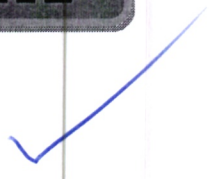
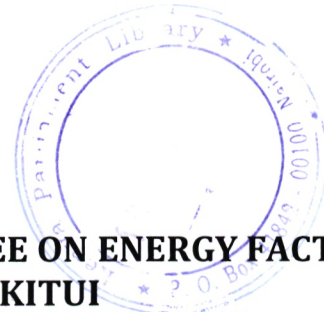


MEMO



To : The Speaker
Thro' : The Clerk
Thro' : Director, Committee Services
From : Clerk Assistant
Date : 19th March, 2015
Subject: **REPORT OF THE STANDING COMMITTEE ON ENERGY FACT FINDING TOUR TO MUI COAL BASIN IN KITUI**

Forwarded and endorsed for Approval
[Signature] 19/03/15



The Standing Committee on Energy undertook a fact finding tour to Mui Coal basin on 3rd September, 2014.

Consequently, pursuant to Standing Order 203 the Committee prepared the attached Report and intends to lay the said report on the Table of the Senate.

This is to request for your consideration and approval of the Report.

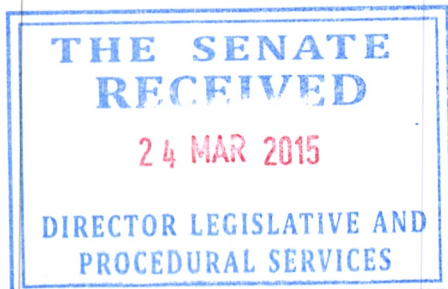
Sub



Stephen Gikonyo

Hon. Speaker
You may approve for tabling.
[Signature] 20/03/15

Approved
[Signature] 24/3/15



Clerks Chambers
The Senate
NAIROBI

19th March, 2015

PAPERS LAID

Mr. Speaker Sir, I beg to lay the following Paper on the Table of the House today Thursday 18th March, 2015.

The Report of the Standing Committee on Energy on the Fact Finding Visit to Mui Coal Basin in Kitui.

Copies to:-

The Speaker
Deputy Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press



NOTICE OF MOTION (SEN. GIDEON MOI)
(STANDING COMMITTEE ON ENERGY)

Mr. Speaker Sir, I beg to give Notice of the following Motion-

THAT, the House adopts the Report of the Standing Committee on Energy on the Fact Finding Visit to Mui Coal Basin laid on the Table of the House on Thursday 19th March, 2015.

Signed  Date 

CHAIRPERSON, STANDING COMMITTEE ON ENERGY.

ABBREVIATIONS AND ACRONYMS

BSA	-	Benefit Sharing Agreement
EIA	-	Environmental Impact Assessment
EMCA	-	Environmental Management Coordination Act
EOI	-	Expression of Interest
MOEP	-	Ministry Of Energy and Petroleum
NLC	-	National Land Commission
RAP	-	Resettlement Action Plan
SEA	-	Strategic Environmental Assessment
SSEC	-	Senate Standing Committee on Energy

PREFACE

1. The Standing Committee on Energy was constituted on 27th February, 2014 during the Second Session of Eleventh (11th) Parliament pursuant to the provisions of Senate Standing Order No.177.
2. The Committee is mandated, under the second schedule of the Senate Standing Orders, to consider all matters related to Fossil fuels exploration, Development, production, maintenance and regulation of energy.
 - (i) In executing its mandate, the Committee oversees the Ministry of Ministry of Energy and Petroleum
3. The Standing Committee on Energy comprises the following members: -
 - (a) Sen. Gideon Moi - Chairman
 - (b) Sen. Danson Mwazo - Vice Chairman
 - (c) Sen. Kiraitu Murungi - Member
 - (d) Sen. Abu Chiaba, - Member
 - (e) Sen. David Musila - Member
 - (f) Sen. Charles Keter - Member
 - (g) Sen. Elizabeth Ongoro - Member
 - (h) Sen. Kimani Wamantangi - Member
 - (i) Sen. John Munyes - Member

The following Members of the Committee and staff of the Senate formed the delegation on 3rd September, 2014 to the fact finding visit at the Mui Coal Basin-

- (a) Sen. Gideon Moi - Chairman
- (b) Sen. David Musila - Member
- (c) Sen. Elizabeth Ongoro - Member
- (d) Sen. Kimani Wamatangi - Member

The Members of the National Assembly who accompanied the Committee were as follows-

- (a) Hon. Joel Musyimi Mutambu, Members of Parliament
- (b) Hon. Marcus Mutua Muluvi, Members of Parliament
- (c) Hon. Benson Makali Mulu, Members of Parliament
- (d) Hon. Benard Munyoki Kitungu, Members of Parliament

The official from the Ministry of Energy and Petroleum was Mr. John Omenge, Chief Geologist and other members of the delegation were the Chairmen of Block C&D; A&B and Liaison Committees.

The Committee was also accompanied by the following officials from the Kitui County-

- (a). Dr. Julius Malobe, the Governor Kitui County;
 - (b). Mr. Henry Wafula, Deputy County Commissioner
 - (c). Mr. Jacob W. K. Ruto Kitui East Sub-County Administrator
 - (d). Mr. Lawrence M. Kinyua, Mathuki Mwingi East Deputy Commissioner
-

EXECUTIVE SUMMARY

In execution of its task and in compliance with Article 118 of the Constitution, the Committee embarked on a fact finding mission by visiting the Kitui County and undertook an all inclusive county consultative forums in sectors under the coal exploration.

This Report in its first chapter narrates the presentations and submission made by the various stakeholders to the Committee and the observation of the previous stakeholder's consultative meeting held on the status of the county mining sector in Kitui; the second chapter defines the legal status of the community land and related issues in mining areas; and lastly, Chapter three is the Committee observation, findings and recommendation adduced from the engagements made during the fact finding mission.

COMMITTEE PROCEEDINGS

The Committee embarked on the fact finding visit on 3rd September, 2014.

The Senate team was received by the County Minister for Energy, County Government officials, Kitui County Commissioner, Kitui Central Sub-County Administrator and Deputy County Commissioner upon arrival.

The Committee paid a courtesy call to the H.E. (Dr.) Julius Malobe, Kitui County Governor's. The Committee was briefed on the vast deposit of coal in Mui Basin, which have been partially prospected; the status of concession of the Coal Exploration Blocks; and issues surrounding the mining of coal in Mui Basin which merited the attention of the Senate Standing Committee on Energy.

The Governor in his address to the Members of the Committee explained the Legal Status of the Community Land and issues in mining areas; Land Lease, Compensation and Resettlement Action Plan(RAP); Environmental Management; Planning and Infrastructure as stipulated in Law.

The Committee met the following County Leadership and subsequently held the meetings with them during the Fact Finding Visit:-

- i. H.E. (Dr.) Julius Malobe, Kitui Governor and meeting held at the Governor's Office;*
- ii. Kitui East Sub-County Administrator and Deputy County Commissioner:- A briefing and short tour was undertaken at Coal Exploration site Zombe*
- iii. Mathuki Mwingi East Deputy Commissioner:- A brief courtesy call at his residence*
- iv. The Committee culminated its Fact Finding Visit with a Public Baraza at Mathuki.*
- v. Air Traverse on the coal basin while being briefed by the Ministry official.*
- vi.*

The delegation visited the following coals wells-

A) Zombe

The Committee visited the Zombe Zone Blocks A and B Coal Exhibition where a brief discussion was held at Zombe under the stewardship of the Kitui East Sub-County Administrator and Deputy County Commissioner

B) Mathuki

The Committee undertook an air traverses over Block A, B and C, later a display of the coal deposits of Block C and D exhibited, followed by a public Baraza at Mathuki Shopping Centre. The Committee concluded its tour by traversing over Block C and D coal deposit fields on its way back to Nairobi.

Objectives of the Tour

- a) *To learn the causes of the stalemate that has forestall the exploration of coal in Mui Basin,*
- b) *To enlighten the locals the lucrative importance of the mining activity to the Nation,*
- c) *To explore the avenues available to mitigate on impasse between the investor and the local community and leaders;- and*
- d) *To translate its findings into a policy and legislative framework to be used nationally in finding a lasting solution to the communities living in mineral rich zones.*
- e) *To create a National lasting solution to the community concern in relation to corporate social responsibilities on other like ventures across the Country*

ACKNOWLEDGMENT

The Committee appreciates the Offices of the Speaker and the Clerk of the Senate for the support extended to it during the visit.

The Committee further extends its gratitude to H.E. (Dr.) Julius Malobe, Kitui Governor, Members of the County Assembly and County Commissioner for their warm reception.

The Committee thanks Cabinet Secretary Ministry of Energy and Petroleum (MOEP) and the Officers from MOEP for facilitating and enlightening the Committee on the exploration activities

Special gratitude also goes to the Members of the Standing Committee on Energy for taking their time to make this visit a success.

Lastly and not least the Committee's secretariat is also appreciated for its technical support to the Committee.

I thank you all.

SIGNED.....


SEN. GIDEON K. MOI, M.P.

CHAIRMAN, STANDING COMMITTEE ON
ENERGY, ROADS & TRANSPORTATION

DATE..... 12-03-2015

CHAPTER ONE

2.1 Presentations

On 3rd September 2014, the Standing Committee on Energy undertook a fact finding mission to the Mui Coal Basin in Kitui and observed the following from the submission made by various stakeholders in the County-

1.1.1 Introduction to Mui Coal Basin in Kitui

Kitui County has a vast deposit of coal; this huge resource once exploited has the potential to be a source of energy for the County as well as supplying the National Grid. Coal is also important in the manufacturing of cement and steel, capable of spurring economic growth. Discovery of coal (a source of energy) in Mui Basin of Kitui County is so important in the realization of Kenya's vision 2030.

The Ministry of Energy has been carrying out exploration since 1999 and still partially prospected. Mui Basin covers a total area about 500sq. km. split into four exploration blocks:-

- i. Block A (Zombe/Mwitika Ward) 121.5sq.km.
- ii. Block B (Mutito/Itiko Ward) 117.5sq.km
- iii. Block C (Mui Ward) 131.5sq.km
- iv. Block D (Kivou Ward) 120sq.km

1.1.2 Overview of the discoveries made:

Exploration works and drilling have been carried out partially as follows:-

- i. exploration in Block C which has about 400million metric tonnes of recoverable coal has been ascertained;
- ii. forty wells were drilled in Blocks C and D and only twenty seven were found to contain coal seams;
- iii. block D has similar features as Block C and is estimated to have the same amount of coal;
- iv. 16 wells have been drilled in Blocks A and B (8 in each block);
- v. coal has been confirmed in eight out of the sixteen wells so far drilled;
- vi. to ascertain the presence of recoverable coal, more exploration needs to be carried out in Blocks A and B as was done in Block C; and
- vii. the range of thickness of coal seams is estimated at 0.3 to 13metres and the depth of the occurrence of coal is estimated between 11 to 329metres.

Despite the high expectation from coal, its extraction and subsequent use as a fuel source of energy has been faced with a myriad of challenges. Thus, the Senate Standing Committee on Energy whose mandate is to consider all matters related to fossil fuels exploration, development,

production, maintenance and regulation of energy resolved to undertake a fact finding tour to the Mui Coal Basin.

1.1.3 Status of the Concessions on Coal Exploration Blocks

The committee was informed on the concessions made and the signed Benefits Sharing Agreements (BSA) as follows:-

- block C and D have already been concessioned to Fenxi Mining Company and the Benefits Sharing Agreement (BSA) signed on 23rd December, 2013;
- an Addendum to the BSA has been drawn to address community issues left out of the BSA and is yet to be signed by the parties; and
- an expression of interest (EOI) for concessions of Block A and B is expected to be advertised any time soon by the Ministry of Energy and Petroleum (MOEP)

1.1.4 Issues of Concern in Mining Coal at Mui Basin

- (a) **Mining of the Coal**
 - The Convening of the Steering Committee, where the County Government is supposed to be a member, has not yet been constituted and needs to be done.
 - The National Government and mining firm should sign the addendum before the mining of the coal and any other activity is carried out.
 - Benefits sharing should be equitable and favorable to the County Government and the community.
 - Harmonize the proposal on benefits sharing between Senate and National Assembly
- (b) **Land Ownership and Compensation**
 - The Adjudication work should be fast-tracked for identifying land owners and easing the compensation process
- (c) **Environment Impact analysis**
 - A comprehensive Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) should be carried out by the mining firm under the supervision of NEMA and the County Government before the mining and resettlement of people
- (d) **Resettlement of People**
 - A comprehensive resettlement action plan to be formulated and implemented by the mining firm under supervision of the County Government and NEMA
- (e) **Liaison Committee for Block A and B**

- The National Government to fast-track the gazettelement and provide budgetary facilitation for the Committee activities
- (f) **Other Mineral Resources**
- The National Government to provide clarity on the utilization of other minerals (either by products) of coal to be mined and the benefits sharing for the County Government and the community
- (g) **Coal energy plant in Mui**
- The National Government to update the County Government and other stakeholders on the status of the advertised bids on the coal energy plant
 - The National Government to provide a clear time frame on when the coal plant will be established in Mui
- (h) **Concession of the Blocks A and B**
- The National Government through the Ministry of Energy and Petroleum in consultation with the County Government should fast-track the concessioning of Block A and B
- (i) **Issues of Addendum**
- The mining firm to provide adequate compensation for land and other property to the community for acquired in consultation with the County and National Government
 - A clear resettlement plan indicating where and how to resettle the displaced people
 - The National Government to clarify on the criteria for sharing benefits with the County Government and community
 - The National Government should establish a coal power plant in Mui Basin
- (j) **Infrastructure Development**
- The National Government to create a T-junction from Mtito Wa Ndei to connect Mui Basin with SGR through Mathima and Kanziko to assist in the transportation of excess coal and open up Kitui mineral belt
 - The National Government to tarmack the roads planned for both sides of the Mui Basin to open up area for social economic development
 - The National Government to fast-track the 12-inch water project to supply water to Mui Basin from the Tana River
 - As part of the County Government planning, the County Government to establish four special economic zones in Mui Basin, Mathimo-Mutomo, Mwingi Town and Tseikuru/Withuki Irrigation Scheme to be serviced by the Rail, Road and Water Infrastructure

2.2 Summary of the Stakeholders Consultative Meeting Held on the Status of the County Mining Sector

The Committee was brief on the Kitui leadership in conjunction other stakeholders consultative meeting held on 11th July, 2014 at KEFRI, JICA Centre to deliberate on a shared vision for the utilization of the Mineral Resources for sustainable development.

This workshop was held and the following is a list of participant:-

- (i) *Elected Leaders – H.E. the Governor, H.E. the Deputy Governor, Members of Parliament (M.Ps) and Members of the County Assembly*
- (ii) *County Executive*
- (iii) *County Public Service Board*
- (iv) *Academics and Researchers*
- (v) *Professionals from Nairobi, Mombasa and Nakuru*
- (vi) *Legal Experts*
- (vii) *KNNCI – Kitui Branch*
- (viii) *Atumia ma Thome*
- (ix) *Kamba Council of Elders*
- (x) *Youth Representative*
- (xi) *Ward Development Committee Officials*
- (xii) *Sub-County Administrators*
- (xiii) *Liaison Committee Officials*
- (xiv) *Civil Society Organizations Representative (CSO)*
- (xv) *Religious Leaders*
- (xvi) *People with Special Needs; and*
- (xvii) *Community Representative*

His Excellency the Governor of Makueni informed the Committee that, the workshop was useful and strides were made in sharing information which enlightening participant on the Coal Exploration, he reiterated that, the participant had a fruitful interaction in unlocking the impasse that existed.

The Governor made the following submission on the recommendations and resolution which was arrived at after lengthy and rich deliberation on the objective of the forum:-

1. The participant agreed to constitute a technical team to consolidate issues raised on the Mining Bill and Community Land Bill 2011, the participants were assured of the Senators and MPs consideration of the matter and lobbying to have their grievances addressed in the proposed amendments to the two legislation in the following areas:-
 - a) *formulation of a new section and clause to serve community interest; and*
 - b) *members of the Team to include 2 representative from mining areas, 4 lawyers and 4 county officers.*
2. The County Government to work with the National Government to facilitate the:-

- a) Gazettement of Liaison Committee for Block A and B;
 - b) Constitute Liaison Committee in mineral rich areas of the County such as Ngaai, Kanziko and Ikutha among others. Members should consist of professionals, experienced and people who can negotiate with investors. Ensure regional balance and representation and lobby National Government to Gazette them; and
 - c) County Government to lobby National Government to provide budgetary allocations to facilitate their planned operations and activities.
3. The County Government to develop laws and institutional structures to facilitate implementation of constitutional mandates on planning, surveying and mapping among others and especially in areas such as:-
- a) environment conservation;
 - b) health and safety issues;
 - c) land valuation and compensation;
 - d) support for community development (CRS); and
 - e) resettlement Action Plan (RAP) for affected people.
4. Members of Parliament to work with the Technical Committee in lobbying and linking others Members of Parliament especially from the minerals rich counties to ensure legislation and laws on mining are passed and implemented appropriately
5. County Government to ensure and facilitate the convening stakeholders meeting shortly after the enactment of the Mining Bill and Community Land Bill 2014 get assented to review the outcome
6. Ministry responsible for mining in the County to formulate a Cabinet Memo on proposal to establish county mining investment proposal for consideration by the Cabinet. After acceptance will pave way for the formulation of a Bill for submission to the County Assemble for a consideration and approval
7. The County Government to carry out civic education to community in order to create awareness and sensitization on minerals exploration, prospecting and exploration
8. The County Government to facilitate formation of a technical team to look on how people can be empowered to benefit from the mineral wealth investment
9. County Government to work with the National Government and closely with the local elected leaders and Mui Coal Basin Blocks C and D Community Liaison Committee to ensure that the addendum for the Benefits Sharing Agreement (BSA) for Block C and D signed on 23rd December, 2013 is concluded before any further activities is undertaken. ~~The signing must be undertaken because leaders and the people gave support to the signing of BSA on understanding that the Addendum will be signed~~

10. The County Government of Kitui and Liaison Committee should arrange a meeting with the Ministry of Energy and Petroleum to be updated on the progress of coal fired plant in Mui Basin
11. The County Government, National Government, Liaison Committees and Local Leaders to come up with action plan pertaining to training and capacity building on the youth in mineral rich areas.

CHAPTER TWO

3.1 Legal Status of the Community Land and Related Issues in Mining Areas

The Kenya Constitution defines the principle of land policy as follows:

(1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles –

- (a) equitable access to land;*
- (b) security of land rights;*
- (c) sustainable and productive management of land resources;*
- (d) transparent and cost effective administration of land;*
- (e) sound conservation and protection of ecologically sensitive areas;*
- (f) elimination of gender discrimination in law, customs and practices related to land and property in land; and*
- (g) encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution.*

(2) These principles shall be implemented through a national land policy developed and reviewed regularly by the national government and through legislation.

The Kenya Constitution classify land as public, community or private as stipulated in the Article 61 (1) and (2)

61. *Classification of land*

- (1) All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.*
- (2) Land in Kenya is classified as public, community or private.*

Article 63 (1-5) defines the Community Land as follows:-

63. *Community land*

- (1) Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.*
- (2) Community land consists of –*
 - (a) land lawfully registered in the name of group representatives under the provisions of any law;*
 - (b) land lawfully transferred to a specific community by any process of law;*
 - (c) any other land declared to be community land by an Act of Parliament; and*
 - (d) land that is –*
 - (i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;*
 - (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; or*
 - (iii) lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under Article 62(2).*

- (3) Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held.
- (4) Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.
- (5) Parliament shall enact legislation to give effect to this Article.

The Constitution also safeguards the interest of the Community in regard to land use as stipulated in the Article 66 (2) as follows:-

66. Regulation of land use and property

- (1) The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.
- (2) Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.

3.2 Legal Status Mui Basin Community Land and Related Issues in Mining Areas

(a) Categorization and Ownership

- i) Most mining areas fall under the community land due to the following factors
 - They are ancestral lands as per the Constitution, Article 63, Section 2 (d) (ii)
 - Any unregistered land as per the Constitution, Article 63, Section 3
 - By definition under the National Land Commission Act, 2012 (preliminaries)
 - According to the County Government Act, 2012, Article 134, the Local Government Act (Chap. 265) was repealed and consequently all community land reverted to be under the County Government

(b) Management

- According to the Constitution, Article 67, 2 (h), the National Land Commission (NLC) has to monitor and have oversight responsibilities over land use planning throughout the country
- The NLC shall manage and administer all un-registered trust and unregistered community land on behalf of the County Government according to the National Land Commission Act, 2012, Section 5, (2) (e)
- NLC shall establish offices in the counties and may establish other offices in the sub-counties as it may consider necessary as per the NLC Act 2012, Article 2012, Article 16 (5)
- Land Act, 2012, Part IV, Article 37 states that "community land shall be managed in accordance with the law relating to the community land enacted pursuant to Article 63 of the Constitution"

(c) Adjudication

According to the County Government Act, 2012, Article 110 2 (c) (i) the County Government shall indicate the desired patterns of land use within the County

(d) Survey

According to the Constitution, fourth Schedule, Part 2, Section 8, the County Government shall be in charge of the County planning and development including:

- Land surveying and mapping (adjudication, survey and registration of titles)
- Boundaries and fencing

(e) Tilting

- Article 8 (I) (a-g) of the Land Registration Act, 2012, requires the maintenance of a community land register in each registration unit pursuant to Article 63 of the Constitution
- Article 8 (2) of the Land Registration Act, 2012, the Registrar shall issue a certificate of title or certificate of lease in the prescribe form
- Land Lease, Compensation and Resettlement Action Plan (RAP)
- Part IV, Article 54 and 55 of Land Registration Act, 2012 deals with all aspects of registration of land leases

(f) Environmental Management

Strategic Environment Assessment SEA and Environment Impact Assessment EIA Study Reports.

According to the Environmental Management and Coordination Act (EMCA), 1999, Second Schedule and EMCA (1999) EIA and EA Regulations of 2003 there is merit to carry out a Strategic Environmental Assessment (SEA) given magnitude of the proposed investment:-

- Displacement and resettlement of 300 household
- Large scale mining of limestone
- Putting up a large cement factory
- Infrastructural development
- Urban planning
- Decommissioning of the mining and cement factory
- Rehabilitation of the mined land
- An EIA should be carried out for each of the above projects
- According to the Constitution Fourth Schedule, Part 2, Section 3, the County Government shall be in charge of the control of air pollution, noise pollution, other public nuisance and outdoor advertising of which mining is a big source

(g) Planning and Infrastructure

Area/Urban Planning

The Physical Planning Act, Chap. 286, requires the approval of all development plans by the County Government besides carrying out of an EIA study in accordance with EMCA (1999)

County Government Act, 2012, Part XI (Article 102-115) mandates the County Government to carry out county planning.

CHAPTER THREE

Conclusion and Recommendations

3.1 Introduction

The one day fact finding mission to the Kitui County was a success. The delegation had a direct contact with the County Government Officials and a baraza which was a perfect engagement with the public as clearly stipulated in the Constitution Article 118 in relation to public participation.

The Committee found out that, the Country needs a long term solution to mitigate between investors and communities for fair benefit sharing. The Committee therefore noted the need for a comprehensive legislation to address issues surrounding exploration and engagements with community living within these regions. The Committee realized that with organized, constant and reliable source of coal energy, the National power grid can be enhanced thus enhance the country's economic activity for and thus facilitate realization of vision 2030. The Committee agreed to solve the disagreement that has stalled the coal exploration in Kitui Government so as to allow the investors work within the stipulated time frame for the completion of the project.

3.2 Committee Observation

The Committee observed that-

- There is need to constitute a local based Steering Committee and the County Government be a member and a clear communication be established between the Liaison Committee and the Ministry of Energy while also the Liaison Committee should be gazetted.
- The National Government and mining firm should sign the addendum before the mining of the coal or any other activity is carried out at the Mui Coal Basin.
- The benefits sharing mode to be employed and should be equitable to the community, County Government and the National Government including the firm.
- The land adjudication need to be fast tracked and identification of the real owners to be given ownership titles.
- There is need for an environment Impact analysis and assessment in the area.
- There should be a clear resettlement plan indicating where and how the displaced persons will be settled.
- The Coal Energy Plant is established right at Mui Coal Basin.
- There is need for the all the other coal accompanying minerals be identified and their benefits analyzed and their processing industries be established at Mui Basin
- The concessioning of Blocks A and B should made clear and fast tracked between the Ministry and the County Government.
- All the issues in the Addendum including compensation from the mining for land and other community property be properly addressed thus they will be beneficial to all the stakeholders more so the local community.

- There is need for the standard railway to have a section to connecting Mui Basin for transportation of coal to the port and the rest of the country and general improvements of the roads at the Mui coal basin.

3.3 Committee's Findings

The Committee established that-

- (i) More explorations need to be carried out especially in Blocks A and B
- (ii) There is need to harmonize the benefits sharing
- (iii) A local based Steering Committee be constituted and be inclusive of all the relevant stakeholders of Mui Coal Basin including the County Government, the Community, mining firm, national government among others.
- (iv) The Gazettement of the Liaison Committee should be fast tracked to enable it start undertaking its mandate.
- (v) A clear communication method be established between the Liaison Committee and the Ministry of Energy thus it can disseminate the information to the community.
- (vi) An information dissemination office be established at the local community level.
- (vii) The National Government and mining firm should sign the addendum before the mining of the coal or any other activity is carried out at the Mui Coal Basin.
- (viii) The benefits sharing method to encompass the element of employment beneficial to the community, County Government and the National Government including the firm.
- (ix) The land adjudication need to be fast tracked and identification of the real owners to be given ownership titles.
- (x) An environment Impact analysis and assessment in the area be carried out by the relevant bodies include NEMA.
- (xi) A clear resettlement plan indicating where and how the displaced persons will be settled be formulated and the community be informed accordingly.
- (xii) The Coal Fired Power Plant be established at Mui Coal Basin where the raw material is found.
- (xiii) The youth in the coal rich areas be trained on issues relating to coal thus they will benefit from the employment opportunities full processing commences
- (xiv) Identification of all the coal accompanying minerals be done, their benefits analysed and their processing plants like tile industries be established at Mui Basin
- (xv) Concessioning of Blocks A and B are fast tracked between the Ministry and the County Government.
- (xvi) All the issues in the Addendum for the Benefit Sharing Agreement (BSA) including compensation from the mining for land and other community property be properly addressed and signed thus they will be beneficial to all the stakeholders more so the local community.
- ~~(xvii) The standard railway should have a section connecting Mui Basin and the rest of the country including the port~~
- (xviii) The roads network at the Mui basin should be improved including tarmacking them.
- (xix) There is need to amend the Mining Bill as it is currently.

- (xx) A coal mining law be formulated.
- (xxi) There is need for constant civic education for the affected communities

3.4 **Committee's Recommendations**

- (a) There is need for constant civic education for the affected communities
- (b) All the issues in the Addendum for the Benefit Sharing Agreement (BSA) including compensation from the mining for land and other community property be properly addressed and signed. In addition identification and consideration of all the coal accompanying minerals in the Benefit Sharing Agreement (BSA)
- (c) A mining law be reviewed.
- (d) The Coal Fired Power Plant be established at Mui Coal Basin where the raw material is found for employment to residence of Kitui and accruing maximum benefits in the exploration.
- (e) A clear resettlement plan indicating where and how the displaced persons will be settled be formulated and the community be informed accordingly.

Appendix I - List of Participant

Appendix II - Addendum Benefit Sharing Agreement

APPENDICES

Appendix I - List of the Delegation

Delegation to the Mui Coal Basin in Kitui - 3rd September 2014

Standing Committee on Energy Members

1. Sen. Gideon Moi - Chairman
2. Sen. David Musila - Member
3. Sen. Elizabeth Ongoro - Member
4. Sen. Kimani Wamantangi - Member

THE SENATE STANDING COMMITTEE ON ENERGY TOUR OF MUI COAL PROJECT

A. Members of Parliament

1. Hon. Joel Musyimi Mutambu - Member of Parliament
2. Hon. Marcus Mutua Muluvi - Member of Parliament
3. Hon. Benson Makali Mulu - Member of Parliament
4. Hon. Benard Munyoki Kitungu - Member of Parliament

B. Kitui County Leadership

1. Dr. Julius Malombe Governor
2. Mr. George Mulatya CEC Member for Environment, Energy
3. and Mining
4. Hon. Stanislaus Mulongo Member County Assembly (Mui Ward)
5. and Chairman of Energy Committee, Kitui County
6. Hon. Patricia Kisio Kimanzi Member of County Assembly
7. Hon. Eunice Katheke Mwathi Member of County Assembly
8. Hon. Anastasia M. Mutunga Member of County Assembly

C. Members of Blocks C and D Liaison Committee

1. Mr. Eric Mutua Chairman
2. Dr. Wathe Nzau Vice-Chairman
3. Dr. Titus Kivaa Secretary
4. Prof. Mumo Kisau Treasurer
5. Hon. Patricia Kimanzi MCA/Member
6. Hon. Stanislaus Mulongo MCA/Member
7. Rev. Joseph Nzuni Member
8. Margaret Munyoki Member
9. Eunice K. Wambua Member
10. John K. Mutia Member
11. Solomon Kivoto Member
12. David K. Maweu Member
13. Florence Kitonga Member

D. Members of Blocks A and B Liaison Committee

1. Jeniffer David Vice Chair
2. David Mutisya Treasurer
3. Tabitha Ngui Assistant Secretary
4. Jehu Mutemi Member
5. Munyoki Kiema Member

E. Ministry of Energy and Petroleum Staff

1. John M. Omenge Chief Geologist
2. Barminas K. Murei Chief Superintending Geologist
3. Barack P. Ouma Ag. Chief Superintending Geologist
4. Joseph M. Ndogo Senior Superintending Geologist
5. Nemuel W. Abuga Senior Superintending Geologist
6. John N. Mwaura Principal Public Communications Officer
7. Raphael K. Kuria Geophysicist
8. Deborah Odera Principal Assistant Office Administrator
9. Martha Wangari Accountant
10. Cecilia Bosire Accountant
11. Mary Mungai Assistant Office Administrator
12. Jacinta Nyakerario Senior Office Administrative Assistant
13. Eric Adika Human Resource Management Officer
14. Antony Njeru Office Administrative Assistant
15. Margaret Makau Office Assistant

F. Ministry of Interior and Coordination of National Government

1. Henry Wafula Deputy County Commissioner, Katulani
Representing Kitui County Commissioner
2. Lawrence M. Kinyua Deputy County Commissioner, Mutitu Sub County
3. Jacob W. K Ruto Deputy County Commissioner, Mwingi East
4. Mrs. M. A. Abdulatif Deputy County Commissioner, Mwingi Central

G. Kitui County Administrators

1. Mr. Stephen Kitonga Salee Mwingi Central Sub County Administrator
2. Mr. Joyfred Mumo Kasamba Mutitu Sub County Administrator
3. Mr. Kiema Kilonzo Administrator, Zombe/Mwitika Ward
4. Mr. Mulyungi Mwendwa Administrator, Mutitu/Kaliku Ward
5. Mr. Mwendwa Kivuvo Administrator, Mui Ward
6. Mr. Joshua Kiteme Administrator, Kivou Ward

Standing Committee on Energy Secretariat

1. Mr. Stephen M. Gikonyo - Clerk Assistant
2. Mr. Ibrahim A. Leruk - Clerk Assistant

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REPUBLIC OF KENYA

ADDENDUM TO BENEFIT SHARING AGREEMENT

DATED 23RD DECEMBER, 2013

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KENYA

AND

FENXI MINING INDUSTRY COMPANY LIMITED

RELATING TO

COAL BLOCK C, MUI BASIN, KITUI COUNTY, KENYA

A
D?

This Agreement is made and entered into on the _____ day of _____ 2014
by and between

1. THE GOVERNMENT OF THE REPUBLIC OF KENYA (hereinafter referred to as "*the Government or GOK*") represented for the purposes of this addenda by the Principal Secretary for the time being appointed in respect of the Ministry of Energy and Petroleum, the Principal Secretary for the time being appointed in respect of the Ministry of Finance and the Principal Secretary in respect of the Ministry of Mining; and
2. FENXI MINING INDUSTRY COMPANY LIMITED, incorporated under the laws of the People's Republic of China whose registered address is No. 95, Yuhua Road, Jiexiu City, Shanxi Province, 032000, People's Republic of China, and having established a place of business at North Star Building, 4th Floor, Lenana Road, P.O. Box 53476—00200, Nairobi, Kenya (hereinafter referred to as "*the Concessionaire*" which expression shall, where the context so requires, include the Concessionaires' successors in title and permitted assigns).

WHEREAS the parties signed and executed a Benefit Sharing Agreement (hereinafter BSA) dated 23rd December, 2013.

WHEREAS the Parties have agreed to receive and amend certain provisions in the said BSA to accommodate certain interests of the local community and the County Government of Kitui (hereinafter "*the County*").

NOW THEREFORE in consideration of the undertakings and covenants contained in BSA and the addenda herein, the Parties hereby agree as follows:-

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1. This ~~is~~ Addendum shall take ~~precedent~~ precedence over the BSA only in so far as the amended clauses are concerned. If any clause in the addendum is in conflict with any provision(s) of the BSA then the provisions of this Addendum shall prevail.
 2. The Concessionaire shall prioritize recruitment of qualified and skilled persons from the local community, County, Kenya and elsewhere in that order as the case may be. For the avoidance of doubt, local community refers to the Development area defined in the Benefit Sharing Agreement. *x unskilled*
 3. The parties acknowledge that upon issuance of a Mining License to an Assignee and the execution by the parties of a Deed of Novation transferring all obligations under BSA and this Addendum to the Assignee then the said obligations of the Concessionaire under BSA and this Addendum shall be extinguished and transferred to the said Assignee.
 - 3.4. The anticipated Financing Agreement between the Concessionaire and its financiers shall be shared with the GOK with a view to secure a clause to the effect that in the event of upon the financier stepping in to conduct the coal operations pursuant to Clause 2.6 of the Benefits Sharing Agreement all the obligations of the concessionaire under the Benefits Sharing Agreement shall be assigned or passed over to the financier.
 - 4.5. The Resettlement Action Plan is to be negotiated and agreed upon between the GOK, the Concessionaire and the local Community.
-
- 65.1 The Land (property) which is to be compulsorily acquired shall revert to the County to be held in trust for the local Community as Community land for the duration of the Benefit Sharing Agreement and exclusively for use by the Concessionaire.

the project is to be set aside and invested as a fund for research in achieving the alternative economic activities. This 1% of the gross revenue shall be part of the gross revenue sharing ratios for Blocks C and D, in which 23.6% for Block C and 22.1% for Block D. This fund shall be controlled by a Committee comprising of representatives of the Concessionaire, the government and the County and the local community and shall be subject to an annual audit.

~~10. The Coal off takers shall be procured through an open tender and in accordance with the Public Procurement & Disposal Act of Kenya.~~

11.1 The local Community and the County shall be party to the Option Agreement.

11.2 The Option share shall be agreed upon and contributed and or distributed among the parties as follows:

GOK	5%
County	3%
Local Community	3%

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IN WITNESS WHEREOF this Agreement has been duly executed as a deed of Variation by the Parties the day and year first hereinabove written.

For Government

Principal Secretary, Ministry of Energy

Signature

Name

Title

In the Presence of:

Witness Signature

Name

Title

Principal Secretary, Ministry of Finance

Signature

Name

Title

In the Presence of:

Witness Signature

Name

Title

Tracked

For the Concessionaire

Fenxi Mining Industry Company Limited

Signature:

Name: MR. YANG WU SHENG, duly authorized
representative of the Concessionaire pursuant to a
resolution of the Board of Directors of the Concessionaire
dated 2014.

Title VICE-CHAIRMAN-FENXI MINING INDUSTRY CO. LTD.

In the Presence of:

First Witness

Signature

Name MR LI YU XIN

Title DIRECTOR-FENXI MUI MINING CORPORATION LTD.

Second Witness

Signature

Name DR. GEORGE KARIITHI

Title DIRECTOR-FENXI MUI MINING CORPORATION LTD.

**MINUTES OF THE ELEVENTH SITTING OF THE STANDING COMMITTEE
ON ENERGY HELD ON THURSDAY 26TH FEBRUARY, 2015 IN KICC, 4TH
FLOOR, K.I.C.C AT 11.00AM**

Present

1. Sen. Gideon Moi - Chairman
2. Sen. Kiraitu Muruingu
3. Sen. Charles Keter

Absent with Apologies

1. Sen. Danson Mwazo Mwakulegwa - Vice Chairman
2. Sen. David Musila
3. Sen. Abu Chiaba
4. Sen. Elizabeth Ongoro
5. Sen. Kimani Wamatangi
6. Sen. John Munyes

In Attendance - SUNY Kenya

1. Dr. Rono Tumuising - Expert
2. Ms. Elsie Opiyo - SUNY Official
3. Ms. Halima Ibrahim - SUNY Official

In Attendance - The Kenya Senate

1. Mr. Stephen Gikonyo - Clerk Assistant
2. Mr. Ibrahim Leruk - Clerk Assistant
3. Ms. Carol Cheruiyot - Legal Officer
4. Mr. Wellington Nemenge - Research Officer
5. Mr. Charles Musera - Serjeant-At-Arms

Min. No. 070/2015 Preliminary

The proceedings commenced with a word of prayer at 10.05am.

Min. No. 071/2015 Adoption of the agenda

The agenda was adopted as follows:-

1. Prayer
2. Adoption of the Agenda
3. Confirmation of Previous Minutes

4. Matters Arising from the Minutes
5. **Brief by the Consultants on the Local Contents Bill.**
6. Any Other Business
7. Adjournment and Date of the Next Meeting

Min. No. 072/2015 Confirmation of Minutes of the Previous Sitting

The Committee resolved to confirm the Minutes of the 9th and 10th in the next sitting.

Min. No.073/2015 SUNY Kenya Consultant Submission

The Committee was briefed on the Local Content Bill policy pillars and legislative guide and the following was highlighted:-

That the Local Content in the current situation be defined as the value-addition which is contributed to the national economy through local hiring, local procurement and beneficiation and further it involves developing local economies through procuring goods and services which are locally available, thus stimulating industrial development through building capability for forward and backward linkages (beneficiation). This will increase local capability to meet international standards in production of goods and services, building skilled workforce and creating a competitive supplier base.

The Committee also observed that the local content can be actualized in various ways including through: -

- the income received by locals;
- the revenues received by landowners and owners of resources; and
- the income streams to local shareholders and creditors.

The Committee deliberated on set of issues commonly raised by communities as follows:-

- Land acquisition processes by non-locals where resources are discovered;
- the displacement from ones land and the loss of established livelihoods and disruption of ways of life;
- Compensation mechanisms in relation to land;
- Low civil education – disempowering locals, and rendering them unable to make informed decisions about their choices;
- Lack by government to adequately disclose information crucial to local communities;

The Committee was further informed that the Draft copy of the Bill will be ready in a week's time and the consultants will be ready to present it to the Committee. After deliberations the Committee resolved to hold a retreat in Naivasha from 12th to 15th March, 2015 to be taken through the proposed draft Bill comprehensively.

Min. No. 074/2015 Adoption of Mui Coal Basin Report

The Committee deliberated on the Mui Coal Report and adopted the Report without amendments.

Min. No. 075/2015 Any Other Business

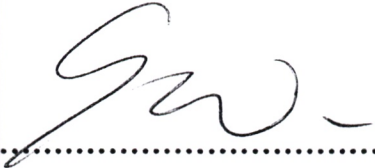
The Committee noted that the KETRACO management were scheduled to appear before the Committee on 12th March, 2015. Further, the Committee was brought to the attention of the apology letter from the Principal Secretary Ministry of Energy and Petroleum on their non appearance before the committee as invited on 18th February, 2015, consequently the Committee resolved that the Ministry be invited for a meeting on the same dates with KETRACO to brief the Committee on the Ministry's Performance Report.

Min. No. 076/2015 Date of Next Meeting

The Committee agreed to have its next sitting on 5th March, 2015 in Lamu while undertaking the fact finding tour on the coal fired construction site and the gas exploration sites.

Min. No. 077/2015 Adjournment

There being no other business and the time being forty five minutes past eleven O'clock the meeting adjourned.

SIGNED: 
CHAIRPERSON – Sen. Gideon Moi

DATE: 12-03-2014
.....

- Weak laws and policies governing the extractive sector which compromise community;
- Lack of clear systems for benefit sharing;
- employment issues including exclusion locals for non-locals
- Lack of involvement in exploratory issues;
- Presence of security forces; and
- Environmental concerns – including pollution of environment and land degradation.

The Committee was further briefed on the following constraints of developing a local content in Kenya:-

- Lack of stimulating regulatory framework, resulting in corrupt or opaque systems, unstable and volatile politico-economic environment, no affirmative
- Policy support for forward and backward linkages;
- Weak infrastructure facilities;
- Low technical capability in manufacturing, fabrication, industrial or artisanal;
- Danger that local content requirements exceed local industry growth potential leading to unintended economic uncertainty;
- Barriers in procurement;
- Weak participation frameworks; and
- Low capacity for skills transfer.

The Consultants also addressed the issues for the local content development as follows:-

- Sovereignty and national interest
- Sector roles and responsibilities
- Natural resource companies
- Private sector participation
- Exploration
- Local content
- Fiscal objectives
- Revenue and expenditure management
- Social and environmental concerns
- Local context and commitments to investors

The Committee learnt that, it had three regulatory designs to adopt for the local content development: - Detail Content Approach, Individually Legislated Agreements and Hybrid Approach. The Committee was advised to take the Hybrid Approach to avoid the pitfalls of the highly prescriptive model that would work for Kenya