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THE REPORT OF THE SENATE STANDING COMMITTEE ON LANDS,  
ENVIRONMENT AND NATURAL RESOURCES

ON

PETITION BY RESIDENTS OF TINDERET SUB-COUNTY, NANDI  
COUNTY, ON THE OPERATIONS OF KAREBE GOLD MINING LTD,  
NANDI COUNTY

PAPERS LAID	
D. TE	07/07/2021.
TABLED BY	Chairman.
COMMITTEE	Lands.
CLERK AT THE TABLE	Dauku

JUNE, 2021

② At. Hon-Speaker  
You may approve for tabling.  
05/07/21

① DC-EG  
Recommended or forwarded for  
Processing for approval  
02/07/21.

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## List of Abbreviations/Synonyms

CDA	- Community Development Agreement
CS	- Cabinet Secretary
CSR	- Corporate Social Responsibility
EACC	- Ethics and Anti-Corruption Commission
EGH	- Elder of the Golden Heart

## PREFACE

**Mr. Speaker sir,**

The Standing Committee on Lands, Environment and Natural Resources is established pursuant to standing order 218(3) of the Standing Orders of the Senate. As set out in the Second Schedule, the Committee is mandated to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

### **Committee Membership**

The Committee comprises of the following Members.

- |                                    |   |                         |
|------------------------------------|---|-------------------------|
| 1. Sen. Paul Mwangi Githiomi, MP   | - | <b>Chairperson</b>      |
| 2. Sen. Philip Mpaayei, MP         | - | <b>Vice-Chairperson</b> |
| 3. Sen. George Khaniri, MGH, MP    |   |                         |
| 4. Sen. Gideon Moi, CBS, MP        |   |                         |
| 5. Sen. Njeru Ndwiga, EGH, MP      |   |                         |
| 6. Sen. (Dr.) Lelegwe Ltumbesi, MP |   |                         |
| 7. Sen. Issa Juma Boy, MP          |   |                         |
| 8. Sen. (Arch.) Sylvia Kasanga, MP |   |                         |
| 9. Sen. Johnes Mwaruma, MP         |   |                         |

At the sitting of the Senate held on 25<sup>th</sup> September, 2018, the Senator, Nandi County, Sen. Samson Cherarkey, MP, presented to the Senate a Petition by residents of Tinderet Sub-county, Nandi County, on the operations of Karebe Gold Mining Ltd in Nandi County. The Petition was thereafter committed to the Senate Committee on Labour and Social Welfare but following consideration by the Committee, it resolved to re-commit the matter vide letter Ref. LABCOMMS/15/05/2019 dated 15<sup>th</sup> May, 2019 through the Speaker of the Senate to the Committee on Lands, Environment and Natural Resources having noted that most of the matters raised in the Petition touched on the Mandate of the Land, Environment and Natural Resources Committee.

The salient issues raised in the said Petition are as follows-

1. That, Karebe Gold Mining Limited is a British firm carrying out gold exploration mining and processing in Kenya and is currently ranked as the largest gold

producer in the country with USD1 million with three separate mines in western Kenya.

2. That, one of these mines is located at Chemise area near a place called Kibisem in Tinderet Sub-county of Nandi County;
3. That, workers at the firm are subjected to harsh working conditions, including working inordinately long hours and without the safety and protective equipment required when working in the mines;
4. That, as a result, many current and former employees of the firm have been affected by a myriad of illnesses, including loss of hearing and breathing complications, with the firm failing to provide them with either an appropriate medical cover or compensation;
5. That, the firm has also engaged in fraudulent land acquisition in the area and has further failed to compensate property owners whose houses have been destroyed due to blasting activities of the mines;
6. That, the firm has failed to engage with locals in carrying out its operations, which are shrouded in secrecy and does not carry out Corporate Social Responsibility (CSR) projects in the area for the benefit of the local community;
7. That, despite the firm extracting gold from the area, the local community has not benefitted in any way from this precious resource and have instead been left in a worse off position than they were before this firm commenced operations in the area; It is worth noting that under the Mining Act, 2016, on mining rules and regulations, according to the community development agreement, the local community should get 1 per cent out of the Kshs1.2 billion that they generate every financial year;
8. That, the best efforts to have these matters addressed by the relevant authorities have been made all of which have failed to give satisfactory response to the people of Chemase; and,
9. That, none of the issues raised in this Petition is pending in any court of law, constitutional or any other legal body.

Therefore, the petitioners humbly pray that the Senate investigates this matter and makes appropriate recommendations thereon, with a view to –

- i). ensuring that the rights of workers at the firm are respected, that the local community benefits from extraction of gold in their area and that if found culpable of breaches of law or other malpractices, action is taken against the directors of the firm; and,
- ii). Ensuring that appropriate regulations and guidelines are put in place, giving effect to the Mining Act, with regard to managing relations between extractive firms and local communities, including in decision-making on matters affecting them.

Pursuant to standing order 232(1) and the Second Schedule to the Standing Orders of the Senate, the Petition was committed to the Standing Committee on Land, Environment and Natural Resources.

Pursuant to Articles 37 and 119(1) of the Constitution, section 5(2) the Petition to Parliament (Procedure) Act and standing order 232 of the Senate Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within the prescribed period.

To enable a judicious disposal of the Petition, the Committee resolved to conduct an inquiry on the issues raised in the Petition. In this regard, the Committee invited the Petitioner to a meeting of the Committee for the Petitioner to elaborate further on the issues raised in the Petition and to supply supporting evidence on the same.

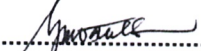
The Committee proceeded to invite the Cabinet Secretary, Ministry of Lands and Physical Planning, the National Land Commission and the Taita Taveta County Government to address respective issues raised on the Petition.

## ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee extends its appreciation to the Petitioners, Stakeholders including the Cabinet Secretary, Ministry of Petroleum and Mining, Mr. John Munyes, EGH; the National Land Commission and the Taita Taveta County Government for their submissions and contribution to the resolution of this matter.

**Mr. Speaker Sir,**

It is now my pleasant duty and privilege, on behalf of the Committee, to present the Report of the Standing Committee on Lands, Environment and Natural Resources on the Petition by residents of Tinderet Sub-county, Nandi County, on the operations of Karebe Gold Mining Ltd in Nandi County.

Signed:  Date: 10/06/2021

**SEN. MWANGI GITHIOMI, M.P.**  
**CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND,**  
**ENVIRONMENT AND NATURAL RESOURCES**

## CHAPTER I

### INTRODUCTION

1. At the Sitting of the Senate held on 25<sup>th</sup> September, 2018, the Senator for Nandi County, Sen. Samson Cherarkey, MP, presented to the Senate, a Petition by residents of Tinderet Sub-county, Nandi County, on the operations of Karebe Gold Mining Ltd in Nandi County.
2. The Salient issues raised in the Petition are as follows:
  - (a) That, Karebe Gold Mining Limited is a British firm carrying out gold exploration mining and processing in Kenya and is currently ranked as the largest gold producer in the country with USD1 million with three separate mines in Western Kenya.
  - (b) That, one of these mines is located at Chemise area near a place called Kibisem in Tinderet Sub-county of Nandi County;
  - (c) That, workers at the firm are subjected to harsh working conditions, including working inordinately long hours and without the safety and protective equipment required when working in the mines;
  - (d) That, as a result, many current and former employees of the firm have been affected by a myriad of illnesses, including loss of hearing and breathing complications, with the firm failing to provide them with either an appropriate medical cover or compensation;
  - (e) That, the firm has also engaged in fraudulent land acquisition in the area and has further failed to compensate property owners whose houses have been destroyed due to blasting activities of the mines;
  - (f) That, the firm has failed to engage with locals in carrying out its operations, which are shrouded in secrecy and does not carry out Corporate Social Responsibility (CSR) projects in the area for the benefit of the local community;

- (g) That, despite the firm extracting gold from the area, the local community has not benefitted in any way from this precious resource and have instead been left in a worse off position than they were before this firm commenced operations in the area; It is worth noting that under the Mining Act, 2016, on mining rules and regulations, according to the community development agreement, the local community should get 1 per cent out of the Kshs1.2 billion that they generate every financial year;
- (h) That, the best efforts to have these matters addressed by the relevant authorities have been made all of which have failed to give satisfactory response to the people of Chemase; and,
- (i) That, none of the issues raised in this Petition is pending in any court of law, constitutional or any other legal body.

Therefore, the petitioners humbly pray that the Senate investigates this matter and –

- i). Ensuring that the rights of workers at the firm are respected, that the local community benefits from extraction of gold in their area and that if found culpable of breaches of law or other malpractices, action is taken against the directors of the firm; and,
  - ii). Ensuring that appropriate regulations and guidelines are put in place, giving effect to the Mining Act, with regard to managing relations between extractive firms and local communities, including in decision-making on matters affecting them.
3. Pursuant to standing order 232(1) of the Standing Orders of the Senate, the Petition was committed to the Labour and Social Welfare Committee and thereafter approved by the Speaker on 23<sup>rd</sup> May, 2019 for further referral to the Land, Environment and Natural Resources Committee.

## **LEGAL BASIS FOR PETITIONS**

4. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.
5. Article 37 of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while Article 119(1) of the Constitution provides that “*every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.*”
6. Section 5(2) of the Petition to Parliament (Procedure) Act, provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House.* In this regard, Standing Order 232 of the Senate Standing Orders provides as follows-
  232. *Committal of Petitions*
    - (1) *Every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.*
    - (2) *Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty (60) calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.*
7. Standing Order 233 requires the Clerk to, within fifteen (15) days of tabling of the report on a petition under Standing Order 232 (Committal of Petitions), submit a copy of the report to the petitioner or petitioners.

## CHAPTER 2

### CONSIDERATION OF THE PETITION

#### **Approach taken by the Committee**

1. The Petition was received from the Petitioner through the House, and was first committed to the Senate Committee on Labour and Social Welfare which resolved that the petition be forwarded to the Senate Committee on Land, Environment and Natural Resources.
2. In considering the Petition, the Committee on Land, Environment and Natural Resources observed that it would be important to verify the facts alleged in the Petition. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.
3. On 22<sup>nd</sup> October 2020, the Senator for Nandi County, Sen. Cherarkey Samson, MP, sought a Statement from the Senate on the Status of the Karebe Gold Mine Company Limited in Nandi County, prompting the Committee to dwell on the two matters at the same time since the issues raised were cross-cutting.
4. The Committee then began inquiry and invited the Cabinet Secretary, Ministry of Petroleum and Mining, who appeared before the Committee virtually on 19<sup>th</sup> August, 2020, where the Ministry responded to the issues raised in the Statement and the Petition.

#### **Response by the Cabinet Secretary, Ministry of Petroleum and Mining**

The statement sought by Sen. Cherarkey is as follows;

1. State the status of licensing and lease renewal of Karebe Gold Mine Company

- Limited, in light of the recent court ruling on the matter between the owners of the land, the local community and the company management;
2. Explain why the Ministry of Petroleum and Mining has failed to ensure that the issues raised in the Petition to the Senate in 2018 are addressed accordingly before pushing for the renewal of the lease with the company;
  3. State why the operations of the mining company have continued to be done in secrecy, against the wishes and the interests of the community and employees, hence creating unnecessary conflict;
  4. Explain why the Ministry of Petroleum and Mining is not willing to respect the wishes of the owners of the land, in respect to lease renewal and the community, in respect to corporate social responsibility; and
  5. State why the ministry has not put in place appropriate regulations and guidelines in line with the Kenya Mining Act, 2016, with regard to managing the relations between the company and the community.

On the issues raised in the Statement, the Ministry of Mining responded as follows:

1. **The status of licensing and lease renewal of Karebe Gold Mine Company Limited, in light of the recent court ruling on the matter between the owners of the land, the local community and the company management.**
  - a) Karebe Gold Mining Limited holds special licence No. 264 (prospecting licence) issued under the repealed Mining Act Cap 306 of the Laws of Kenya, to prospect for precious metals (gold) over an area of 85km<sup>2</sup> in Chamase, Tinderet Sub-county, Nandi County, with effect from 1st October 2008. The licence had been renewed over time and expires on 30th September 2020;
  - b) The company was on 16<sup>th</sup> April, 2009 granted Mining Location No 1113/1-8 for one year from its date of pegging of 14th April 2009, which has been renewed over time and expired on 13th April, 2017. This is the area over which the company has been extracting gold since 2009;

- c) Land Consents had been issued to the company by the respective land owners (including Mr. Cheseret - 10 years consent over parcels No. Nandi / Chemase /974 (9 acres) and Nandi/legemet/224 (1.2 acres) with date of commencement of 21<sup>st</sup> January 2009);
- d) On 6<sup>th</sup> March, 2018, Karebe made an application for a mining licence No. ML/2018/0049, in accordance to the Mining Act, 2016 over an area of 0.8552 km<sup>2</sup> covering its former Mining Location No. 1113/1-8 area;
- e) Mr. Cheseret Arap Korir had however refused to renew the 10 years land lease after its expiry in January 2019, to which the company sought court redress, and as a result the Mining Licence has not been issued;
- f) A ruling of 26<sup>th</sup> February, 2020, of ELC Misc. Application No. 15 of 2019, was made in favour of Mr. Cheseret and the company ordered to vacate his property. In the application Mr. Cheseret had appealed against a 10 years' renewal ward granted through an arbitration. The company has however appealed against the ruling at the Court of Appeal in Nairobi, which appeal is still pending. In the meantime, the company has since commenced pulling down its processing plant for purposes of relocating the same from Mr. Cheseret Korir's land to an adjoining land they have bought, in compliance to the court ruling.

**2. Explain why the Ministry of Petroleum and Mining has failed to ensure that the issues raised in the Petition to the Senate in 2018 are addressed accordingly before pushing for the renewal of the lease with the company.**

The issues raised in the Petition to the Senate in 2018 were as follows;

- a) Whether the gold mine has a prescribed manner for dealing with discovery, exploration, mining, processing and export of gold;
- b) Whether the gold mine has the required technical capacity, expertise, experience and financial resources;
- c) Whether the mining is done in consideration of protecting the environment and

safety of the miners;

- d) The benefits that have been achieved for community development;
- e) Whether the mining operations are carried out in accordance with mining best practice;
- f) Whether there are labour related issues and land exploitation in leasing of the land; and;
- g) Whether the gold mine has been granted the mineral rights stipulated in the Mining Act, No 12 of 2016.

From the issues raised above, the main issue of concern that has been pending is the land owner lease renewal dispute, which is still pending in court, and which has prevented the re-grant of mineral rights to the company as stipulated in the Mining Act, No 12 of 2016.

**3. State why the operations of the mining company have continued to be done in secrecy, against the wishes and the interests of the community and employees, hence creating unnecessary conflict.**

The mining operations of the company have not continued being undertaken in secrecy. The company stopped the operations and laid off the workers following the court ruling of 26<sup>th</sup> February, 2020 which ordered it to vacate Mr. Cheseret Arap Korir's property that had been subject of the disputed renewal of the land lease entered between the parties in 2009, which expired in January 2019.

**4. Explain why the Ministry of Petroleum and Mining is not willing to respect the wishes of the owners of the land, in respect to lease renewal and the community, in respect to corporate social responsibility.**

The Ministry of Petroleum and Mining has respected the wishes of the owners of the land, in respect to the lease renewal and the community, in respect to corporate social responsibility.

The Ministry, in recognition of the wishes of the landowner, has not granted the company with any mining licence over the disputed area.

Further, Corporate Social Responsibility is voluntary and not regulated. However, if the mining licence is granted, then the company will have a legal obligation to a Community Development Agreement (CDA) as in the Mining Act, 2016 and Mining Regulations.

**5. State why the ministry has not put in place appropriate regulations and guidelines in line with the Mining Act, with regard to managing the relations between the company and the community.**

The Law has provided for regulations and guidelines to manage relations between mining companies and holders of mining licences through requirements of consents, regulations on Community Development Agreements, and local content (Procurement of local goods and services & employment and training). However, there are no company specific regulations and guidelines.

## **CHAPTER 5**

### **COMMITTEE OBSERVATIONS**

**In accordance with the Prayers of the Petitioner, the Committee observes as follows:**

- 1. That the petitioner raised concerns on rights of workers and lack of benefits to the local community from the mining activities while the Ministry, in its response, restricted itself on the land issue between Mr. Cheseret Arap Korir and Karebe Gold Mining Limited, a matter still pending in court.**
- 2. That Karebe Gold Mining Limited had operated on Mr. Cheseret Arap Korir's land for 10 years until its license expired in January, 2019.**
- 3. That on 26<sup>th</sup> February, 2020 there was a court ruling in favour of Mr. Cheseret Arap Korir ordering the company to vacate his land. Consequently, Karebe Gold Mining Limited stopped its operations and laid off the workers following the court ruling.**

## CHAPTER 6

### COMMITTEE RECOMMENDATIONS

In accordance with the Prayers of the Petitioner, the Committee recommends as follows:

**The Specific prayer by the Petitioner is that-**

1. Ensuring that the rights of workers at the firm are respected, that the local community benefits from extraction of gold in their area and that if found culpable of breaches of law or other malpractices, action is taken against the directors of the firm; and,
2. Ensuring that appropriate regulations and guidelines are put in place, giving effect to the Mining Act, with regard to managing relations between extractive firms and local communities, including in decision-making on matters affecting them.

**The Committee therefore recommends as follows:**

1. **THAT before renewal of the mining license to Karebe Gold Mining Limited whether on the disputed land or any other land, the Ministry of Petroleum and Mining should ensure that the company has fully addressed concerns of its employees;**
2. **That the Ministry of Petroleum and Mining local community whose lives and properties were affected by the mining activities were adequately compensated by Karebe Gold Mine Limited;**
3. **THAT Karebe Gold Mining Limited fulfils any commitment it had to Corporate Social Responsibility to benefit the local community; and**
4. **THAT the Ministry to promptly finalize the relevant regulations of the Mining Act, 2016 so as to ensure the mining activities by the Firm benefits the local community.**

## APPENDICES

### ANNEX I: MINUTES OF THE MEETINGS

**MINUTES OF THE 40<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 16<sup>TH</sup> SEPTEMBER, 2020 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.**

**MEMBERS**

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Gideon Moi, CBS, MP
3. Sen. Ndwiga Peter Njeru, EGH, MP
4. Sen. Mwaruma Johnes, MP
5. Sen. (Dr.) Lelegwe Ltumbesi, MP

**PRESENT**

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

**ABSENT WITH APOLOGY**

1. Sen. Philip Mpaayei, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. Boy Issa Juma, MP
4. Sen. Sylvia Kasanga, MP

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

**IN ATTENDANCE**

1. Sen. (Dr.) Ochilo Ayacko, MP,
2. Sen. Samson Cherarkey, MP,

**SENATORS**

- Senator, Migori County
- Senator, Nandi County

**MINISTRY OF PETROLEUM AND MINING**

1. Hon. John Munyes, EGH,
2. Eng. John Mosonik, CBS,
3. Mr. Raymond Mutiso
4. Mr. Joshua Ang'elei
5. Mr. Paul Mirie

- Cabinet Secretary
- Chief Administrative Secretary
- Ag. Director of Mines
- Policy Advisor to the CS
- Chief Mineral Economist

**SECRETARIAT**

1. Mr. Victor Bett
2. Ms. Judy Ndegwa
3. Ms. Clare Kidombo
4. Mr. John Ngang'a

- Clerk Assistant
- Legal Counsel
- Researcher
- Audio Recording

**MINUTE SEN/SCLENR/217/2020: PRELIMINARIES**

The meeting was called to order at 11.25 am by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLENR/218/2020: ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Gideon Moi, CBS, MP as follows –

1. Preliminaries
2. Adoption of the agenda;

3. Confirmation of Minutes;
4. Meeting with the **Cabinet Secretary, Ministry of Petroleum and Mining** on **Petitions and Statements-**
  - (a) Statement requested on 27<sup>th</sup> March, 2019 by Sen. (Dr.) Ochilo Ayacko, MP regarding mining activities in Migori County;
  - (b) Statement requested on 10<sup>th</sup> April, 2019 by Sen. Johnes Mwaruma, MP regarding the payment of mining royalties by miners in Taita Taveta County;
  - (c) Statement requested on 3<sup>rd</sup> December, 2019 by Sen. Johnes Mwaruma, MP regarding the operationalization of the Royalty Fund Account ;
  - (d) Statement requested on Tuesday, 24<sup>th</sup> June, 2020 by Sen. Samson Cherarkey, MP, on the status of operations at the Karebe Gold Mine Company Limited in Tinderet Constituency, Nandi County; and
  - (e) Petition by residents of Tinderet Sub County, Nandi County, on the operations of Karebe Gold Mining Ltd in Tinderet Sub County, Nandi County.
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

**MINUTE SEN/SCLNDR/219/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The Committee differed the confirmation of Minutes to the next meeting.

**MINUTE SEN/SCLNDR/220/2020: MEETING WITH THE CABINET SECRETARY, MINISTRY OF PETROLEUM AND MINING ON PETITIONS AND STATEMENTS**

- (a) Statement requested on 10<sup>th</sup> April, 2019 by Sen. Johnes Mwaruma, MP regarding the payment of mining royalties by miners in Taita Taveta County;**

The Cabinet Secretary presented as follows:

**1. The names, addresses and directors of the companies that are licensed to carry out mining activities in Taita Taveta County.**

Mineral deposits within Taita Taveta County include gemstones, iron ore, manganese, copper, limestone, marble, magnesite, kaoline, kyanite, vermiculite, asbestos, mica, and graphite and construction minerals. Currently, the main mineral products from Taita Taveta are gemstones and iron ore. Kenya's gemstone products are destined for export market, where Taita Taveta county account's for approximately 80% of the gemstones produced in the Country, as per export permit declarations. The iron ore mined from the Kishushe area, of the Taita Taveta County is also exported.

Taita Taveta has over 100 mineral rights holders of which approximately 90% are in gemstone prospecting and mining. A detailed list of the operators is attached hereto.

**Table 1: List of Names and address of Companies Licensed to explore and Mine in Taita Taveta County (Copy of table is attached to this minutes)**

## **2. Types of Minerals mined by each of the miners in Taita Taveta.**

The types of minerals mined or sought by each of the miners in Taita Taveta are shown alongside each miner / prospector in the above annexed list of prospectors and miners.

## **3. Confirmation whether the miners pay royalties, the amount of money collected from the royalties, the account to which the royalties are paid and whether the royalties accrue any interest backdated to when they were first collected in 2016.**

The Miners pay royalty for the mineral sales based on rates published vide Legal Notice No. 187 of 2013. Currently royalty for gemstones is paid at a rate 5% of the export value for rough gemstones and at 1% of the export value of value added (or cut) gemstones. Iron ore is charged a royalty at a rate of 8% of gross sales value. The royalties for both gemstones and iron ore from Taita Taveta for the last three years, as per export declarations, are as summarized in the table here below; *(Copy of table is attached to this minutes)*

### **(b) Statement requested on 3<sup>rd</sup> December, 2019 by Sen. Johnes Mwaruma, MP regarding the operationalization of the Royalty Fund Account**

The Cabinet Secretary presented as follows:

The Ministry confirmed that the revenues received, in form of royalties, from mining in Taita Taveta County are paid to the Revenue Account of State Department for Mining at the Central Bank of Kenya.

The royalties are paid either directly by the miners vide EFT to the State Department of Mining Revenue Account at the Central Bank of Kenya (Revenue Account No. 1000387238; Title "State Department for Mining") or by Bankers Cheques for large royalty payments or in case of by cash at the Accounts Section of the State Department. Cheque and cash payments are in turn banked at State Departments Revenue Account at the Central Bank thrice a week.

Being a revenue account, transfers of the remittances are immediately and instantly done to the National Exchequer, at the Central Bank of Kenya.

Having been paid as revenue to the government in the Ministry's Revenue account at the Central Bank of Kenya, the royalties have accrued no interest backdated to when they were first collected in 2016 (or the effective date of Mining Act No 12 of 2016 which provided royalty sharing)

The Committee as per its tradition invited the Senator, Taita Taveta County, who sought further clarification as per the presentation by the Cabinet Secretary on the actual date when these payments will be made and the Cabinet Secretary informed the meeting that as at the previous week the head of public service had begun deliberations on the fund.

### **(c) Statement requested on 27<sup>th</sup> March, 2019 by Sen. (Dr.) Ochilo Ayacko, MP regarding mining activities in Migori County;**

The Cabinet Secretary presented as follows:

**1. The names and addresses of the companies that are licensed to carry out mining activities in Migori County, particularly in Nyatike Sub-county.**

Currently, there is no licensee with a mining right to undertake mining activities in Migori County, particularly in Nyatike Sub-county. However, there are several entities that have exploration licences, whereas others have made applications for exploration licences and mining permits which are at various stages of consideration as per the annexed list, marked **Table 1. (Table attached to this minute)**

Further, there numerous artisanal mining operations within Migori County. For a long time, the artisanal miners operating in Kenya were termed as illegal until the enactment of the Mining Act 2016, which provides for the formalization of the this category of operators through grant of artisanal mining permits. The ministry has commenced the formalization process by constituting the artisanal mining committees at the county level, which committee is mandated to consider applications for artisanal mining permits.

**2. The number of accidents, disasters or fatal emergencies that have occurred in the mines in the last five (5) years, the persons involved in these accidents / disasters and whether the victims have received any form of compensation**

For the last five (5) years, the mine accidents occurring within the Migori County were mainly from the operations by the artisanal miners. The victims, who normally toil for their livelihoods, do not only operate without licences but have no insurance cover of any sort and as such have no recourse for compensation in any way. The details of the reported mine accidents that occurred within the Migori County are as per the annexed list marked **Table 2.**

**3. The measures put in place to safeguard the prospectors against accidents, disasters or emergencies that may threaten their wellbeing**

The Ministry of Petroleum and Mining has been training the artisanal miner on mine safety. The formalization of artisanal miners, as provided for by the Mining Act 2016, will enable the regulation and monitoring of safety aspects through licensing. Additionally the Ministry has sensitized the artisanal miners and the local officers of the Ministry of Interior and Co-ordination of the National Government (County Commissioners, Sub-County Commissioners, etc) on the need to form “*Rescue Response Teams and/or Centres*” within the areas with high concentration of artisanal mining. The ministry is encouraging the artisanal miners to get insurance covers. The ministry will also explore with some of the insurance companies/ providers to determine whether artisanal mining operations, once licensed, can qualify for insurance cover.

**TABLE 1: LIST OF PROSPECTING LICENCES IN MIGORI COUNTY**

*(Table attached to this minute)*

**TABLE 2: LIST OF MINE ACCIDENTS / DISASTERS / FATAL EMERGENCIES IN MIGORI COUNTY IN THE LAST FIVE (5) YEARS**

*(Table attached to this minute)*

The Committee allowed the Senator, Migori County to seek responses directly from the Cabinet Secretary and he informed the meeting that most of these companies were operating illegally and that very serious activities were taking place there.

The CS responded by informing the Committee that they are in the process of identifying the potential that exists in Migori County.

*(Sen. Samson Cherarkey, MP, logged in while the Cabinet Secretary was making his presentation and Interruption ensued compelling the Chairperson to adjourn the meeting)*

**MINUTE SEN/SCLNR/221/2020: ANY OTHER BUSINESS;**

There was no other business discussed.

**MINUTE SEN/SCLNR/222/2020: DATE OF NEXT MEETING;**

The meeting was adjourned at 12.38 pm and the date of the next meeting was scheduled for Thursday, 17<sup>th</sup> September, 2020 at 11.00 am via zoom online platform.

Signed: For:  .....

Date: 19/11/2020

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL  
RESOURCES**

# **STAKEHOLDER'S SUBMISSIONS**

## SENATE STATEMENT ON THE MINING ACTIVITIES IN MIGORI COUNTY

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### REQUESTED STATEMENT

The Senator for Migori County, Sen. (Dr.) Ochilo Ayako, MP, on 27<sup>th</sup> March 2019, sought a statement, through the Speaker, from the Standing Committee on Land, Environment and Natural Resources, concerning the following mining activities In Migori County.

In the statement the Committee is to-

1. Provide the names and addresses of the companies that are licensed to carry out mining activities in Migori County, particularly in Nyatike Sub-county;
2. State the number of accidents, disasters or fatal emergencies that have occurred in the mines in the last five (5) years, the persons involved in these accidents / disasters and whether the victims have received any form of compensation; and
3. Explain the measures put in place to safeguard the prospectors against accidents, disasters or emergencies that may threaten their wellbeing.

Subsequently the request was passed to the Ministry of Mining for response.

### STATEMENT FROM THE MINISTRY OF PETROLEUM AND MINING

The Ministry of Petroleum and Mining wish to respond to the issues raised as follows:

- 1. The names and addresses of the companies that are licensed to carry out mining activities in Migori County, particularly in Nyatike Sub-county.**

Currently, there is no licensee with a mining right to undertake mining activities in Migori County, particularly in Nyatike Sub-county. However, there are several entities that have exploration licences, whereas others have made applications for exploration licences and mining permits which are at various stages of consideration as per the annexed list, marked **Table 1**.

Further, there numerous artisanal mining operations within Migori County. For a long time, the artisanal miners operating in Kenya were termed as illegal until the enactment of the Mining Act 2016, which provides for the formalization of the this category of operators through grant of artisanal mining permits. The ministry has commenced the formalization process by constituting the artisanal mining committees at the county level, which committee is mandated to consider applications for artisanal mining permits.

**2. The number of accidents, disasters or fatal emergencies that have occurred in the mines in the last five (5) years, the persons involved in these accidents / disasters and whether the victims have received any form of compensation**

For the last five (5) years, the mine accidents occurring within the Migori County were mainly from the operations by the artisanal miners. The victims, who normally toil for their livelihoods, do not only operate without licences but have no insurance cover of any sort and as such have no recourse for compensation in any way. The details of the reported mine accidents that occurred within the Migori County are as per the annexed list marked **Table 2**.

**3. The measures put in place to safeguard the prospectors against accidents, disasters or emergencies that may threaten their wellbeing**

The Ministry of Petroleum and Mining has been training the artisanal miner on mine safety. The formalization of artisanal miners, as provided for by the Mining Act 2016, will enable the regulation and monitoring of safety aspects through licensing. Additionally the Ministry has sensitized the artisanal miners and the local officers of the Ministry of Interior and Co-ordination of the National Government (County Commissioners, Sub-County Commissioners, etc) on the need to form "*Rescue Response Teams and/or Centres*" within the areas with high concentration of artisanal mining. The ministry encouraging the artisanal miners to get insurance covers. The ministry will also explore with some of the insurance companies/ providers to determine whether artisanal mining

operations, once licensed, can qualify for insurance cover.

**TABLE 1: LIST OF PROSPECTING LICENCES IN MIGORI COUNTY**

<b>COMPANY/ INDIVIDUAL</b>	<b>COMMODITY OF INTEREST</b>	<b>Licence No.</b>	<b>Type of Licence</b>
<b>Ngira Exploration and Mining Works Ltd</b>	Precious Metals	PL/2018/0192	Prospecting Licence
<b>Ngira Exploration and Mining Works Ltd</b>	Precious Metals	MP/2019/0275	Mining Permit
<b>East African Pure Gold</b>	Gold, Base Metals	PL/2018/0176	Prospecting Licence
<b>Abba Mining Company Ltd</b>	Precious Metals	PL/2018/0164	Prospecting Licence
<b>B and M Mining Company Ltd</b>	Precious Metals	PL/2018/0150	Prospecting Licence
<b>Maralal Energy Ltd</b>	Precious Metals, Base and Rare Metals	PL/2018/0140	Prospecting Licence
<b>Maralal Energy Ltd</b>	Precious Metals, Base Metals	PL/2018/0146	Prospecting Licence
<b>Pinsapo Kenya Ltd</b>	Precious Metals, Base Metals	209	Prospecting Licence
<b>Nichau International (Kenya) Ltd</b>	Precious Metals, Base Metals, Industrial Minerals	PL/2018/0137	Prospecting Licence
<b>Nichau International (Kenya) Ltd</b>	Precious Metals, Base Metals, Industrial Minerals	PL/2018/0138	Prospecting Licence
<b>Ruban Company Limited</b>	Gold	PL/2015/1070	Prospecting Licence
<b>Asko Miners Ltd</b>	Gold, Copper	PL/2015/0034	Prospecting Licence
<b>Edward Nyamboge</b>	Precious Metals, Base and Rare Metals	AMP/0005	Artisanal Mining Permit
<b>Kenya Sunny Industries Company Ltd</b>	Precious Metals, Base Metals	PL/2017/0031	Prospecting Licence
<b>Mid Migori Mining Company Ltd</b>	Precious Metals, Non Precious Minerals	PL/2018/0202	Prospecting Licence
<b>Mid Migori Mining Ltd</b>	All Minerals	PL/2018/0203	Prospecting

			Licence
<b>Zhengwei Technique Kenya Ltd</b>	Precious Metals, Gold, Copper	SPL/2015/0053	PL
<b>Aurum Utulum Mining Co. Ltd</b>	Gold, Copper, Silver	PL/2018/0107	PL
<b>Aurum Utulum Mining Co. Ltd</b>	Precious Metals, Base and Rare Metals	App No/1142	Application for PL
<b>Wacho Investments Ltd</b>	Precious Metals, Base Metals	SPL/2013/1314	Prospecting Licence

**TABLE 2: LIST OF MINE ACCIDENTS / DISASTERS / FATAL EMERGENCIES IN MIGORI COUNTY IN THE LAST FIVE (5) YEARS**

	Date	Injury / Fatality	Locality	Sub-County.	Incident / Cause
1.	3/6/2013	5 people died due to Carbon Dioxide gas poisoning	Masara	Suna West	Carbon Dioxide poisoning in pit
2.	4/9/2013	4 people died at	Osiri Matanda	Nyatike	Mine collapse
3.	8/10/2013	1 person died	Osiri Matanda	Nyatike	Hit by boulder
4.	Feb. 2017	3 Miners died	Osiri Matanda	Nyatike	Mine Collapse
5.	8/5/2018	6 people died	Macalder	Nyatike	Rock collapse during heavy downpour
6.	29/8/2018	6 people rescued after being buried in pit for 2 days	Kehancha Stadium	Kuria West	Collapse of mine pit
7.	10/11/2018	1 person died	Macalder	Nyatike	Hit by rock
8.	28/12/2018	4 miners died	Osiri, Matanda	Nyatike	Mine Collapse
9.	March 2019	1 man hurt when trapped in pit	-	Nyatike	Hurt by boulder and trapped in pit

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## STATEMENT TO THE SENATE ON PAYMENT OF MINING ROYALTIES FROM TAITA TAVETA COUNTY

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### REQUESTED STATEMENT

The Senator for Taita Taveta (Senator Johnes Mwaruma, MP) seeks a response through from the Cabinet Secretary for Petroleum and Mining, through the Standing Committee on Land, Environment and Natural Resources, on the division of revenue obtained from mining in Taita Taveta County between the Taita Taveta County and the National Government.

In the Statement, the Cabinet Secretary should:-

1. Provide the names, addresses and directors of the companies that are licensed to carry out mining activities in Taita Taveta County;
2. State the types of minerals they mine from the county; and
3. State whether the miners pay royalties, the amount of money collected from the royalties, the account to which the royalties are paid and whether the royalties accrue any interest backdated to when they were first collected in 2016.

### **The Ministry of Mining and Petroleum wish to state as follows:**

- 1. The names, addresses and directors of the companies that are licensed to carry out mining activities in Taita Taveta County.**

Mineral deposits within Taita Taveta County include gemstones, iron ore, manganese, copper, limestone, marble, magnesite, kaoline, kyanite, vermiculite, asbestos, mica, and graphite and construction minerals. Currently, the main mineral products from Taita Taveta are gemstones and iron ore. Kenya's gemstone products are destined for export market, where Taita Taveta county account's for approximately 80% of the gemstones produced in the Country, as per export permit declarations. The iron ore mined from the Kishushe area, of the Taita Taveta County is also exported.

Taita Taveta has over 100 mineral rights holders of which approximately 90% are in gemstone prospecting and mining. A detailed list of the operators is attached hereto.

## 2. Types of Minerals mined by each of the miners in Taita Taveta.

The types of minerals mined or sought by each of the miners in Taita Taveta are shown alongside each miner / prospector in the above annexed list of prospectors and miners.

## 3. Confirmation whether the miners pay royalties, the amount of money collected from the royalties, the account to which the royalties are paid and whether the royalties accrue any interest backdated to when they were first collected in 2016.

The Miners pay royalty for the mineral sales based on rates published vide Legal Notice No. 187 of 2013. Currently royalty for gemstones is paid at a rate 5% of the export value for rough gemstones and at 1% of the export value of value added (or cut) gemstones. Iron ore is charged a royalty at a rate of 8% of gross sales value. The royalties for both gemstones and iron ore from Taita Taveta for the last three years, as per export declarations, are as summarized in the table here below;

Year	Gemstones		Iron Ore	
	Export Value (US\$)	Royalty paid (Kshs.)	Export value (US\$)	Royalty Paid (Kshs.)
<b>2016</b>	1,824,719.00	6,717,995.00	-	-
<b>2017</b>	2,361,389.00	6,351,028.50	-	-
<b>2018</b>	5,579,936.88	18,799,636.03	3,919,688.36	36,550,955.68
<b>2019 (upto March)</b>	1,268,245.67	9,132,936.45	-	-
<b>Total</b>	<b>11,034,290.55</b>	<b>41,001,595.98</b>	<b>3,919,688.36</b>	<b>36,550,955.68</b>

The Ministry confirms that the revenues received, in form of royalties, from mining in Taita Taveta County are paid to the Revenue Account of State Department for Mining at the Central Bank of Kenya.

The royalties are paid either directly by the miners vide EFT to the State Department of Mining Revenue Account at the Central Bank of Kenya (Revenue Account No. 1000387238; Title "State Department for Mining") or by Bankers Cheques for large royalty payments or in case of by cash at the Accounts Section of the State Department. Cheque and cash payments are in turn banked at State Departments Revenue Account at the Central Bank thrice a week.

Being a revenue account, transfers of the remittances are immediately and instantly done to the National Exchequer, at the Central Bank of Kenya.

Having been paid as revenue to the government in the Ministry's Revenue account at the Central Bank of Kenya, the royalties have accrued no interest backdated to when they were first collected in 2016 (or the effective date of Mining Act No 12 of 2016 which provided royalty sharing)

## SENATE STATEMENT ON STATUS OF KAREBE GOLD MINING LIMITED IN NANDI COUNTY

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### REQUESTED STATEMENT

The Senator for Nandi County, Sen. Cherarkey Samson Kiprotich, MP, on 22<sup>nd</sup> October 2020, sought a statement from the Senate Majority Leader on the Status of the Karebe Gold Mine Company Limited in Nandi County.

Subsequently the request was passed to the Ministry of Petroleum and Mining for response.

The statement is to respond to and provide details on;

1. State the status of licensing and lease renewal of Karebe Gold Mine Company Limited, in light of the recent court ruling on the matter between the owners of the land, the local community and the company management;
2. Explain why the Ministry of Petroleum and Mining has failed to ensure that the issues raised in the Petition to the Senate in 2018 are addressed accordingly before pushing for the renewal of the lease with the company;
3. State why the operations of the mining company have continued to be done in secrecy, against the wishes and the interests of the community and employees, hence creating unnecessary conflict;
4. Explain why the Ministry of Petroleum and Mining is not willing to respect the wishes of the owners of the land, in respect to lease renewal and the community, in respect to corporate social responsibility; and
5. State why the ministry has not put in place appropriate regulations and guidelines in line with the Mining Act, with regard to managing the relations between the company and the community.

The Ministry of Mining wish to respond to the issues raised as follows:

**1. The status of licensing and lease renewal of Karebe Gold Mine Company Limited, in light of the recent court ruling on the matter between the owners of the land, the local community and the company management.**

Karebe Gold Mining Limited holds special licence No 264 (prospecting licence) issued under the repealed Mining Act Cap 306 of the Laws of Kenya, to prospect for precious metals (gold) over an area of 85km<sup>2</sup> in Chamase, Tinderet Sub-county, Nandi County, with effect from 1st October 2008. The licence had been renewed over time and expires on 30th September 2020

The company was on 16th April 2009 granted Mining Location No 1113/1-8 for one year from its date of pegging of 14th April 2009, which has been renewed over time and expired on 13th April 2017. This is the area over which the company has been extracting gold since 2009.

Land Consents had been issued to the company by the respective landowners (including Mr Cheseret - 10 years consent over parcels No. Nandi / Chemase /974 (9 acres and Nandi/legemet/224 (1.2 acres) with date of commencement of 21st January 2009).

On 6th March 2018, Karebe made an application for a mining licence No ML/2018/0049, in accordance to the Mining Act 2016 over an area of 0.8552 km<sup>2</sup> covering its former Mining location No 1113/1-8 area.

Mr Cheseret Arap Korir had however refused to renew the 10 years land lease after its expiry in January 2019, to which the company sought court redress, and as result the Mining Licence has not been issued.

A ruling of 26<sup>th</sup> February 2020, of ELC Misc. Application No 15 of 2019, was made in favour of Mr Cheseret and the company ordered to vacate his property. In the application, Mr Cheseret had appealed against a 10 years's renewal ward granted through an arbitration. The company has however applead against the ruling at the Court of Appeal in Nairobi, which appeal is still pending. In the meantime, the company has since commenced pulling down its processing plant for purposes of relocating the same from Mr Cheret Korir's to an adjoining land they have bought, in compliance to the court ruling.

**2. Explain why the Ministry of Petroleum and Mining has failed to ensure that the issues raised in the Petition to the Senate in 2018 are addressed accordingly before pushing for the renewal of the lease with the company;**

The issues raised in the Petition to the Senate in 2018 were as follows;

- i) Whether the gold mine has a prescribed manner for dealing with discovery, exploration, mining, processing and export of gold;
- ii) Whether the gold mine has the required technical capacity, expertise, experience and financial resources;
- iii) Whether the mining is done in consideration of protecting the environment and safety of the Miners;
- iv) The benefits that have been achieved for community development;
- v) Whether the mining operations are carried out in accordance with mining best practice;
- vi) Whether there are labour related issues and land exploitation in leasing of the land; and
- vii) Whether the gold mine has been granted the mineral rights stipulated in the Mining Act, No 12 of 2016.

From the above, the main issue of concern that has been pending is the land owner lease renewal dispute, which is in court, and which has prevented the re-grant of mineral rights to the company as stipulated in the Mining Act, No 12 of 2016.

**3. State why the operations of the mining company have continued to be done in secrecy, against the wishes and the interests of the community and employees, hence creating unnecessary conflict;**

The mining operations of the company have not continued being undertaken in secrecy. The company stopped the operations and laid off the workers

following the court ruling of 26th February 2020, which ordered it to vacate Mr Cheseret Arap Korir's property that had been subject the disputed renewal of the land lease entered between the parties in 2009, which expired in January 2019.

**4. Explain why the Ministry of Petroleum and Mining is not willing to respect the wishes of the owners of the land, in respect to lease renewal and the community, in respect to corporate social responsibility;**

The Ministry of Petroleum and Mining has respected the wishes of the owners of the land, in respect to the lease renewal and the community, in respect to corporate social responsibility.

The Ministry, in recognition of the wishes of the landowner, has not granted the company with any mining licence over the disputed area.

Further Corporate Social Responsibility is voluntary and not regulated. However, if the mining licence is granted, then the company will have a legal obligation to a Community Development agreement (CDA) as the Mining Act 2016 and Mining regulations.

**5. State why the ministry has not put in place appropriate regulations and guidelines in line with the Mining Act, with regard to managing the relations between the company and the community.**

The Law has provided for regulations and guidelines to manage relations between mining companies and holders of mining licences through requirements of consents, regulations on Community Development Agreements, and local content (Procurement of Local Goods and Services & Employment and Training). However, there are no company specific regulations and guidelines.

**Hon. John K. Munyes, EGH**

**CABINET SECRETARY**

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**ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS**

*(Attached separately)*

