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REPUBLIC OF KENYA



PARLIAMENT OF KENYA THE SENATE

THIRTEENTH PARLIAMENT
THIRD SESSION

THE STANDING COMMITTEE ON ENERGY

PARLIAMENT
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REPORT ON THE LOCAL CONTENT BILL
(SENATE BILLS NO. 50 OF 2023)

PAPERS LAID	
DATE	01/08/2024
TABLED BY	Chair-Energy
COMMITTEE	Energy
CLERK AT THE TABLE	Carolyne Chewp

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 31/07/24

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21/7/24

APPROVED
RT. HON. SEN
AMASON J. KINGI

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First Floor,
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Mr. Hon. Speaker
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Date: _____

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RT. HON. SEN
AMASON J. KINGI

Clerk's Chambers,
First Floor,
Parliament
Buildings,
NAIROBI.

JULY, 2024

Mr. Hon. Speaker
You may approve for lifting
the ban on arms sales
to the Secretary of State
and the State Department

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PRELIMINARIES

A. Establishment and Mandate of the Standing Committee on Energy

The Standing Committee on Energy is established under standing order 228 (3) of the Senate Standing Orders and is mandated to consider all matters related to fossil fuels exploration, development, production, maintenance and regulation of energy.

B. Membership of the Committee

The Committee is comprised of the following Members:

1. Sen. Wamatinga Wahome, MP	-	Chairperson
2. Sen. William Kisang' Kipkemoi, MP	-	Vice-Chairperson
3. Sen. (Dr.) Boni Khalwale, CBS, MP	-	Member
4. Sen. Ledama Olekina, MP	-	Member
5. Sen. (Dr.) Oburu Oginga, MGH, MP	-	Member
6. Sen. James Lomenen Ekomwa, MP	-	Member
7. Sen. Danson Buya Mungatana, MGH, MP	-	Member
8. Sen. Abass Sheikh Mohamed, MP	-	Member
9. Sen. Edwine Watinya Sifuna, MP	-	Member

C. Functions of the Committee

Pursuant to Standing Order 228(4), the Committee functions to –

1. Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration and operations of its assigned ministries and departments;
2. Study the program and policy objectives of its assigned ministries and departments, and the effectiveness of the implementation thereof;
3. Study and review all legislation referred to it;
4. Study, assess and analyse the success of the ministries and departments assigned to it as measured by the results obtained as compared with their stated objectives;
5. Consider the Budget Policy Statement in line with Committee's mandate;
6. Report on all appointments where the Constitution or any law requires the Senate to approve;
7. Make reports and recommendations to the Senate as often as possible, including recommendations of proposed legislation;
8. Consider reports of Commissions and Independent Offices submitted to the Senate pursuant to the provisions of Article 254 of the Constitution;

9. Examine any statements raised by Senators on a matter within its mandate; and
10. Follow up and report on the status of implementation of resolution within their mandate.

D. Government Agencies and Departments

In exercising its mandate, the Committee oversees the County Governments, the Ministry of Energy and its various Semi-Autonomous Government Agencies (SAGAs)

1. Energy and Petroleum Regulatory Authority (EPRA)
2. Kenya Power & Lighting Company Limited (KPLC)
3. Kenya Electricity Generating Company Limited (Kengen)
4. Kenya Electricity Transmission Company Limited (KETRACO)
5. Rural Electrification and Renewable Energy Company (REREC)
6. Nuclear Power and Energy Agency (NUPEA)
7. Geothermal Development Company (GDC)
8. Kenya Pipeline Company (KPC)
9. Kenya Pipeline Refineries Limited (KPRL)

CHAIRPERSON'S FOREWORD

The Local Content Bill (Senate Bills No. 50 of 2023) was published *vide* Kenya Gazette Supplement No. 224 of 24th November, 2023. It was introduced in the Senate by way of First Reading on Tuesday, 26th March, 2024, and thereafter stood committed to the Standing Committee on Energy pursuant to Standing Order 145.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145(5) of the Senate Standing Orders, the Standing Committee on Energy proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Tuesday, 3rd April, 2024, inviting members of the public to submit written memoranda to the Committee on the Bill.

Following the call for submissions, the Committee received written memoranda from various stakeholders, including: the Ministry of Mining, Blue Economy and Maritime Affairs, the Council of Governors, Bunge Youth Dialogue and Extractive Insight Centre.

About the Local Content Bill

The Local Content Bill (Senate Bills No. 50 of 2023), seeks to provide a framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil and other petroleum resources; to provide a framework to increase the local value capture along the value chain in the exploration of gas, oil and other petroleum resources; and for connected purposes.

The bill aims to enhance the Kenyan economy by increasing local content in the extractive industry through the systematic development of national capacity, capabilities, and investment in local workforce, services, and supplies to maximise the benefits shared. The bill therefore, intends to maximise the level of usage of local goods and services, people, businesses and financing.

Specifically, the bill focuses on the oil, gas, and other petroleum resources sectors in Kenya. To this effect the law shall apply to all commercial activities related to the exploration, extraction, development and exploitation of oil, gas and other petroleum resources in the extractive industry in Kenya.

It seeks to promote the maximisation of value-addition and the creation of employment opportunities within the extractive industry value chain through the use of local expertise, goods, services, businesses and financing and their retention in the country.

Having conducted public participation on the Bill, the Committee has recommended minor amendments as detailed in this report as well as consequential amendments as outlined below.

Consequential Amendments

The Committee **observed** that the Mining Act Cap. 306, the Energy Act and the Petroleum Act Cap. 308 currently contains provisions that may not fully align with the objectives and requirements introduced by the Local Content Bill. The Committee further observed the need to streamline and harmonise existing legislative frameworks to ensure consistency and coherence in regulating the extractive industries.

The Committee **recommended** an amendment to the Mining Act Cap. 306, the Energy Act Cap 314 and the Petroleum Act Cap. 308 to streamline and harmonise these laws with the provisions introduced by the Local Content Bill as detailed in this report.

Acknowledgements

On behalf of the Committee, I wish to thank the various stakeholders who submitted written memoranda including: the Cabinet Secretary, Ministry of Mining, Blue economy and Maritime Affairs, Council of Governors, Extractive Insights Centre and Bunge Youth Dialogue.

I thank the offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this important assignment.

Lastly, I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Local Content Bill (Senate Bill 50 of 2023) successful.

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders of the Senate Standing Orders to present the Report of the Standing Committee on Energy on the Local Content Bill (Senate Bills 50 of 2023).



Signed

Date..... 2/07/2024

SEN. WAMATINGA WAHOME, M.P.

CHAIRPERSON, STANDING COMMITTEE ON ENERGY

CHAPTER ONE INTRODUCTION

A. Introduction

1. The Local Content Bill (Senate Bills No. 50 of 2023) was published *vide* Kenya Gazette Supplement No. 224 of 24th November, 2023. A copy of the Bill as published has been attached to this report as *Annex 2*.
2. It was introduced in the Senate by way of First Reading on Tuesday, 26th March, 2024, and thereafter stood committed to the Standing Committee on Energy pursuant to Standing Order 145.
3. In compliance with the provisions of Article 118 of the Constitution and Standing Order 145(5) of the Senate Standing Orders, the Standing Committee on Energy proceeded to undertake public participation on the Bill.
4. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Tuesday, 3rd April, 2024, inviting members of the public to submit written memoranda to the Committee on the Bill. A copy of the advert as published has been attached to this report as *Annex 3*.
5. Following the call for submissions, the Committee received written memoranda from various stakeholders, including: the Ministry of Mining, Blue Economy and Maritime Affairs, the Council of Governors, Bunge Youth Dialogue and Extractive Insight Centre.
6. In addition, the Committee held intensive meetings to review the submissions made by the various stakeholders. A copy of the public participation matrix has been attached to this report as *Annex 1*.

B. Background

7. The Local Content Bill, 2023 aims to create a comprehensive legal framework that will fully enhance local content in Kenya. This Bill proposes to achieve this through among other things; the maximisation of value-addition, facilitation of a competitive, capable and sustainable labour force within the extractive industry, and enhancing local ownership and use of local assets and services in the extractive industry.
8. The current legal framework for local content lies in the Petroleum Act Cap. 308, the Mining Act, Cap. 306 and the Mining (Use of Local Goods and Services) Regulations. Section 9 of the Petroleum Act provides that the national government shall ensure that petroleum operations and infrastructure development are carried out for the benefit of the people of Kenya.
9. Part VI of the Petroleum Act further sets out the local content requirements of persons carrying out petroleum operations. This Part prescribes a basic outline of a local content plan as well as the monitoring and enforcement provisions to be carried out by the National Government.

10. Section 47 of the Mining Act mandates that holders of mineral rights prioritize employment for local community members and Kenyan citizens. For large-scale operations, they must conduct employee training programs, build capacity, and comply with local standards for hiring non-citizen technical experts, aiming to replace them with qualified Kenyans within a reasonable timeframe. Additionally, they are required to establish links with universities for research and environmental management, undertake socially responsible investments in local communities, and implement community development agreements as prescribed by regulations.
11. Section 50 of the Mining Act provides for the preference in the use of local products. The holder of a mineral right is required to prioritise, to the maximum extent possible, the use of materials and products made in Kenya, services offered by members of the local community and Kenyan citizens, and companies or businesses owned by Kenyan citizens.
12. The Mining (Use of Local Goods and Services) Regulations aim to promote the utilization of Kenyan goods and services in the mining industry. They define key terms such as "Kenyan content," "Kenyan goods," and "Kenyan services" and outline the responsibilities of holders of mineral rights to prioritize local products and services.
13. The regulations mandate the submission of procurement plans that prioritize local goods and services and ensure that these plans form part of the licensing conditions. They also require holders of mineral rights to submit procurement plans for local goods and services, set criteria for inviting tenders, and establish a register of local businesses and service providers.
14. Additionally, the regulations emphasise the use of local engineering, insurance, accounting, and legal services and mandate regular reporting and compliance monitoring to ensure adherence to these requirements.

C. Objects of the Bill

15. The objects of the Bill are to -
 - a) promote the maximisation of value-addition and the creation of employment opportunities in the extractive industry value chain through the use of local expertise, goods, services, businesses and financing and their retention in the country;
 - b) provide a framework for the—
 - i. establishment of a monitoring, evaluation and reporting system in the implementation of this Act;
 - ii. development of indigenous skills across the extractive industry value chain; and

- iii. application of the mechanism of local content by an operator under this Act;
- c) enhance the participation of local persons in extractive industry value chain; (d)
- d) facilitate the development of a competitive, capable and sustainable labour force within the extractive industry;
- e) enhance local ownership and use of local assets and services in the extractive industry; and
- f) maximise value addition through local content development and local participation in extractive industry operations.

D. Overview of the Bill

16. The Bill is divided into seven Parts and contains a Schedule which outlines the provisions relating to the conduct of meetings of the Committee created under clause 9 of the Bill.

a) Part I—Preliminary (Clauses 1-5)

17. This Part of the Bill contains the preliminary clauses of the Bill. These include the short title to the Bill, the interpretations clause, the application clause, the objects clause and the guiding principles of the Bill.

18. According to the application clause, this Bill is intended to apply to all commercial activities related to the exploration, extraction, development and exploration of oil, gas and other petroleum resources in the extractive industry in Kenya. This Bill cites its guiding principles of this under clause 5 as being Article 10, Article 62 and Article 69 of the Constitution.

b) Part II—Role of the National Government (Clauses 6-8)

19. Clause 6 of the Bill states that the obligations of the national and county governments are to put in place measures to ensure the maximum development and adoption of local content by an operator under this Bill.

20. Clause 7 of the Bill outlines the functions of the national government and the Cabinet Secretary responsible for matters relating to the extractive industry. Clause 8 of the Bill sets out the responsibilities of the county governments which are mainly to assist local contractors and companies within the respective counties, implementing the cross-cutting policies formulated by the National Government, strategy implementation and to perform such other functions necessary for the implementation of the objectives of the Act.

c) Part III —Establishment of the Local Content Development Committee (Clauses 9-20)

21. The Local Content Development Committee (LCDC) is established under clause 9 of the Bill. The main function of this Committee is to oversee, coordinate and manage the development of local content in the country. Clause 10 outlines the functions of the LCDC.
22. Under clause 11, the LCDC is obligated to carry out an assessment of local capabilities. Clause 12 outlines the membership of the nine member LCDC.
23. Clause 13 indicates the term of office of the membership of the LCDC whereas the qualifications for appointment to the Committee are laid out in clause 14. The conditions for disqualification from membership are stated in clause 15 whereas the situation in which there is a vacation in office is stated in clause 16.
24. Clause 17 of the Bill outlines the conduct of the affairs of the Committee, which is further elaborated in the schedule to the Bill, while the Committee is granted the power to establish subcommittees in clause 18. The Cabinet Secretary is given the power to establish a secretariat to the Committee by clause 19. The Secretariat's functions are listed in detail under clause 20.

d) Part IV —Local Content Plans (Clauses 21-40)

25. This Part contains clauses relating to the details of local content plans which are intended to benefit Kenya. Clause 21 states that the Cabinet Secretary shall in consultation with the Committee, set the minimum local content to be applied by an operator.
26. In clause 22, any person seeking a licence, permit or bidding for an interest in extractive matters shall submit a local content plan as part of their application to the Cabinet Secretary to carry out business. This clause sets out in detail the actions that are to be carried out by an operator.
27. The Committee is further empowered to carry out a review of the plan submitted to it under clause 23. In clause 24, the CS in consultation with the Committee is empowered to prescribe rules on local content certification.
28. This Part of the Bill also covers the creation of employment and skill development plans under local content. Clause 25 and clause 26 states that an operator is obligated to prepare and implement strategies and plans for capacity building of local Kenyans in the extractive industry. Meanwhile, clause 27 states that operators are to undertake initiatives for the education and training for locals who are not employed due to their lack of expertise.
29. In clause 28, an operator is legally obligated to give first consideration of employment to local persons to the satisfaction of the Committee and to ensure that foreign employees are engaged only in positions for which the operator cannot after reasonable search, find available Kenyan nationals.

30. An operator is furthermore required to submit to the Committee a succession plan for any position not held by a local person within a period of six months from the commencement of its operations. Clause 29 further elaborates on the details of the succession plan to be submitted to the Cabinet Secretary.
31. As regards the matter of the transfer of technology, clause 30 states that the Cabinet Secretary shall in consultation with the Committee and collaboration of both levels of government, formulate a strategic plan on the transfer of technology with respect to various operations in the extractive industry and to publicise the same plan.
32. In order to ensure the proper carrying out of this transfer of technology, clause 31 states that the Cabinet Secretary shall submit recommendations to the Cabinet Secretary responsible for finance in order to obtain fiscal support for this transfer. Clause 32 states that every operator shall submit a transfer of technology plan together with its local content plan. Furthermore, an operator is expected under clause 33 to ensure the facilitation of transfer of technology.
33. According to clause 34, an operator shall commence its extractive activities unless it has prepared and submitted to the Committee an annual report on the implementation of the technology transfer plan and the initiatives being undertaken by the operator in implementing the plan.
34. Under clause 35 of the Bill, an operator shall before the commencement of its extractive activities, prepare and submit to the Committee its research and development plan. The details of the plan are further outlined in the clause and it shall run for a five-year term. Clause 36 states that the Committee shall put in place measures and implement strategies in order to bridge the knowledge gap in relation to the extractive industry and promote research and development in the same.
35. Clause 37 states that an operator shall annually set aside funds for the purpose of research and development of which half shall be utilised in Kenyan universities and the other half in facilities of the operator that are established in Kenya.
36. Clause 38 also sets out the obligation of an operator to set out a financial services plan which shall be submitted together with the local content plan. Moreover, under clause 39, the operator shall submit a local content performance report within forty-five days of the commencement of each year following the start of extractive activities. Clause 40 directs that the Committee shall thereafter assess and review the report received under clause 39 for the purposes of compliance.

e) Part V—Strategies for Local Content Development (Clauses 41-47)

37. This Part of the Bill outlines the strategies for local content development in the country. Clause 41 compels an operator to maintain a bidding process for the acquisition of goods and services which shall provide a fair opportunity to local persons.

38. Clauses 42 and 43 also direct the operators to give first consideration to local companies and to local goods and services. In clause 44, the national government shall encourage the establishment of joint ventures when granting concessions and other agreements between international investors and local business enterprises. Clause 45 states that the Cabinet Secretary shall in consultation with the Committee set out thresholds for Kenyan equity stakes.
39. In order to incentivise local content in Kenya, clause 46 states that the Cabinet Secretary responsible for matters related to extractives may implement tax incentives, adopt supportive and non-distorting tariff measures and tax deductibles for the benefit of training Kenyan nationals.
40. Clause 47 establishes the Local Content Training and Development Fund which shall be used in a manner that the Cabinet Secretary shall prescribe in regulations.

f) Part VI —Miscellaneous Provisions (Clauses 48-57)

41. This Part of the Bill contains miscellaneous provisions. Clause 48 states that an operator shall prepare and submit an annual work programme to the Committee. Clause 48(2) outlines the details of the annual work programmes to be submitted to the Committee and clause 48(3).
42. According to clause 49, an operator is obligated to maintain the records relating to its operations so as to facilitate the determination of the local content expenditure incurred by the operator. As regards impact assessment, clause 50 states that the Committee shall monitor and evaluate compliance by every person under this Act of the obligations imposed on such a person.
43. Clause 51 deals with reporting by a connected entity whereas clause 52 addresses support measures that the Committee is to make to the Cabinet Secretary on the implementation of strategies that would facilitate and sustain the adoption of local content. As regards public participation, according to clause 53, the Cabinet Secretary shall in consultation with the Committee prescribe guidelines for the conduct and promotion of public participation of stakeholders in the extractive industry or affected by a project carried out under this Bill. Clause 54 contains the offences and penalties whilst clause 55 describes the procedure to be undertaken when a body corporate commits an offence. Clause 56 grants the power of revocation of a licence to the Cabinet Secretary whilst clause 57 deals with the general regulations to be issued by the Cabinet Secretary.

g) Part VII —Transitional Provisions (Clause 58)

44. This Part of the Bill contains the transitional provisions of the Bill. It states that upon enactment of the Bill into law, all prior oil and gas arrangements, agreements, contract or memoranda of understanding relating to any operation or transaction in the extractive industry in Kenya shall continue in force as if entered into pursuant to the Bill and those entered after the commencement of the Bill into law shall be in conformity with the Bill.

E. Consequences of the Bill

45. If the Bill is enacted, it shall have far-reaching consequences for the extractive industry in Kenya. The Bill aims to empower local Kenyans to take a full part in the local industry which will undoubtedly create employment at a larger scale than the present status as well as empower communities for the better.
46. Furthermore, the Bill will go a long way to hasten the industrialization drive of the country and if implemented will create a robust part of the energy sector that will be majority locally owned and operated.

CHAPTER TWO

COMMITTEE PROCEEDINGS

Public Participation on the Bill

47. Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Standing Committee on Energy invited interested members of the public to submit submissions on the Bills.
48. An advertisement requesting for submission of memoranda from members of the public was made in the Daily Nation and Standard Newspapers Tuesday, 3rd April, 2024. Receipt of memoranda on the Bill was closed on Tuesday, 16th April, 2024.
49. The Committee received written memoranda from various stakeholders, namely:
 - a) The Ministry of Mining, Blue Economy and Maritime Affairs
 - b) The Council of Governors
 - c) Bunge Youth Dialogue
 - d) Extractive Insight Centre
50. The Committee proceeded to consider the submissions received, further giving their own views and amendments thereon as set out in the matrix attached to this report as *Annex 4*.
51. Further to the above, the Committee reviewed technical, non-partisan output from the Parliamentary Budget Office, the Senate Directorate of Legal Services and the Senate Research Services.
52. A schedule of the Committee's meetings in relation to the above has been annexed to this report as *Annex 5*.
53. The Committee held a total of seven (7) sittings in relation to the matter. The minutes of the sittings have been attached to this report as *Annex 1*.

A) Summary of Submissions by Key Stakeholders

a) Submissions by The Ministry of Mining, Blue Economy Maritime Affairs Office of the Cabinet Secretary.

54. The Ministry of Mining proposed that the term 'Cabinet Secretary' be redefined to mean either the Cabinet Secretary responsible for Energy or the Cabinet Secretary responsible for Mining as the case may be. The Rationale being: In Kenya, the extractive industry encompasses the extraction of both oil and gas, overseen by one Cabinet Secretary, and mineral resources, managed by a separate Cabinet Secretary. This distinction therefore highlighted the different governing bodies responsible for each resource sector.

Committee Resolution: Proposal adopted.

55. Under Clause 10 which outlines the functions of the Local Content Committee, the Committee proposed the provision for a funding model for the activities of the Committee. This is in view of the Local Content Development Committee's critical role in fostering local participation thus necessitating significant funding for its activities. It was the submission of the Ministry that the Bill currently lacks clarity on how these expenses will be covered. To address this, it recommended incorporating a clause that explicitly outlines the Committee's funding mechanisms.

Committee Resolution: The proposal adopted.

56. Under Clause 10(d), the Ministry proposed an amendment of the clause to delete the term "approve local content plans", as the Mining (Use of Local Goods and Services) Regulations, 2017, already provide a framework for applicants of mineral rights/licences to submit to the Cabinet Secretary for Mining (CS) procurement plans.

Committee Resolution: Proposal rejected. The committee resolved to do consequential amendments to harmonise existing Acts.

57. Under Clause 12 which outlines the membership of the Local Content Development Committee, the Ministry proposed the inclusion of the Principal Secretary responsible for mining as a member. The rationale being that the Extractives Industry is composed of the oil and gas sector as well as mining. It was therefore crucial that the Principal Secretary for Mining is included as a member of the Committee.

Committee Resolution: Proposal adopted. The committee resolved to include the Mining sector.

58. Under Clause 19(1), the Ministry proposed the expansion of the secretariat of the Local Content Development Committee to include representatives from the mining sector, thus forming a Joint Secretariat. This was because the proposal to have a technical and admirative unit from the Ministry responsible for Petroleum as secretariat to the Committee implied the exclusion of the mining sector.

Committee Resolution: Proposal adopted. The committee resolved to include the Mining sector.

59. Under Clause 22(1) the Ministry proposed the deletion of the provision on submission and approval of a local content plan by a licence/permit applicant as it conflicts with the Mining Act, Cap 306 and its attendant Regulations. It was the submission of the Ministry that The Mining Act, Cap 306 provides with clarity that any applicant for a mineral right be it a prospecting licence, a reconnaissance licence, a mining licence or a retention licence is required to submit to the Cabinet Secretary a plan giving particular with respect to the procurement of local goods and services. The Act further requires that an applicant must submit a plan giving particular of the applicant's proposals with respect to socially responsible investments for the local community.

Committee Resolution: Proposal rejected. The committee resolved that consequential amendment for the local content bill to cover everything local content.

60. Under Clause 24(1) the Ministry proposed aligning the provision with the provisions of the Mining (Use of Local Goods and Services) Regulations which set target levels of local procurement based on a procurement list developed and communicated by the Director of Mines, and; which indicate specific support to be provided by mineral rights holders to local providers or suppliers as well as other measures being implemented to develop the supply of local goods and services including broadening access to opportunities and technical support.

The Regulations also require engineering services to be rendered by Kenyan engineering companies registered with the relevant regulatory bodies or by foreign engineering consultants working in collaboration with firms or companies licenced to provide such engineering services in Kenya.

Committee Resolution: Proposal rejected. The committee resolved that consequential amendment for the local content bill to cover everything local content.

61. Under Clause 26(1) the Ministry proposed aligning the clause to section 101(2)(g) of the Mining Act, Cap 306 which requires an applicant for any mineral right in Kenya to submit a plan to the Cabinet Secretary of Mining giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens. The Ministry therefore submitted that the clause conflicts with provisions of the Mining Act and its attendant Regulations and thus needs to be aligned accordingly.

Committee Resolution: Proposal rejected. The committee resolved that consequential amendment for the local content bill to cover everything local content.

62. Under Clause 36(1) the Ministry proposed aligning the clause with section 46(3) of the Mining Act which provides that the Cabinet Secretary shall provide for the replacement of expatriates, the number of years such expatriates shall serve and provide for collaboration and linkage with universities and research institutions to train citizens. The Ministry therefore submitted that the Bill should be consistent with relevant legislation for the extractives industry.

Committee Resolution: Proposal rejected. The committee resolved that consequential amendment for the local content bill to cover everything local content.

63. Under Clause 41(1) the Ministry noted that the clause should be aligned with the Mining (Use of Local goods and services) Regulations, 2017, and the provisions of the Mining Act, Cap 306: The Mining (Use of Local Goods and Services) Regulations, 2017, requires holders of existing mineral rights to submit to the Cabinet Secretary for Mining (CS) procurement plans which must: (i) set target levels of local procurement based on a procurement list to be developed and

communicated by the Director of Mines and ; (ii) indicate specific support to be provided by mineral rights holders to local providers or suppliers as well as other measures being implemented to develop the supply of local goods and services including broadening access to opportunities and technical support.

Committee Resolution: Proposal rejected. The committee resolved that consequential amendment for the local content bill to cover everything local content.

b) Submissions by the Council of Governors

64. The Council of Governors proposed the deletion of Clause 7(b)(iii) and the amendment of clause 7b(iv) to provide for the development and strategies for the development of local skills.

Committee Resolution: Proposal adopted. This proposal aligns with the principle that the national government, through its committee, should concentrate on setting standards, norms, and guidelines while providing capacity-building support. This approach empowers county governments to effectively implement local content strategies.

65. Additionally, they proposed amending clause 7(b)(v) to read as follows: provision of guidelines to ensure local content activities shall include participation of local persons at a quota of not less than thirty percent. The rationale being that the implementation function is already vested in the role of counties. The National Government, with the help of the committee, should therefore focus on creating clear instructions and guidelines. They should also offer training and support to counties.

Committee Resolution: Proposal adopted. This proposal aligns with the principle that the national government, through its committee, should concentrate on setting standards, norms, and guidelines while providing capacity-building support. This approach empowers county governments to effectively implement local content strategies.

66. Under Clause 10 (1), COG proposed to amend clause 10(1)(a) to read as follows to coordinate *the development of local content in the country*. They also proposed the deletion of clause 10(1)(e) noting that according to the Constitution (Articles 174, 176, and 186) counties are in charge of managing their own resources and providing services to residents. As such, constitutionally, Counties were best placed to oversee the implementation of local content policies and strategies by operators.

Committee Resolution: Proposal rejected. The Bill is sufficiently drafted.

67. Under Clause 23. (2), COG proposed an amendment to introduce the following clause: *obtain approval of the county governments*, in order to ensure that county governments are directly involved in decisions regarding local content plans, aligning with the constitutional mandate for devolution, local governance, and community participation. This was expected to promote accountability,

responsiveness, and ensure that local interests are adequately represented and protected.

Committee Resolution: Proposal rejected and it is likely to create bureaucratic implications. It will increase unnecessary administrative steps and delays.

68. Under Clause 57(4)(a), COG proposed an amendment to provide for Article 94(6) of the Constitution. This was for purposes of bringing the Bill into alignment with constitutional principles, including the promotion of devolution and local governance (Article 174), recognizing the distinctive yet interdependent nature of national and county governments (Article 6(2)). It further supported the idea of giving more power to counties and encouraging cooperation and collaboration with the national government.

Moreover, it would uphold national values such as public participation and inclusiveness (Article 10) by actively involving county governments in the regulatory process and empowering them to address local needs effectively.

Committee Resolution: Proposal rejected. The Clause is sufficient.

c) Submissions by The Bunge Youth Dialogue

69. Bunge Youth Dialogue (BYD) proposed an amendment to the definition of 'Cabinet Secretary' to include the Cabinet Secretary responsible for matters related to the extractive industry. They noted that the Bill needs a clearer definition of the extractive industry, and that it should distinguish between the roles of the Cabinet Secretary of Energy and the Cabinet Secretary for Mining when dealing with these resources.

Committee Resolution: Proposal partially accepted. The Committee agreed to amend the definition of the CS.

70. Under Clause 12(1), BYD proposed amendments aimed at ensuring National and County Governments mainstreaming representation of the women, PWD, indigenous communities and youth, and that they benefit as part of host communities and also as local contractors. They proposed more slots to cater for youth, women, indigenous community and Persons with Disabilities in the committee. Part (e) and (f) to include the names of male and female.

Committee Resolution: Proposal rejected. Clause 13(2) sorts that issue.

71. Submission under Clause 18(1) & 2- (1) submitted that it was necessary to limit the number of sub-committee members and further noted that membership should be gender representative (male and female) (indigenous communities, PWD, youth) nominations in committee appointments. This measure would regulate the composition of the committee, as an undefined number could potentially create an open-ended scenario, allowing for unrestricted participation and potentially causing delays in decision-making within the technical working group.

Committee Resolution: Proposal rejected. The committee resolved that we

should not over legislate.

72. Under Clause 50(3), they proposed an amendment for the national committee together with the proposed county committees to prepare annual performance reports to the Cabinet Secretary in charge of the Energy Ministry and the respective senators respectively. They noted that a monitoring, evaluation, and reporting system was necessary to outline and fully account for the value of the operators to the local community and areas. This annual performance report would give a benefit analysis to inform whether the operation is viable and give accountability to how resources are exploited at the same time limiting corruption and embezzlement loopholes.

Committee Resolution: Proposal rejected. Clause in the Bill is sufficient.

d) Submissions by Extractive Insight Centre

73. The Extractive Insight Centre proposed that the Bill should explicitly designate a single Cabinet Secretary as responsible for administering the Local Content Act, even if ministerial portfolios are divided as this would ensure a clear point of authority.

Committee Resolution: Proposal partially accepted. The Committee agreed to amend the definition of the CS.

74. Submission under Clause 7: They proposed revising clause (b)(v) to gradually increase the quota overtime, focus on providing incentives and support to local business, prioritise investments in mining-specific education and skills development programs.

Committee Resolution: Proposal Rejected. The committee stated that there is no evidence presented to support the claim that Kenyans currently lack the necessary skills or that the existing 30% quota will not be achievable. The current provisions are designed to encourage immediate and meaningful participation of local businesses and professionals in the mining sector

75. Submission under Clause 8: They further proposed the following additional duties of the County Governments under clause 8(1) to include —

(d) monitor and put in place measures to facilitate the implementation of local content performance by all operators in the respective county in accordance with the provisions of this Act;

(e) conduct regular audits for the purposes of monitoring the compliance with the provisions of this Act in the respective county;

Committee Resolution: Proposal rejected. The committee noted that the proposal to revise Clause 8(1)(d) to limit the role of counties to information gathering is unnecessary because the bill already ensures that counties do not operate independently. The bill mandates collaboration between the counties and the Local Content Development Committee (LCDC). According to Section 9 of the

bill, the functions of the LCDC include overseeing, coordinating, and managing the development of local content in consultation with county governments.

76. Submission under Clause 9: Establishment of the Local Content Development Committee. Functions of the Committee-(9)There is established the Local Content Development Committee (LCDC). The Extractive Insight Centre expressed that there was Duplication of Duties and Regulatory Burden. They proposed a Streamlined Regulatory Framework and Amend the Bill to explicitly empower the MRB and EPRA to consider local content requirements during their existing processes for reviewing licences and monitoring compliance.

Committee Resolution: Proposal rejected. The committee resolved to do Consequential amendments to harmonize with existing Acts.

77. Submission under Clause 11: Assessment of local capabilities. They proposed outlining a flexible and collaborative approach for establishing a committee to assess local content in the mining and petroleum industries. This includes gathering ongoing data, working with stakeholders, and adapting to changing conditions. Reason being unrealistic Timelines that six months are too short for the complex tasks in the extractive industries, such as understanding equipment and service needs and assessing local capacity gaps.

Committee Resolution: Proposal partially adopted. The committee resolved to increase the period from six months to one year.

78. Submission under Clause 12: Membership of the Committee. Where they noted that the absence of a Principal Secretary (PS) from the state department responsible for mining creates a gap in high-level representation from the very department most directly affected by the Committee's work. They proposed to include a Relevant Permanent Secretary: Amend Clause 12(1) of the Bill to mandate the inclusion of the Permanent Secretary (PS) from the Ministry responsible for mining on the LCDC.

Committee Resolution: Proposal partially adopted. PS mining to be included in the Committee. The chairperson is to competitively be recruited by the PSC with at least 10 years experience.

79. Submission under Clause 20: Functions of the Secretariat. The issue being Arguments Against an Overly Broad, Standalone Committee Mandate. They proposed to skip creating a new committee and instead, give existing agencies (EPRA & MRB) the responsibility for local content assessment and advice and create a smaller, focused committee to address any remaining gaps, like public outreach or data collection.

Committee Resolution: Proposal rejected. Committee resolved that consequential amendments be done so that all matters of local content will be in the Local Content Bill.

80. Submission under Clause 21: Minimum local content. They proposed to delete Clause 21.

Committee Resolution: Proposal Rejected. Quota already set at 30% in 7 (b)(v)

81. Submission under Clause 22: Local content plan. They proposed to delete Clause 22.

Committee Resolution: Proposal rejected. Consequential Amendments to be done.

82. Submission under Clause 23: Review of local content plan. Clause 23 mandates public participation in reviewing local content plans submitted by applicants before a licence is granted. This occurs within a 60-day timeframe. They proposed to delete Clause 23.

Committee Resolution: Proposal rejected. Community Buy-In: When local communities and stakeholders are involved in the decision-making process, it fosters a sense of ownership and acceptance of the outcomes. This can lead to smoother implementation of the extractive activity, as local support and cooperation are critical for the success of such projects.

83. Submission under Clause 24: Local content certification. They proposed deleting Clause 24: Remove the entire provision on local content certification and certifying agents.

Committee Resolution: Proposal partially adopted. Let the LCDC do the approval and certification and not an independent agency. It will ensure a streamlined process.

84. Submission under Sections of Clauses 25-29: Employment and Skill Development Plan. They proposed to revise the clauses since the Local Content Bill will apply across.

Committee resolution: Proposal rejected. There is no evidence provided to show that Kenyans are not skilled.

85. Submission under Clause 34: They proposed to delete Clause 34 in its entirety. This eliminates the excessive penalty and the disincentive it creates.

Committee Resolution: Proposal rejected. This not only helps in building local capacity and expertise but also ensures that operators contribute to the sustainable development of the host country by sharing advanced technologies and practices. Such a requirement fosters a continuous improvement process, driving innovation and aligning the operators' activities with national development goals.

86. Submission under Sections of Clauses 35-37: Research and Development Plan. They proposed to revise these clauses.

Committee Resolution: Proposal rejected. The clauses in the Bill are sufficient.

87. Submission under Clause 38: Financial Services Plan. They proposed to delete clause 38 on mandating use of Indigenous Kenyan Banks.

Committee Resolution: Proposal rejected. Clauses in the Bill are sufficient.

88. Submission under Clause 41: Procurement-which suggests improvements to bidding processes for projects.They proposed to revise the Clause.

Committee Resolution: Proposal rejected. The Clause is sufficient on the procurement bidding process.

89. Submission under Clause 44: Contracting services from local companies.The provision in Clause 44(3) of the Local Content Bill, which mandates that at least thirty percent of contracting be reserved for locals in the extractive industry, is intended to boost local participation and economic benefits. However, this specific requirement could potentially limit foreign investment due to several factors.They proposed delete the sub-clause 3.

Committee Resolution: Proposal rejected. No evidence presented.

90. Submission under Clause 45: Thresholds for Kenyan equity stake in operator.They proposed deleting Clause 45 as Other provisions in the Bill (skills development, procurement focus) are stronger tools to maximise Kenyan benefits from the extractive sector.

Committee Resolution: Proposal rejected. The Clause is sufficient.

91. Submission under Clause 46:Financial incentives.They proposed to amend Clause 46 as the recommendation is to make tax incentives for local content development more specific and effective.

Committee Resolution: Proposal rejected. The CS finance in consultation with the Committee are better placed to advise on the issues.

92. Submission under Clause 47: Fund for Training and Development.They proposed to Amend clause 47 on how a training fund for the extractive sector will be managed.

Committee Resolution: Proposal adopted. The Committee resolved to make the training levy tax-deductible to foster operator participation.

93. Submission under Clause 48: They proposed deleting Clause 48. This clause argues against requiring companies to submit a separate local content work plan to the committee. It suggests this creates unnecessary duplication of effort and that the committee should focus on broader goals rather than managing specific operational details.

Committee Resolution: Proposal rejected. The Clause in the Bill is sufficient.

94. Submission under Clause 49: Where they highlighted reducing the record-keeping burden on smaller operators by simplifying the required documentation of local content spending and focusing audits on higher-risk situations rather than auditing all companies every year. They proposed deleting clause 49.

Committee Resolution: Proposal rejected. The Clause in the Bill is sufficient.

95. Submission under Clause 50: That the reporting requirements create an excessive burden for both stakeholders, operators and the committee. It also questions whether the committee has the capacity to effectively use the large amount of data collected. They proposed deleting Clause 50.

Committee Resolution: Proposal rejected. The Clause in the Bill is sufficient.

96. Submission under Clause 51: Reporting by a connected entity. They proposed deleting Clause 51 by removing this provision streamlines compliance and avoids potential legal and contractual disputes.

Committee Resolution: Proposal rejected. The Clause in the Bill is sufficient.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

A. Committee Observations

97. Having considered the Bill and the submissions received thereon, the Committee made the following observations —

Clause 2

The committee observed that the initial definition of "Cabinet Secretary" as "the Cabinet Secretary responsible for matters related to the extractive industry" was ambiguous. It did not specify which Cabinet Secretary was responsible when separate ministries handle different aspects of the extractive industry, such as petroleum and mining. This lack of specificity could lead to confusion and inefficiencies in administering and implementing local content policies.

Clause 7

The committee observed that the current wording of Clause 7, particularly sub-clauses (b)(iii), (iv) and (v), were problematic. These subparagraphs were encroaching on the implementation functions vested in county governments, effectively taking away the counties' implementation responsibility.

Clause 10

The committee observed that the Bill lacked a clear funding model for the activities of the Local Content Development Committee. Given that the functions of the Committee are capital intensive, the absence of specified funding mechanisms could hinder the effective execution of its duties.

Clause 11

The committee observed that the original requirement for the Local Content Development Committee (LCDC) to develop a comprehensive register of all equipment and service categories needed for the extractive industry within six months was unrealistic. Given the complexity of the tasks involved, a six-month timeline is insufficient.

Clause 12

The committee observed that the composition of the Local Content Development Committee (LCDC) did not include the Principal Secretary responsible for Mining. Given that the extractive industry comprises both the oil and gas sector as well as the mining sector, the absence of the Principal Secretary for Mining could lead to inadequate representation and consideration of mining-related issues within the Committee's deliberations and decisions.

Clause 19

The committee observed that the original proposal to establish a technical and administrative unit from the Ministry responsible for Petroleum as the sole secretariat for the committee raised concerns about the exclusion of the mining sector from the administrative oversight of the Local Content Bill. This approach implied a focus primarily on the local content of petroleum resources, potentially neglecting the specific needs and considerations of the mining sector.

Clause 47

The committee observed that Clause 47 of the Local Content Bill currently stipulates a non-tax-deductible training levy for operators to contribute annually to the Local Content Training and Development Fund. The committee noted that provision may discourage robust contributions from operators within the extractive sector, potentially limiting the fund's overall effectiveness in supporting local content objectives.

Consequential Amendments

The Committee observed that the Mining Act Cap. 306 and the Petroleum Act Cap. 308 currently contains provisions that may not fully align with the objectives and requirements introduced by the Local Content Bill. The Committee further observed the need to streamline and harmonize existing legislative frameworks to ensure consistency and coherence in regulating the extractive industries.

B. Committee Recommendations

98. The Committee therefore recommends that the Senate passes the Bill with amendments as follows—

Clause 2

The Committee recommended that the definition of “Cabinet Secretary” within the Bill be amended to provide clarity as follows:

“Cabinet Secretary means either the Cabinet Secretary responsible for matters relating to petroleum or the Cabinet Secretary responsible for matters relating to mining as the case may be.”

Clause 7

The Committee recommended the following amendments to Clause 7 of the Bill to ensure clarity and proper delineation of responsibilities between the national and county governments:

i) Delete Subparagraph (iii):

- o Remove Clause 7(b)(iii) entirely to prevent redundancy and overlapping of roles, ensuring that implementation functions remain with the county governments.

ii) Amend Subparagraph (iv):

- o Delete the words “and implementation” in Clause 7(b)(iv) to clarify that the national government's role is limited to the development of strategies, not their implementation. The revised text will focus on “the development of strategies for the development of local skills.”

iii) Replace Subparagraph (v):

- o Delete the existing Clause 7(b)(v) and substitute it with a new subparagraph to provide clear guidelines. The new subparagraph will read: “provision of guidelines to ensure local content activities shall include the participation of local persons at a quota of not less than thirty percent.”

Clause 10

The Committee recommended that the Bill be amended to include a clear funding model for the activities of the Local Content Development Committee. This addition will ensure that the Committee has the necessary financial resources to carry out its capital-intensive functions effectively.

Clause 11

The Committee recommended amending Clause 11 to extend the period for developing the comprehensive register from six months to one year to allow sufficient time for accurate data collection and analysis.

Clause 12

The Committee recommended including the Principal Secretary responsible for Mining as a member of the Local Content Development Committee and conducting a competitive recruitment process for the Chairperson. This ensures adequate representation of both key sectors within the extractive industry—oil and gas, as well as mining—thus facilitating comprehensive and balanced decision-making within the Committee.

Clause 19

The Committee recommended an amendment to Clause 19 to establish a Joint Secretariat that includes representation from both the Ministry responsible for Petroleum and the Ministry responsible for Mining. This ensures that administrative and technical support for the LCDC covers both the petroleum and mining sectors, reflecting the broader scope of the Local Content Bill.

Clause 47

The Committee recommended an amendment to Clause 47(2) to make the training levy contributions tax-deductible for operators. This adjustment fosters greater operator participation and support for local content development initiatives.

Consequential Amendment

The Committee recommended an amendment to the Mining Act Cap. 306, the Energy Act Cap 314 and the Petroleum Act Cap. 308 to streamline and harmonise these laws with the provisions introduced by the Local Content Bill.

ANNEX 1
COPIES OF MINUTES



**MINUTES OF THE SEVENTY-EIGHTH SITTING OF THE STANDING
COMMITTEE ON ENERGY HELD ON TUESDAY, 2ND JULY, 2024 AT 12.00 PM
VIA THE ZOOM ONLINE PLATFORM**

PRESENT

- | | |
|--------------------------------------|---------------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 3. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. James Lomenen Ekomwa, MP | -Member |
| 5. Sen. Abass Sheikh Mohamed, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Ledama Olekina, MP | - Member |
| 2. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 3. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 4. Sen. Edwine Watanya Sifuna, MP | - Member |

COMMITTEE SECRETARIAT

- | | |
|-------------------------|---------------------------------|
| 1. Dr. Christine Sagini | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Ms. Faith Cherutoh | - Legal Counsel |
| 4. Ms. Nancy Mulei | - Researcher |
| 5. Mr. Joseph Lekisima | - Fiscal Analyst |
| 6. Ms. Violet Nalianya | - Media Relations Officer |
| 7. Mr. Rony Nyaga | - Public Communications Officer |
| 8. Mr. Nicholas Arusei | - Audio Officer |
| 9. Mr. John Lekampule | - Assistant Serjeant at Arms |

MIN/SEN/ENG/NO.525/2024

PRELIMINARIES

a) Prayer

The Chairperson called the meeting to order at 12.03 p.m. This was followed by a word of prayer.

b) Introductions

There was a round of introductions from the Hon Senators and members of the secretariat.

MIN/SEN/ENG/NO.526/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Abass Sheikh Mohamed, MP and Seconded by Sen. William Kisang' Kipkemoi, MP as follows-

AGENDA

- a) Prayer;
- b) Adoption of the Agenda;
- c) Confirmation of the minutes;
- d) Matters Arising from the previous minutes;
- e) Adoption of the proposed Committee Schedule of Activities for the FY 2024/2025;
- f) Adoption of the Committee Report on the Local Content Bill Report (*Senate Bills No. 50 OF 2023*);
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.527/2024

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

- a) Minutes of the 62nd sitting held on Friday, 3rd May, 2024 were deferred till the next meeting.
- b) Minutes of the 63rd sitting held on Friday, 3rd May, 2024 were deferred till the next meeting.



MINUTES OF THE SIXTY-SIXTH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON TUESDAY, 7TH MAY, 2024 IN COMMITTEE ROOM 2, FIRST FLOOR, BUNGE TOWER BUILDING AT 12.00 PM

PRESENT

- | | |
|--|---------------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 3. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 5. Sen. James Lomenen Ekomwa, MP | -Member |
| 6. Sen. Abass Sheikh Mohamed, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|----------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 2. Sen. Ledama Olekina, MP | - Member |
| 3. Sen. Edwine Watanya Sifuna, MP | - Member |

COMMITTEE SECRETARIAT

- | | |
|------------------------------|---------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Ms. Faith Cherutoh Rotich | - Legal Counsel II |
| 4. Ms. Juliet Masinde | - Media Relations Officer |
| 5. Mr. Nicholas Arusei | - Audio Officer |
| 6. Mr. John Lekampule | - Assistant Serjeant at Arms |

MIN/SEN/ENG/NO.447/2024

PRELIMINARIES

a) Prayer

The Chairperson called the meeting to order at 12.21 p.m. This was followed by a word of prayer.

b) Introductions

There was a round of introductions from the Hon Senators and members of the secretariat.

MIN/SEN/ENG/NO.448/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. William Kisang' Kipkemoi, MP and Seconded by Sen. (Dr.) Oburu Oginga, MGH, MP as follows-

AGENDA

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Consideration of pending legislative business before the Committee(*Committee Paper No 65*);
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment

MIN. SEN/ENG/NO.449/2024

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

- a) Minutes of the 55th sitting held on Thursday, 21st March 2024 were confirmed as the true record of the proceedings after being proposed by, Sen. James Lomenen Ekomwa, MP and Seconded by Sen. William Kisang' Kipkemoi, MP.
- b) Minutes of the 60th sitting held on Tuesday, 30th April 2024 were confirmed as the true record of the proceedings after being proposed by, Sen. (Dr.) Oburu Oginga, MGH, MP and Seconded by Sen. Abass Sheikh Mohamed, MP.
- c) Minutes of the 61st sitting held on Thursday, 2nd May, 2024 were confirmed as the true record of the proceedings after being proposed by, Sen. Abass Sheikh Mohamed, MP and Seconded by Sen. Danson Buya Mungatana, MGH, MP.

- c) Minutes of the 64th sitting held on Saturday, 4th May, 2024 were deferred till the next meeting.
- d) Minutes of the 65th sitting held on Saturday, 4th May, 2024 were deferred till the next meeting.
- e) Minutes of the 69th sitting held on Tuesday, 28th May, 2024 were deferred till the next meeting.
- f) Minutes of the 70th sitting held on Friday, 14th June, 2024 were deferred till the next meeting.
- g) Minutes of the 71st sitting held on Friday, 14th June, 2024 were deferred till the next meeting.
- h) Minutes of the 72nd sitting held on Saturday, 15th June, 2024 were deferred till the next meeting.
- i) Minutes of the 73rd sitting held on Saturday, 15th June, 2024 were deferred till the next meeting.
- j) Minutes of the 74th sitting held on Friday, 28th June, 2024 were deferred till the next meeting.
- k) Minutes of the 75th sitting held on Friday, 28th June, 2024 were deferred till the next meeting.
- l) Minutes of the 76th sitting held on Saturday, 29th June, 2024 were deferred till the next meeting.
- m) Minutes of the 77th sitting held on Saturday, 29th June, 2024 were deferred till the next meeting.

MIN. SEN/ENG/NO.528/2024

MATTERS ARISING FROM THE MINUTES

There were no issues deliberated on under matters arising.

MIN. SEN/ENG/NO.529 /2024

**ADOPTION OF THE PROPOSED
COMMITTEE SCHEDULE OF
ACTIVITIES FOR THE FY 2024/
2025**

- a) The proposed Committee Schedule of activities for the FY 2024/2025 was considered and adopted having been proposed by Sen. William Kisang' Kipkemoi, MP and seconded by Sen. Abass Sheikh Mohamed, MP;
- b) The Committee resolved to prioritize gas and electricity sectors in the schedule of activities;
- c) The Committee noted that it is important to visit various minigrids under construction by Kenya Electricity Transmission Company Ltd (KETRACO);
- d) The Committee noted that Counties with low power connectivity should be prioritized in the schedule of County Visits; and
- e) The Committee resolved to visit the Counties of Wajir and Elgeyo Marakwet on electricity connectivity to public schools and referral hospitals;

MIN. SEN/ENG/NO.530 /2024

**ADOPTION OF THE COMMITTEE
REPORT ON THE LOCAL
CONTENT BILL REPORT (SENATE
BILLS NO. 50 OF 2023)**

The report on the Local Content Bill (Senate Bill 50. Of 2023) was adopted by the committee having been proposed by Sen. Abass Sheikh Mohamed, MP and seconded Sen. William Kisang' Kipkemoi, MP.

MIN. SEN/ENG/NO.531/2024

ANY OTHER BUSINESS

The following issue was deliberated under Any Other Business-

- a) The Committee resolved that the report on Mradi Fire Incident should be adopted during the next meeting which will be held on 4th July, 2024 and the earlier scheduled visit to Mradi area cancelled.

MIN. SEN/ENG/NO.532/2024

ADJOURNMENT

The meeting was adjourned at 1.03 p.m. The date of the next meeting was to be communicated by notice.

SIGNED.....

DATE.....

**SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.**

Under ex-min. Sen/Eng/No.373/2024

- a) The Committee noted that Hon. Johnson Sakaja, EGH, Governor Nairobi City County is yet to appear before the Committee after failing to honor two summons.
- b) The Committee further noted that it is important to meet with the Governor, Nairobi City County so as to conclude on the pending Mradi Explosion report.
- c) The Committee resolved to invite the Governor, Nairobi City County for a meeting on 23rd May, 2024 to deliberate on the gas explosion that occurred on 1st February, 2024 in Embakasi, Nairobi City County.

Under ex-min. Sen/Eng/no.416/2024

- a) The Committee was informed of the findings of the Seven Folks dam's tour that was undertaken on 2nd May, 2024. The tour aimed at establishing the damage caused by the overflowing of the dams to the counties that are downstream.
- b) The Committee noted that there are plans in place to-
 - Increase the height of the dams by a further 1.5 M;
 - Construction of dykes;
 - Construction of a new dam with a capacity of 50 Cubic Meters and a capacity to generate power up to 1000MW.
- c) The Committee noted that river activities upstream must be informed by activities downstream;
- d) The Committee noted that planting of trees will be beneficial in reduction of silt in the dams;
- e) The Committee further noted that a press conference should be done by the Committee on Thursday, 9th May, 2024 on the effects the overflowing of the dams on the downstream counties.

MIN. SEN/ENG/NO.451/2024

**CONSIDERATION OF PENDING
LEGISLATIVE BUSSINESS BEFORE
THE COMMITTEE (COMMITTEE
PAPER NO 65)**

- a) The Committee noted that there are fourteen (14) pending statements yet to receive responses from the Ministry of Energy and Petroleum.
- b) The Committee resolved to write to the Ministry of Energy and Petroleum to seek responses to the unresponded statements.
- c) The Committee noted that no memoranda has been received from the Ministry of Energy and Petroleum, Ministry of Mining, Blue Economy and Maritime Affairs, Council Of Governors (COG) and the Kenya Private Sector Alliance(KEPSA) regarding the Local Content Bill;
- d) The Committee resolved to write to Ministry of Energy and Petroleum, Ministry of Mining, Blue Economy and Maritime Affairs, Council of Governors (COG) and the Kenya Private Sector Alliance (KEPSA) to request for memoranda on the Local Content Bill;
- e) The Committee noted that the Moratorium preventing signing of new Power Purchase Agreements will greatly affect the countries power stability in the next few years;
- f) The Committee noted that the country currently imports 200MW from Ethiopia and importing more power from neighboring countries will be risky in case of any disagreements;
- g) The Committee further noted that with no new Power Purchase Agreements being signed, the Country might have to go into load shedding due to increase in demands while supply remains the same; and
- h) The Committee resolved to draft a motion to lift the moratorium on signing of new Power Purchase Agreements.

MIN. SEN/ENG/NO.452/2024

ANY OTHER BUSINESS

There were no issues were deliberated under Any Other Business.

The meeting was adjourned at 1.23 p.m. The date of the next meeting was to be communicated by notice.

SIGNED.....*Wamatinga Wahome*.....

DATE.....*14/05/2024*.....

SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.



**MINUTES OF THE SIXTIETH SITTING OF THE STANDING COMMITTEE
ON ENERGY HELD ON TUESDAY, 30TH APRIL, 2024 IN COMMITTEE ROOM
2, FIRST FLOOR, BUNGE TOWER BUILDING AT 12.00 PM**

PRESENT

- | | |
|--------------------------------------|---------------------|
| 1. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 2. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 3. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Abass Sheikh Mohamed, MP | - Member |
| 5. Sen. James Lomenen Ekomwa, MP | -Member |
| 6. Sen. Edwine Watinya Sifuna, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. Ledama Olekina, MP | - Member |
| 3. Sen. Danson Buya Mungatana, MGH, MP | - Member |

COMMITTEE SECRETARIAT

- | | |
|------------------------------|-------------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Ms. Faith Cherutoh Rotich | - Legal Counsel II |
| 4. Ms. Nancy Mulei | - Research Officer III |
| 5. Mr. Joseph Lekisima | - Fiscal Analyst |
| 6. Ms. Juliet Masinde | - Media Relations Officer |
| 7. Mr. Nicholas Arusei | - Audio Officer |
| 8. Mr. Rony Nyaga | - Public Communications Officer III |

MIN/SEN/ENG/NO.405/2024

PRELIMINARIES

a) Prayer

The Chairperson called the meeting to order at 12.20 pm. This was followed by a word of prayer.

b) Introductions

There was a round of introductions from the Hon Senators and members of the secretariat.

MIN/SEN/ENG/NO.406/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Abass Sheikh Mohamed, MP and Seconded by Sen. (Dr.) Oburu Oginga, MGH, MP as follows-

AGENDA

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Consideration of Submissions received from the public on the Local Content Bill,2023 (Senate Bills No. 50 of 2023) (*Committee Paper No 64*)
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.407/2024

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

- a) Minutes of the 54th sitting held on Tuesday, 12th March 2024 were confirmed as the true record of the proceedings after being proposed by, Sen. (Dr.) Oburu Oginga, MGH, MP and Seconded by Sen. James Lomenen Ekomwa, MP.
- b) Minutes of the 55th sitting held on Thursday, 21st March 2024 were deferred till the next meeting.

- c) Minutes of the 58th sitting held on Tuesday, 16th April 2024 were confirmed as the true record of the proceedings after being proposed by, Sen. James Lomenen Ekomwa, MP and Seconded by Sen. Abass Sheikh Mohamed, MP.
- d) Minutes of the 59th sitting held on Tuesday, 23rd April 2024 were confirmed as the true record of the proceedings after being proposed by, Sen. James Lomenen Ekomwa, MP and Seconded by Sen. Abass Sheikh Mohamed, MP.

MIN. SEN/ENG/NO.408/2024 MATTERS ARISING FROM THE MINUTES

There were no issues deliberated on under matters arising.

MIN. SEN/ENG/NO.409/2024

**CONSIDERATION OF SUBMISSIONS
RECEIVED FROM THE PUBLIC ON
THE LOCAL CONTENT BILL, 2023
(SENATE BILLS NO. 50 OF 2023)
(COMMITTEE PAPER NO 64).**

- a) The Committee noted that no memoranda has been received from the Ministry of Energy and Petroleum, Ministry of Mining, Blue Economy and Maritime Affairs, Council Of Governors (COG) and the Kenya Private Sector Alliance(KEPSA);
- b) The Committee noted that there is duplicity of functions as some of the functions to be undertaken by the Local Content Development Committee are already being undertaken by Energy and Petroleum Regulatory Authority (EPRA);
- c) The Committee noted that various County Governments have made laws regarding the local resources found in each County;
- d) The Committee further noted that the Local Content Bill is focused on the Energy and Petroleum sector whereas other sectors like mining and blue Economy ought to be factored in;
- e) The Committee resolved to stand down the Bill so as to allow for the scope of the Bill to be increased; and
- f) The Committee resolved to have a stakeholder meeting with all the relevant bodies regarding the Local Content Bill.



MIN. SEN/ENG/NO.410/2024

ANY OTHER BUSINESS

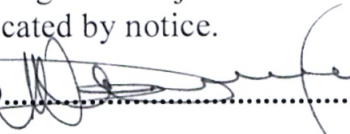
The following issues were deliberated under Any Other Business-

- a) The Committee noted that the KenGen dams are releasing water from the dams due to their filled capacity causing floods in Kilifi, Lamu, Tana River and Garissa Counties.
- b) The Committee further noted that the flooding caused by the water from the dams has resulted to loss of lives, animals, destruction of property and roads in the affected Counties.
- c) Members were asked to confirm their attendance to the County Oversight and Networking Visit in Mombasa scheduled from 2-6 May 2024.

MIN. SEN/ENG/NO.411/2024

ADJOURNMENT

The meeting was adjourned at 1.12 p.m. The date of the next meeting was to be communicated by notice.

SIGNED.....

DATE.....7/05/2024

**SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.**



MINUTES OF THE THIRTY- NINTH (39TH) SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON THURSDAY, 12TH OCTOBER, 2023 AT 12.00 PM IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS.

PRESENT

- | | |
|--|---------------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 3. Sen. Ledama Olekina, MP | - Member |
| 4. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 5. Sen. James Lomenen Ekomwa, MP | -Member |
| 6. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 7. Sen. Abass Sheikh Mohamed, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|----------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 2. Sen. Edwine Watanya Sifuna, MP | - Member |

COMMITTEE SECRETARIAT

- | | |
|------------------------------|---------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Ms. Faith Cherutoh Rotich | - Legal Counsel II |
| 4. Mr. Eric Ososi | - Research Officer I |
| 5. Mr. Washington Otiato | - Media Relations Officer II |
| 6. Ms. Shirley Milimu | - Audio Officer III |
| 7. Mr. Joseph Lekisima | - Fiscal Analyst III |
| 8. Ms. Julia Gachoki | - Assistant Sergeant at Arms |

MIN/SEN/ENG/NO.259/2023

PRELIMINARIES

a) Prayer

The Chairperson called the meeting to order at 12.19 pm. This was followed by a word of prayer.

MIN/SEN/ENG/NO.260/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Danson Buya Mungatana, MGH, MP and Seconded by Sen. James Lomenen Ekomwa, MP as follows-

AGENDA

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Recap of Senate Mashinani Meetings; (*Committee Paper No. 41*)
 - i. Lake Turkana Wind Power Limited Visit;
 - ii. Meeting with Turkana County Assembly Committee on energy; and
 - iii. Visit to Tullow Oil.
6. Consideration of the pre-publication scrutiny on the Local Content Bill, 2023. (*Committee Paper No. 42*)
7. Consideration of response from the Ministry of Energy on the Statement sought by Sen. Mohamed Chute, MP concerning the status of electricity connection in Marsabit County. (*Committee Paper No. 43*);
8. Any Other Business; and
9. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.261/2023

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

- a) Minutes of the 35th sitting held on 19th September 2023 were confirmed as the true record of the proceedings after being proposed by, Sen. Danson Buya Mungatana, MGH, MP and Seconded by Sen. James Lomenen Ekomwa, MP.

- b) Minutes of the 36th sitting held on 25th September 2023 were confirmed as the true record of the proceedings after being proposed by, Sen. Danson Buya Mungatana, MGH, MP and Seconded by Sen. James Lomenen Ekomwa, MP.
- c) Minutes of the 37th sitting held on 26th September 2023 were confirmed as the true record of the proceedings after being proposed by, Sen. Danson Buya Mungatana, MGH, MP and Seconded by Sen. James Lomenen Ekomwa, MP.
- d) Minutes of the 38th sitting held on 26th September 2023 were confirmed as the true record of the proceedings after being proposed by, Sen. Danson Buya Mungatana, MGH, MP and Seconded by Sen. Abass Sheikh Mohamed, MP

MIN. SEN/ENG/NO.262/2023

MATTERS ARISING FROM THE MINUTES

Under ex-min. sen/eng/no.256/2023

meeting with officials of tullow oil

- a) The Committee noted that in their presentation officials from Tullow Oil are planning to use water from Turkwell dam as opposed to exploring the water aquifers that have been discovered in Turkana County. The Committee further noted that Tullow oil was transporting water using water bowsers and has not invested in boreholes;
- b) The Committee noted that foreign investors avoid investing in permanent infrastructure and leave an area without benefiting the community. The Committee further noted that the agreements entered into with the multinationals should compel them to invest in infrastructure; and
- c) The Committee noted that the social corporate responsibility by Tullow Oil was insignificant and that the company did minimal to benefit the community.

MIN. SEN/ENG/NO.263/2023

RECAP OF SENATE MASHINANI MEETINGS (COMMITTEE PAPER NO 41)

a) Lake Turkana Wind Power Limited Visit

- i. The Committee noted that the Lake Turkana Wind Power project which supplies the national grid with 270 MW is protected by National Police

Reservists. The Committee further noted that the lack of adequate security could leave a gap for occurrence of a security breach which will affect the national power supply leading to economic sabotage; and

- ii. The Committee noted that a meeting with KPLC and National Treasury is needed to establish whether the funds paid for carbon credits are being disbursed to the counties.

b) Meeting with Turkana County Assembly Committee Energy Committee

- i. The Committee noted that the meeting with the Turkana County Assembly Energy Committee was short and issues were not extensively covered and a meeting with the Committee needs to be planned to cover the remaining pending issues.

c) Visit to Tullow Oil

- a. The Committee noted that the Field Development Plan is yet to be approved by the Ministry Of Energy;
- b. The Committee resolved to invite the Ministry of Energy and EPRA to find out the reasons as to why the Field Development Plan from Tullow Oil has not been approved; and
- c. The Committee resolved to have a follow up meeting with Tullow Oil to get an explanation as to why Africa Oil and Total Oil Company disengaged from Tullow Oil.

MIN. SEN/ENG/NO.264/2023

CONSIDERATION OF PRE-PUBLICATION SCRUTINY ON THE LOCAL CONTENT BILL (COMMITTEE PAPER NO 42)

- a) The Committee noted that the consideration of the pre-publication scrutiny is sufficient and that the bill can be forwarded for publishing.
- b) The Local Content Bill 2023 was proposed by Sen. (Dr.) Oburu Oginga, MGH, MP and seconded by Sen. James Lomenen Ekomwa, MP for publishing.

The agenda was deferred to the next meeting.

MIN. SEN/ENG/NO.266/2023

ANY OTHER BUSINESS

The following issues were deliberated under Any Other Business;

a) Issues pertaining to Power;

- i. The Committee noted that meters are unavailable in Kenya Power and Lighting Company due to the procurement issues resulting to delays in electricity connections for thousands of customers;
- ii. The Committee noted that KPLC have many faulty transformers and that the Committee should inquire reasons as to why there are many complaints on faulty transformers in the country;
- iii. The Committee noted that there are numerous complaints of over quotation from Kenya Power and Lighting Company and the same should be followed up with them;
- iv. The Committee noted that the ethnical distribution of employees of the Company should be evaluated;
- v. The Committee resolved to invite Kenya Power and Lighting Company for a meeting to deliberate on the afore-mentioned issues;
- vi. The Committee noted that the pace of electricity connection in the rural areas is low.

- vii. The Committee resolved to invite Rural Electrification and Renewable Energy Cooperation (REREC) to inquire about the status of electricity connectivity in rural areas.

b) Issues pertaining to Petroleum;

- i. The Committee resolved to look into the following issues in regards to the Petroleum sector,
- The Government to Government deal for Fuel supply to the country;
 - The high cost of petroleum products;
 - Payment of fuel subsidies to oil marketing companies;
 - Installation of the leak detector system on Line V pipeline by Kenya Pipeline Company; and
 - Challenges facing Oil Marketing Companies.

MIN. SEN/ENG/NO.267/2023

ADJOURNMENT

The meeting was adjourned at 1.10 PM. The date of the next meeting was to be communicated by notice.

SIGNED.....

DATE..... 11/10/23.....

**SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.**



MINUTES OF THE THIRTY- FIFTH (35TH) SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON TUESDAY, 19TH SEPTEMBER, 2023 AT 10.00 AM IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS.

PRESENT

- | | |
|--|---------------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 3. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 5. Sen. James Lomenen Ekomwa, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|----------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 2. Sen. Ledama Olekina, MP | - Member |
| 3. Sen. Abass Sheikh Mohamed, MP | - Member |
| 4. Sen. Edwine Watinya Sifuna, MP | - Member |

COMMITTEE SECRETARIAT

- | | |
|------------------------|---------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Ms. Faith Rotich | - Legal Counsel II |
| 4. Mr. Joseph Lekisima | - Fiscal Analyst III |
| 5. Mr. Nicholas Arusei | - Audio Officer III |
| 6. Ms. Julia Gachoki | - Assistant Serjeant at Arms |

MIN/SEN/ENG/NO.231/2023

PRELIMINARIES

a) Prayer

The Chairperson called the meeting to order at 10.20 am. This was followed by a word of prayer.

MIN/SEN/ENG/NO.232/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. (Dr.) Oburu Oginga, MGH, MP and Seconded by Sen. James Lomenen, MP as follows-

AGENDA

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Review of the Committee business during the Senate sitting in Turkana County (Senate *Mashinani*);
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.233/2023

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

- a) Minutes of the thirty fourth (34th) sitting held on 14th September, 2023, were confirmed as the true record of the proceedings after being proposed by, Sen. William Kisang, MP and Seconded by Sen. (Dr.) Oburu Oginga, MGH, MP.
- b) Minutes of the thirty first (31st) sitting held on 1st August, 2023 were confirmed as the true record of the proceedings after being proposed by, Sen. (Dr.) Oburu Oginga, MGH, MP, and Seconded by Sen. James Lomenen, MP.
- c) Minutes of the twenty fourth (24th) sitting held on 2nd May, 2023 were confirmed as the true record of the proceedings after being proposed by, Sen. (Dr.) Oburu Oginga, MGH, MP, and Seconded by Sen. Danson Buya Mungatana, MGH, MP.

- d) Minutes of the seventeenth (17th) sitting held on 13th April, 2023 were confirmed as the true record of the proceedings after being proposed by Sen. William Kisang' Kipkemoi, MP and Seconded by Sen. James Lomenen, MP.
- e) Minutes of the fifteenth (15th) sitting held on 4th April, 2023 were confirmed as the true record of the proceedings after being proposed by, Sen. William Kisang MP, MP and Seconded by Sen. Danson Buya Mungatana, MGH, MP
- f) Minutes of the twelfth (12th) sitting held on 20th March, 2023, were confirmed as the true record of the proceedings after being proposed by Sen. William Kisang' Kipkemoi, MP and seconded by Sen. James Lomenen, MP.
- g) Confirmation of minutes of the twenty seventh (27th) sitting held on 30th May, 2023 was deferred.

MIN. SEN/ENG/NO.234/2023

MATTERS ARISING FROM THE MINUTES

The following issues were discussed under matters arising-

Ex Min.Sen/Eng/No.207/2023

Consideration of Pre-publication scrutiny on the Local Content Bill 2023

- a) The Committee was informed of different countries and their threshold of local content for comparison purposes. It was noted that—
 - i. In *Nigeria*, the Local Content Act (LCA) of 2010 provides for categories of activities to be locally procured, with targets ranging from 45 to 100 per cent for the majority of service categories. For instance, reservoir services as they relate to well and drilling shall have 75 per cent local content level;
 - ii. The government declared that, by 2010 in Angola, oil companies would be required to increase Angolan staffing from 70 per cent to 90 per cent of their workforce operating in Angola;
 - iii. In Ghana, the Minerals and Mining General Regulations 2012 set out employment training and procurement requirements. Companies were required to give preference in employment to citizens to the maximum extent possible. For instance, the share of Ghanaians in management positions had to increase from 50% to 80% with five years. Core technical staff was required to move from 30% of the

staff from the start and that was to increase to 90% within 10 years. For oil, operators, contractors, and sub-contractors, they must comply with specified minimum local content levels for goods and services. The targets are 10 per cent at the start, 50 per cent at five years and 60–90 per cent at 10 years;

- iv. In Brazil, local content is one of the three determinate factors in the bidding process. In presenting their offers bidders indicate a specific percentage of local content which is turned into a number of points used to rank bidders; and
- v. In Angola, the law gives preference to Angolan companies provided that their services and goods are equivalent to those available in the international market, and their fee quotes are not 10 per cent higher than the fee quotes of the others.

MIN. SEN/ENG/NO.235/2023

**REVIEW OF THE COMMITTEE
BUSSINESS DURING SENATE
MASHINANI IN LODWAR
(COMMITTEE PAPER NUMBER 40)**

- a) The Committee was informed of a scheduled visit to Lake Turkana Wind Power Ltd on Monday, 25th September, 2023. Members were requested to pick Sunday or Monday morning flights to Lodwar to enable them to make it for the 10.00 am flight pick up by Lake Turkana Wind Power Ltd on Monday, 25th September, 2023 at Lodwar Airstrip;
- b) The Committee was also informed of a meeting with the Turkana County Assembly Energy Committee on Tuesday, 26th September, 2023 at 9.00 am and a visit to Tullow Oil in Lokichar;
- c) The Committee noted that there are inconsistencies in Tullow Oils reporting on the availability of oil in Turkana County. The Committee also noted that during the visit, it is important to establish how many oil wells exist and what each oil well can produce; and
- d) The Committee further noted that there is dissatisfaction amongst the locals due to the extraction and transportation of oil from Turkana County with no content sharing with the County Government and the locals.

The following issues were deliberated under Any Other Business;

a) **Rising Cost of Petroleum;**

The Committee noted that the Energy and Petroleum Regulatory Authority increased fuel prices by at least Kshs 16.96 per litre with prices of diesel and kerosene increasing by Kshs 21.32 and Kshs 33.13 per litre respectively.

The Committee noted that the increments are the highest in the recent past which will see Super Petrol retail at Kshs 211.64, diesel at Kshs 200.99 and kerosene at Kshs 202.61.

The Committee to resolved to invite the Cabinet Secretary, Ministry of Energy and Petroleum for a meeting to deliberate on the rising cost of petroleum products in the Country.

b) **Petition to review a tender at Dandora Dumpsite,**

The Committee was informed that it has received a Petition to review tender process for design, finance, build, operate, maintenance and transfer of waste to Energy Processing plant at Dandora Dumpsite Nairobi/Block 86/36, Nairobi Tender No: NCC/ENV.RFP/287/2022-2023.

The Committee resolved to invite Ms. Wanjiru Gikonyo Githogo the petitioner to review tender process to tender a waste to Energy processing plant in Dandora

The meeting was adjourned at 11.06 am. The date of the next meeting was to be communicated by notice.

SIGNED.....

DATE..... 12/10/23

SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.



MINUTES OF THE THIRTY- FIRST (31ST) SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON TUESDAY 1ST AUGUST, 2023 AT 10.00 AM IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS.

PRESENT

- | | |
|--|---------------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 3. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 5. Sen. Abass Sheikh Mohamed, MP | - Member |
| 6. Sen. James Lomenen Ekomwa, MP | -Member |
| 7. Sen. Edwine Watanya Sifuna, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|----------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 2. Sen. Ledama Olekina, MP | - Member |

COMMITTEE SECRETARIAT

- | | |
|------------------------|-------------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Mr. Malcom Ngugi | - Legal Counsel I |
| 4. Mr. Erick Ososi | - Research Officer I |
| 5. Mr .Nicholas Arusei | - Audio Officer III |
| 6. Mr. Joseph Lekisima | - Fiscal Analyst III |
| 7. Mr. Rony Nyaga | - Public Communications Officer III |
| 8. Ms. Julia Gachoki | - Assistant Serjeant at Arms |

MIN/SEN/ENG/NO.203/2023

PRELIMINARIES

a) Prayer

The Chairperson called the meeting to order at 10.04 AM. This was followed by a word of prayer.

b) Introductions

There was a round of introductions from the Honourable Senators.

MIN/SEN/ENG/NO.204/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Danson Buya Mungatana, MGH, MP and Seconded by Sen. (Dr.) Oburu Oginga, MGH, MP as follows-

AGENDA

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Consideration of the pre-publication scrutiny on the local content bill 2023. (*Committee Paper No 38*)
6. Consideration of the pre-publication scrutiny on a legislative proposal to amend the Energy Act. (*Committee Paper No 39*)
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.205/2023

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

- a. Confirmation of Minutes of the 12th Sitting held on 20th March 2023;
- b. Confirmation of Minutes of the 14th sitting held on 29th March 2023;
- c. Confirmation of Minutes of the 15th sitting held on 4th April 2023;
- d. Confirmation of Minutes of the 16th sitting held on 5th April 2023;
- e. Confirmation of Minutes of the 17th sitting held on 13th April 2023;
- f. Confirmation of Minutes of the 18th Sitting held on 17th April 2023;

- g. Confirmation of Minutes of the 19th sitting held on 17th April 2023;
- h. Confirmation of Minutes of the 20th sitting held on 18th April 2023;
- i. Confirmation of Minutes of the 21st sitting held on 18th April 2023;
- j. Confirmation of Minutes of the 21st sitting held on 24th April 2023;
- k. Confirmation of Minutes of the 22nd sitting held on 24th April 2023
- l. Confirmation of Minutes of the 23rd sitting held on 25th April 2023,
- m. Confirmation of Minutes of the 24th Sitting held in 2nd May 2023 ;
- n. Confirmation of minutes of the 25th Sitting held on 8th May 2023;
- o. Confirmation of minutes of the 26th Sitting held on 26th May 2023;
- p. Confirmation of minutes of 27th Sitting held on 30th May 2023 and;
- q. Confirmation of minutes of the 28th Sitting held on 8th June, 2023 were differed till the end of the inquiry.
- r. Minutes of the 29th sitting held on 13th June 2023 were confirmed as the true record of the proceedings after being proposed by Sen. Abbas Sheikh Mohamed, MP and Seconded by Sen. Edwine Watanya Sifuna, MP.
- s. Confirmation of minutes of the 30th sitting held on 20th June 2023 were differed to the next meeting.

MIN. SEN/ENG/NO.206/2023

MATTERS ARISING FROM THE MINUTES

There were no matters arising.

MIN. SEN/ENG/NO.207/2023

CONSIDERATION OF PRE-PUBLICATION SCRUTINY ON THE LOCAL CONTENT BILL 2023. (COMMITTEE PAPER NO 38)

- a) The committee was taken through the bill digest for the local content bill after the suggested amendments were included.
- b) The committee was informed that the suggestion to have the name ‘*indigenous*’ to replace local persons in the bill will not be necessary as the definition of a local person is conclusive as it includes the word ‘*Kenyan Citizen*’ as conferred in the constitution by Articles 13 and 15.
- c) The committee noted that it was necessary to look into different jurisdictions on local content and compare to the recommended 30% by the Committee before adoption of the bill.

- d) The committee noted that the bill should also encourage foreign investors and make the country as attractive as possible to ensure economic growth.
- e) The committee further noted that breaking down the local content into different percentages is necessary.

MIN. SEN/ENG/NO.208/2023

**CONSIDERATION OF THE PRE –
PUBLICATION SCRUTINY ON A
LEGISLATIVE PROPOSAL TO
AMMEND THE ENERGY ACT
(COMMITTEE PAPER NO 39)**

- a) The committee was taken through the bill digest for the Energy Amendment bill 2023.
- b) The committee noted that the amendment of the energy act was necessitated from the experience of the inquiry, the high levels of secrecy from the Independent Power Producers and the lack of transparency in disclosing the beneficial owners of the companies.
- c) The committee noted that there will be additional amendments that will arise on the Energy Act 2019 from the committee recommendations on the inquiry.

MIN. SEN/ENG/NO.209/2023

ANY OTHER BUSSINESS

There following issues deliberated under any other business-

- a) The committee was informed that two Independent Power Producers, Kipeto Energy PLC and Lake Turkana Wind Power Ltd have extended an invite to the committee to tour the projects.
- b) The committee resolved to tour Kipeto Energy PLC in Kajiado on 11th August 2023 and thereafter proceed to write the report on the Inquiry on the high cost of electricity in the country in Machakos County.
- c) The committee resolved to visit Lake Turkana Wind Power Ltd during Senate Mashinani which will be taking place in Turkana County.

MIN. SEN/ENG/NO.210/2023

ADJOURNMENT

The meeting was adjourned at 11.16 am. The date of the next meeting was to be communicated by notice,

SIGNED: *.....

DATE: 12/9/2023.....

**SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.**



MINUTES OF THE THIRTIETH (30TH) SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON TUESDAY, 20TH JUNE, 2023 AT 11.13 AM IN GROUND FLOOR BROAD ROOM, COUNTY HALL.

PRESENT

- | | |
|--------------------------------------|---------------------|
| 1. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 2. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 3. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Abass Sheikh Mohamed, MP | - Member |
| 5. Sen. Edwine Watenya Sifuna, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. Ledama Olekina, MP | - Member |
| 3. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 4. Sen. James Lomenen Ekomwa, MP | -Member |

COMMITTEE SECRETARIAT

- | | |
|--------------------------|-------------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Mr. Malcom Ngugi | - Legal Counsel I |
| 4. Ms. Christine Mwaura | - Legal Counsel II |
| 5. Mr .Nicholas Arusei | - Audio Officer III |
| 6. Mr. Washington Otiato | - Media Relations Officer II |
| 7. Mr. Rony Nyaga | - Public Communications Officer III |

MIN/SEN/ENG/NO.195/2023

PRELIMINARIES

a) Prayer

The Chairperson called the meeting to order at 11.13 a.m. This was followed by a word of prayer.

b) **Introductions**

There was a round of introductions from the Honourable Senators.

MIN/SEN/ENG/NO.196/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Edwine Watenya Sifuna, MP and Seconded by Sen. Abass Sheikh Mohamed, MP as follows-

AGENDA

1. Preliminaries
 - a. Prayer; and
 - b. Introductions.
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Consideration on the pre-publication scrutiny on the local content bill 2023. (*Committee Paper No 38*)
6. Review of progress on the Inquiry into the high cost of electricity in the country.
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.197/2023

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

1. The Minutes of the 29th sitting held on 13th June, 2023 were confirmed as the true record of the proceedings after being proposed by Sen. Abbas Sheikh Mohamed, MP and Seconded by Sen. Edwin Watenya Sifuna, MP.
2. Confirmation of the following set of minutes was deferred until the end of the inquiry-
 - a. Confirmation of Minutes of the 12th Sitting held on 20th March, 2023;
 - b. Confirmation of Minutes of the 14th sitting held on 29th March, 2023;
 - c. Confirmation of Minutes of the 15th sitting held on 4th April, 2023;
 - d. Confirmation of Minutes of the 16th sitting held on 5th April, 2023;
 - e. Confirmation of Minutes of the 17th sitting held on 13th April, 2023;
 - f. Confirmation of Minutes of the 18th Sitting held on 17th April, 2023;

- g. Confirmation of Minutes of the 19th sitting held on 17th April, 2023;
- h. Confirmation of Minutes of the 20th sitting held on 18th April, 2023;
- i. Confirmation of Minutes of the 21st sitting held on 18th April, 2023;
- j. Confirmation of Minutes of the 21st sitting held on 24th April, 2023;
- k. Confirmation of Minutes of the 22nd sitting held on 24th April, 2023
- l. Confirmation of Minutes of the 23rd sitting held on 25th April, 2023,
- m. Confirmation of Minutes of the 24th Sitting held in 2nd May, 2023 ;
- n. Confirmation of minutes of the 25th Sitting held on 8th May, 2023;
- o. Confirmation of minutes of the 26th Sitting held on 26th May, 2023;
- p. Confirmation of minutes of 27th Sitting held on 30th May, 2023 and;
- q. Confirmation of minutes of the 28th Sitting held on 8th June, 2023.

MIN. SEN/ENG/NO.198/2023

MATTERS ARISING FROM THE MINUTES

Under Ex min. Sen/Eng/no.193/2023

Any other business

a) The committee was informed that the Ministry of Energy held a stakeholder conference on deliberations on sustainability of electricity supply in Kenya. The committee was informed that the Chairperson and the Vice-Chairperson of the committee acceded to the invite from the Ministry of Energy and were present during the meeting.

b) The committee was informed that the issues the committee had raised during the inquiry on high costs of electricity were discussed in the forum, including the bulk buying of Heavy Fuel Oil (HFO) for the Independent Power Producers as a way of reducing the cost of electricity.

MIN. SEN/ENG/NO.199/2023

CONSIDERATION OF PRE-PUBLICATION SCRUTINY ON THE LOCAL CONTENT BILL 2023. (COMMITTEE PAPER NO 38)

- a) The Committee was taken through the bill digest for the Local Content Bill.
- b) The Committee noted that the Local content bill is a crucial bill and will protect the interest of Kenyans who are often exploited by foreign investors.
- c) The Committee noted that most of the foreign investors who invest in the country come with their own personnel putting the local labour force at a huge disadvantage.

- d) The Committee noted that the bill should address issues beyond the extractive industry since protecting local content cuts across all sectors.
- e) The Committee noted that there should be a fixed percentage of 30% minimum for the Local Content be it labour or locally sourced materials.
- f) The Committee noted that the bill needs amendments before adoption.

The Committee resolved to discuss and adopt the Local Content Bill during the report writing retreat.

MIN. SEN/ENG/NO.200/2023

**DELIBERATE ON THE
ELECTRICITY STAKEHOLDER
CONFERENCE. (COMMITTEE
PAPER NO 37)**

- a) The Committee was briefed on the Senate Energy Committee Stakeholder's conference that will take place on 29th July - 2nd July, 2023 in the Nairobi Metropolitan Area.
- b) The Committee was informed that some Independent Power Producers have already confirmed their attendance for the conference.

MIN. SEN/ENG/NO.201/2023

ANY OTHER BUSINESS

There were no issues deliberated under any other business.

MIN. SEN/ENG/NO.202/2023

ADJOURNMENT

The meeting was adjourned at 11.57 am. The date of the next meeting was to be communicated by notice.

SIGNED ^{FOR}.....

DATE..... 1st/09/2023.....

**SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON, COMMITTEE ON ENERGY.**

ANNEX 2
COPY OF THE BILL

SPECIAL ISSUE

Kenya Gazette Supplement No. 224 (Senate Bills No. 50)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2023

NAIROBI, 24th November, 2023

CONTENT

Bill for Introduction into the Senate —

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THE LOCAL CONTENT BILL, 2023
ARRANGEMENT OF CLAUSES

Clause

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- 2—Interpretation.
- 3—Application.
- 4—Object and purposes.
- 5—Guiding principle.

**PART II — ROLE OF THE NATIONAL AND
COUNTY GOVERNMENTS**

- 6—Obligations of the National and County Governments.
- 7—Oversight role of the Committee.
- 8—Duties of the County Governments.

**PART III — ESTABLISHMENT OF THE LOCAL
CONTENT DEVELOPMENT COMMITTEE**

- 9—Establishment of the Local Content Development Committee.
- 10—Functions of the Committee.
- 11—Assessment of local capabilities.
- 12—Membership of the Committee.
- 13—Term of office.
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- 18—Sub-committees of the Committee.
- 19—Secretariat.
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PART IV — LOCAL CONTENT PLANS*Local content plan*

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- 22—Local content plan.
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- 24—Local content certification.

Employment and Skill Development Plan

- 25—Capacity building.
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- 27—Education and training for nationals.
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- 35—Research and development plan.
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- 38—Submission of a financial services plan.

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- 39—Local content performance report.
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**SCHEDULE—PROVISIONS RELATING TO THE
CONDUCT OF MEETINGS OF THE
COMMITTEE**

THE LOCAL CONTENT BILL, 2023**A Bill for**

AN ACT of Parliament to provide for a framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil and other petroleum resources; to provide a framework to increase the local value capture along the value chain in the exploration of gas, oil and other petroleum resources; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I—PRELIMINARY

1. This Act may be cited as the Local Content Act, 2023.

Short title.

2. In this Act,—

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters related to the extractive industry;

“Committee” means Local Content Development Committee established under section 9 of this Act;

“company” means a firm or entity whose business enterprise is incorporated or otherwise organised under the Laws of Kenya and whose principal place of business is in Kenya and which is effectively owned and controlled by nationals of Kenya;

“connected entity” means a person, firm or entity contracted by an operator to perform a specified component of the operator’s obligations under a licence issued pursuant to this Act;

“extractive industry” means the oil, gas and mining sectors in Kenya;

“foreigner” means a person who is not a citizen of Kenya, and includes a body corporate which was not incorporated in Kenya;

“local content” means the added value brought to the Kenyan economy from extractive industry through systematic development of national capacity and capabilities and investment in developing and procuring

locally available work force, services and supplies, for the sharing of accruing benefits;

“local goods” means materials or equipment mined, produced or manufactured in Kenya and for this purpose, a good shall be considered to be manufactured, processed or assembled if it differs substantially in its basic characteristic, purpose or utility or in the case of a manufactured good, if the cost of local materials, labour and services used in the manufacture of such goods constitutes at least fifty percent of the cost of the finished product;

“local person” means a person, firm or entity performing works, services or supplying goods and materials to an operator, whether as a subcontractor or otherwise, whose business enterprise is incorporated under the Laws of Kenya and whose principal place of business is in Kenya and which is effectively owned and controlled by a Kenyan national;

“operator” means a person, firm or entity licensed by the Government to undertake exploration, development and extraction activity with respect to natural resource in the extractive industry; and

“value chain” means sequential stages in the extractive industry life cycle including exploration and development, production, treatment, transportation, refining, or other beneficiation, and distribution.

3. This Act shall apply to all commercial activities related to the exploration, extraction, development and exploitation of oil, gas and other petroleum resources in the extractive industry in Kenya.

Application.

4. The object of this Act is to—

Objects.

- (a) promote the maximisation of value-addition and the creation of employment opportunities in the extractive industry value chain through the use of local expertise, goods, services, businesses and financing and their retention in the country;
- (b) provide a framework for the—
 - (i) establishment of a monitoring, evaluation and reporting system in the implementation of this Act;

- (ii) development of indigenous skills across the extractive industry value chain; and
- (iii) application of the mechanism of local content by an operator under this Act;
- (c) enhance the participation of local persons in extractive industry value chain;
- (d) facilitate the development of a competitive, capable and sustainable labour force within the extractive industry;
- (e) enhance local ownership and use of local assets and services in the extractive industry; and
- (f) maximise value addition through local content development and local participation in extractive industry operations.

5. All persons shall, in the performance of their functions under this Act, be guided by the following principles—

Guiding principles.

- (a) the national values and principles of governance set out under Article 10 of the Constitution;
- (b) the principles of ownership of natural resources set out under Article 62 of the Constitution; and
- (c) the principle of equity in the sharing of benefits accruing from natural resource exploitation set out under Article 69 of the Constitution.

PART II — ROLE OF THE NATIONAL AND COUNTY GOVERNMENTS

6. (1) The National and County Governments shall, to the extent of their constitutional mandate, put in place measures to ensure the maximum development and adoption of local content by an operator under this Act.

Obligations of the National and County Governments.

(2) The National Government shall, in performing its functions under subsection (2), collaborate with County Governments.

7. In ensuring that the National Government fulfils its obligations under section 6, the Committee shall—

Functions of the National Government and role of the Cabinet Secretary.

- (a) identify sectors in which value-addition opportunities exist along the extractive value chain

industry with respect to various goods and services and focus on the local content, participation and supply capability development in those sectors;

- (b) facilitate the realisation of local content through—
 - (i) managing the pace and scheduling of extractive industry programmes in order to enable locals to take advantage of opportunities along the extractive value chain;
 - (ii) facilitating local capability development through in-country programmes in order to enable full participation by locals in the extractive industry value chain;
 - (iii) the implementation of strategies that ensure that preference is given to locally owned, controlled and financed enterprises and to those that demonstrate commitment and capacity for maximising local value-addition, participation and capability development;
 - (iv) the development and implementation of strategies for the development of local skills, business know-how, technology, financing, capital market development, and wealth capture and distribution; and
 - (v) ensuring that all local content activities shall include participation of local persons at a quota of not less than thirty percent;
- (c) ensure delivery of maximum local value-addition by—
 - (i) measuring and reporting on the performance of operators in the extractive industry; and
 - (ii) periodically comparing the local content and participation performance amongst operators, between projects and operations and with other countries and identifying opportunities for improvement and best practices; and
- (d) pursue supportive policy objectives across all policy frameworks with the view to giving effect to the objectives of this Act.



8. (1) Each county government shall, for the performance of its functions under section 6 of this Act —

Duties of the
County
Governments.

- (a) assist local contractors and companies within the respective counties to develop their capabilities and capacities to further the attainment of the goal of developing local content in the extractive industry within the respective county;
- (b) implement the cross-cutting policies formulated by the National Government with respect to the implementation of local content;
- (c) implement strategies that enable local participation in the various activities along the extractive value chain in the respective county;
- (d) monitor and put in place measures to facilitate the implementation of local content performance by all operators in the respective county in accordance with the provisions of this Act;
- (e) conduct regular audits for the purposes of monitoring the compliance with the provisions of this Act in the respective county;
- (f) set targets, in collaboration with the Committee, for the achievement of local content and participation in relation to specific projects, operations and operators and support these targets with appropriate contract terms; and
- (g) perform such other function necessary for the implementation of the objectives of this Act.

**PART III — ESTABLISHMENT OF THE LOCAL
CONTENT DEVELOPMENT COMMITTEE**

9. There is established the Local Content Development Committee.

Establishment of
the Local Content
Development
Committee.
Functions of the
Committee.

10. (1) The functions of the Committee shall be to—

- (a) oversee, coordinate and manage the development of local content in the country;
- (b) make recommendations and advise the Cabinet Secretary on the formulation of policy and strategies for the development and implementation of local content;

- (c) make recommendations to the Cabinet Secretary on the minimum standard requirements for local content and the development of local content plans under this Act;
 - (d) appraise, evaluate and approve local content plans and reports submitted to the Committee pursuant to section 22;
 - (e) oversee, in consultation with the county governments, the implementation of local content policies and strategies by operators;
 - (f) collaborate with county governments in the implementation of strategies to improve the capacity of local persons, businesses and the capital market to fully leverage the objectives of this Act; and
 - (g) carry out such other functions that may be necessary for the achievement of the objects and purposes of this Act or that may be conferred by any other law.
- (2) The Committee shall, in implementing this Act, —
- (a) ensure measurable and continuous growth in the development and adoption of local content with respect to all activities in the extractive industry; and
 - (b) consult with, and collaborate with the county governments.

11. The Committee shall —

Assessment of local capabilities.

- (a) within a period of six months from the date of its constitution, develop, and keep under regular review, a comprehensive register of all equipment and service categories required to effectively supply the needs of the extractive industry;
- (b) assess the capacity of the local industry to supply the goods and services identified under paragraph (a); and
- (c) adopt policies and measures aimed at progressively enhancing the capabilities of local enterprises to compete effectively on quality, price, quantity and reliability in the supply of

goods and services required in the extractive industry.

12. (1) The Committee shall consist of—

Membership of the Committee.

- (a) a chairperson appointed by the Cabinet Secretary in accordance with subsection (2);
- (b) the Principal Secretary responsible for matters relating to petroleum and natural gas or a representative designated in writing;
- (c) the Principal Secretary responsible for matters relating to finance or a representative designated in writing;
- (d) the Principal Secretary responsible for matters relating to industry and enterprise development or a representative designated in writing;
- (e) two persons nominated by the Council of Governors;
- (f) two persons nominated by players in the extractive industry in such manner as the Cabinet Secretary shall determine and appointed by the Cabinet Secretary; and
- (g) the Director who shall be the secretary to the Committee.

(2) The persons nominated under subsection (1)(a) and (f) shall be appointed by the Cabinet Secretary by notice in the *Gazette*.

(3) There shall be paid to the members of the Committee such allowances as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

13. (1) The persons nominated under section 12(1)(a) and (f) shall be appointed for a term of four years renewable for one further term.

Term of office.

(2) No more than two thirds of the Committee shall be of the same gender.

14. A person is qualified for appointment as —

Qualifications for appointment.

- (a) the chairperson of the Committee if that person —
 - (i) holds a degree from a university recognised in Kenya;

- (ii) has knowledge and at least ten years' experience in matters relating to the extractive industry; and
- (iii) meets the requirements of Chapter Six of the Constitution; or
- (c) a member of the Committee under section 12(1)(f) if that person -
 - (i) holds a degree from a university recognised in Kenya;
 - (ii) has knowledge and at least five years' experience in matters relating to the extractive industry; and
 - (iii) meets the requirements of Chapter Six of the Constitution.

15. A person is not qualified for appointment as a member of the Committee under section 12(1)(a) and (f) if that person—

Disqualification from membership.

- (a) has violated Chapter Six of the Constitution;
- (b) is adjudged bankrupt; or
- (c) has been convicted of an offence and sentenced to imprisonment for a term of more than six months.

16. (1) The office of a member of the Committee appointed under section 12(1)(f) shall become vacant if the member—

Vacation of office of member.

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of at least six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent, without reasonable cause, from three consecutive meetings of the Committee;
- (e) resigns in writing addressed to the Cabinet Secretary;
- (f) is removed from office by the Cabinet Secretary for —

- (i) being unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (ii) failing to declare his or her interest in any matter being considered or to be considered by the Committee; or

(g) dies.

17. (1) The Committee shall conduct its affairs in accordance with the provisions of the Schedule.

Conduct of the affairs of the Committee.

(2) Except as otherwise provided in the Schedule, the Committee may regulate its own procedure.

18. (1) The Committee may establish such sub-committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

Sub-committees of the Committee.

(2) The Committee may co-opt any person to sit on any sub-committee established under subsection (1), whose knowledge and skills are found necessary for the performance of the functions of the Committee but such person shall have no right to vote at the meeting.

19. (1) The Cabinet Secretary shall designate an appropriate administrative unit within the Ministry responsible for matters relating to the petroleum industry to serve as the Secretariat of the Committee.

Secretariat.

(2) The Secretariat shall consist of —

- (a) the Director who shall be competitively recruited by the Public Service Commission and appointed by the Cabinet Secretary; and
- (b) such other public officers as the Cabinet Secretary shall, in consultation with the Committee, designate for the proper performance of the functions of the secretariat under this Act.

(2) The Director and persons designated under subsection (2)(b) shall possess such knowledge and experience in matters relating to the petroleum industry as the Cabinet Secretary shall, in consultation with the Committee, determine.

- 20.** The functions of the Secretariat shall be to —
- (a) provide technical and administrative services to the Committee;
 - (b) implement the decisions, strategies, programmes and policies of the Committee;
 - (c) make recommendations to the Committee on the formulation and implementation of programmes for the achievement of the functions of the Committee;
 - (d) on behalf of the Committee, establish and maintain relationships with international, national and local institutions involved in the extractive industry and other related activities;
 - (e) collaborate with State agencies, financial institutions and other stakeholders in the implementation of policies, strategies and programmes developed pursuant to this Act;
 - (f) train, disseminate information and provide linkages and networks with local and international institutions which engage in capacity building on local content development and application;
 - (g) conduct studies, research and investigations in order to enhance the development of local content in the extractive industry in Kenya;
 - (h) maintain a local content data base setting out information on —
 - (i) projects, operations and programmes on extractive activities with respect to each county, including the goods and services required with respect to the activities and the timelines for their delivery;
 - (ii) suppliers of goods and services relevant to the extractive industry in Kenya;
 - (iii) human resource development programmes and initiatives of the operators and their connected entities, including work permits awarded and their related commitments;
 - (iv) business development programmes and initiatives; and

Functions of the Secretariat.

- (iv) the progress of activities by operators, State-owned agencies and connected entities in the adoption of local content;
- (j) make arrangements for periodical evaluation of the policies and programmes in relation to the objects and functions of the Committee; and
- (k) perform such other functions as may be assigned to it by the Committee.

PART IV — LOCAL CONTENT PLANS

Local content plan

21. (1) The Cabinet Secretary shall, in consultation with the Committee and by notice in the *Gazette*, set the minimum local content to be applied by an operator engaging in any extractive activity undertaken under this Act.

Minimum local content.

(2) An operator shall, in carrying out extractive activities under this Act, comply with the minimum local content requirements prescribed under subsection (1).

22. (1) A person shall, before applying for, or bidding for a licence, permit or interest and before engaging in any extractive activity, prepare and submit to the Committee a local content plan with respect to the extractive activity in the prescribed form.

Local content plan.

(2) An operator shall, for the purposes of subsection (1),—

- (a) submit a long-term local content plan corresponding to the work programme with respect to the entire project which shall be submitted together with the bid or application to engage in the extractive activity; and
 - (b) once approval to carry out the extractive activity is granted, submit an annual local content plan with respect to each year of the programme in relation to the extractive activity.
- (3) An operator shall, in preparing a local content plan, set out the following information —
- (a) the procurement, the expected quality of main goods and services and utilization of locally

produced goods and services available in the locality in which the extractive activity is to be undertaken, where such goods meet established standards in the extractive industry;

- (b) the qualification requirements and employment of local persons to be engaged in the extractive or related activities and the standards for the remuneration of such employees;
- (c) workforce development strategies in relation to locals including training plans and projections to address any skill gaps that may have been identified in relation to the local labour force;
- (d) strategies for the support of local participation in the activities of the operator; and
- (e) the exploration and production work programme and budget estimate with regard to the local content component of the project.

(4) An operator shall set out, in the operator's local content plan, the strategies through which the operator shall

- (a) give first consideration to quality goods produced and services delivered locally; and
- (b) give first consideration to qualified local persons with respect to employment by the operator.

(5) An applicant shall, subject to the provisions of this Act and for the purposes of subsection (2), include in the local content plan, the following plans –

- (a) employment and skills development plan;
- (b) research and development plan;
- (c) technology transfer plan;
- (d) financial services plan;
- (e) succession plans for positions not held by Kenyans; and
- (f) such other plans as the Cabinet Secretary may prescribe.

23. (1) The Committee shall review and assess the local content plan submitted to it by an applicant under section 22 within a period of sixty days from the date of receipt of the plan.

Review of local content plan.

(2) The Committee shall, in reviewing and assessing the local content plan under subsection (1), carry out public participation and shall, for this purpose—

- (a) publicise the plan in at least one newspaper of wide circulation in the area with respect to which the extractive activity is to be undertaken and through such other media as the Committee may consider appropriate;
- (b) involve the relevant stakeholders in the extractive industry or persons that are likely to be affected by the decision to approve the application to engage in the extractive activity and afford such persons an opportunity to be heard; and
- (c) take into account any representations that may be made to the Committee prior to making its decision.

(3) The Committee shall, upon reviewing and assessing a local content plan, inform the applicant of its decision to approve or refuse the approval of the plan within a period of seven days from the date of its decision.

(4) Where the Committee refuses to approve a local content plan, it shall furnish the applicant with a written statement of the reasons for the refusal which shall include recommendations to the application.

(5) An applicant may, where applicable, within a period of thirty days from the date of notification of the decision by the Committee refusing to approve the local content plan and receipt of the written statement under subsection (4),—

- (a) revise the local content plan taking into account the recommendations of the Committee; and
- (b) submit the revised local content plan to the Committee.

(6) Where the Committee fails to notify the applicant of its approval or otherwise of the local content plan or revised local content plan, the local content plan shall be deemed to be approved upon the expiry of ninety days from

the date of submission or re-submission of the local content plan, as the case may be.

24. (1) The Cabinet Secretary shall, in consultation with the Committee, prescribe rules on local content certification and in so doing shall –

Local content certification.

- (a) prescribe a methodology for determining the percentage of local content in goods and services acquired or delivered in Kenya;
- (b) the specifications to be applied in determining the achievement of the minimum local content levels and in-country spending for the provision of goods and services in the extractive industry value chain;
- (c) develop standards for the accreditation of independent companies to certify such levels of local content;
- (d) accredit independent companies as independent certifying agents under this Act; and
- (e) enforce compliance with the provisions of this Act by accredited independent certifying agents.

(2) An accredited independent certifying agency shall be responsible for measuring the local content found in goods and services acquired or contracted by an operator under this Act.

(3) A certificate issued by an accredited independent certifying agency shall be proof of local content compliance by an operator, and shall be attached to the annual reports submitted to the Committee by an operator under this Act.

(4) The Committee shall use the local content certificate to audit the fulfilment by an operator, of its obligations to local content development under this Act.

Employment and Skill Development Plan

25. (1) An operator shall, in order to develop the skills and capacity of local persons and enterprises to participate effectively in its extractive industry operations, prepare and implement strategies and plans for the utilization of –

Capacity building.

- (a) technical service contracts, joint ventures and strategic alliances to broaden opportunities for local persons and enterprises to build capacity;

- (b) technology transfer strategies with local enterprises to provide credible and measurable plans on incremental transfer of technological know-how to locals; and
- (c) internships to equip locals at all levels of the extractive value chain with the view to developing a critical mass of knowledgeable and competent national skills pool.

(2) An operator shall, for the purpose of this section, prepare an employment and skill development plan in the form prescribed under section 26.

26. (1) An operator shall prepare and submit to the Committee, together with its local content plan, an employment and skills development plan with respect to the extractive activity to be carried out by the operator.

Employment and
skills
development plan.

(2) An employment and skill development plan submitted under subsection (1) shall include –

- (a) a forecast of the employment and training needs of the operator or other connected entity which shall include –
 - (i) a specification of the skills needed;
 - (ii) the anticipated skill shortages in the local workforce;
 - (iii) the specific training requirements; and
 - (iv) the anticipated expenditure that will be incurred by the operator or other connected entity in implementing the employment and training plan;
- (b) a time frame within which the operator, or other connected entity shall provide employment opportunities for the local workforce for each phase of the extractive activity to enable members of the local community prepare for such opportunities;
- (c) efforts made and procedures adopted for the accelerated training of local persons; and
- (d) the information in the implementation of the strategies and plans set out under section 25.

(3) An operator shall, in addition to the requirement under subsection (1) and upon commencing its extractive activities under this Act, submit to the Committee a quarterly report setting out –

- (a) the employment and training activities undertaken during the reporting period; and
- (b) a comparative analysis of the employment and training plan and the employment and training activities to monitor compliance.

(4) The quarterly report submitted to the Committee under subsection (3) shall specify the number of new local persons employed during the respective quarter and their job descriptions.

(5) The Committee may request for such further information with respect to the employment and skills development plan as the Committee considers necessary for the purpose of the implementation of this Act.

27. (1) Where local persons are not employed due to their lack of expertise, the operator shall, to the satisfaction of the Committee, –

Education and training for locals.

- (a) make every reasonable effort within a reasonable time to supply such training locally; and
- (b) implement strategies for the capacity building of local persons in the respective field.

(2) An operator shall set out the procedure for the execution of the training of local persons in the employment and skill development plan submitted to the Committee under section 26.

(3) A training carried out by an operator under subsection (1) shall extend to the training of local persons and public officers in the entire value chain of extractive operations.

(4) An operator shall, for the purposes of subsection (1), prepare in consultation with the Committee, programmes for industrial and technical education and training including the grant of scholarships and implement such programmes with a view to training local persons to replace foreign personnel as soon as reasonably practicable

and to affording local persons an opportunity of occupying senior positions in the operations of the operator.

(5) Local persons shall be selected and trained in a manner that is consistent with the performance standards of the operator in relation to the extractive activities to be undertaken by the operator.

28. (1) An operator shall—

Consideration of
employment of
local persons.

- (a) give first consideration to the employment of local persons who have the requisite expertise or qualification in various levels of the extractive operations in accordance with this Act;
- (b) minimise the employment of foreign personnel; and
- (c) ensure that foreign employees are engaged only in positions for which the operator cannot, after reasonable advertisement in at least two newspapers of wide circulation in Kenya and in such other media as the Committee may determine, find available Kenyan nationals having the necessary qualifications and experience.

(2) An operator shall, in meeting the requirements set out under subsection (1),—

- (a) maintain such reasonable number, as may be determined by the Committee, of local personnel from the area that the operator carries out its significant operation;
- (b) not engage in discriminatory practices on grounds of race, nationality, religion, or gender in the conditions of service provided for personnel; and
- (c) determine, in accordance with the existing laws and regulations that may be prescribed by the Cabinet Secretary, the rules of employment including salary scales in such manner as to ensure that all employees in the same category enjoy equal conditions of employment irrespective of their nationality.

29. (1) An operator shall, with respect to each of its operations, submit to the Committee a succession plan for

Succession plan.

any position not held by a local person within a period of six months from the commencement of its operations.

(2) A succession plan shall provide for the understudy, by local persons, of each incumbent foreigner for such period as shall be determined by the Committee on a case by case basis and at the end of such period, the position shall be assumed by the local person.

(3) All positions held by local persons shall attract salaries, wages and benefits as may be set out in the conditions of service of the operator with respect to local employees and to the existing labour laws of Kenya.

(4) An operator shall submit to the Committee, a report on the conditions of service and staff demography of all persons employed or contracted by the operator.

Transfer of Technology and Research Plan

30. (1) The Cabinet Secretary shall, in consultation with the Committee and in collaboration with the relevant State agencies and county governments,—

Strategies for transfer of technology.

- (a) formulate a strategic plan on the transfer of technology with respect to various operations in the extractive industry; and
- (b) publicise in such manner as it shall consider appropriate, the strategic plan.

(2) The Cabinet Secretary shall set out in the strategic plan formulated under subsection (1)—

- (a) the provisions to be included in contracts, agreements, concessions and licences granted to an operator for the transfer of technological know-how to local persons in the extractive industry value chain;
- (b) a framework for the monitoring and evaluation of the implementation of the policy on transfer of technology;
- (c) the strategies designed to increase the capability and international competitiveness of local persons; and
- (d) a road map toward the achievement and maintenance of a degree of control by local

enterprises over operations in the extractive industry.

31. The Cabinet Secretary shall, for the purpose of facilitating the transfer of technology and expertise and in consultation with the Committee and the relevant State agencies, submit recommendations to the Cabinet Secretary responsible for finance on fiscal incentives and criteria for obtaining the fiscal incentives to facilitate the implementation of activities by -

Fiscal support for the transfer of technology.

- (a) foreign companies which aim to develop technological capacity and skills of local enterprises; and
- (b) local persons who establish factories and production units in the country.

32. (1) Every operator shall prepare and submit to the Committee, together with its local content plan under section 22, a plan for the implementation of its transfer of technology programme.

Transfer of technology plan.

(2) A plan submitted under subsection (1) shall include—

- (a) a plan of activities aimed at promoting the effective transfer of technology from the operator to a local company or citizen;
- (b) the specific requirement for the transfer of technology;
- (c) the expected outputs;
- (d) timeframe for the implementation of the activities set out in the plan; and
- (e) the anticipated expenditure that will be incurred by the operator.

33. (1) An operator shall facilitate the transfer of technology and shall, for this purpose,—

Facilitation of transfer of technology by an operator.

- (a) prepare and adopt technology transfer agreements with locals to provide credible and measurable plans on incremental transfer of technological know-how to locals; and
- (b) facilitate the formation or entry into joint ventures and partnering through licensing agreements between local persons and foreign operators or supply companies.

(2) The Committee shall, for the purpose of this section, prepare an assessment tool for the monitoring and evaluation of the transfer of technology by an operator under this Act.

34. An operator shall not commence its extractive activities unless it has prepared and submitted to the Committee, an annual report on the implementation of the technology transfer plan and the initiatives being undertaken by the operator in implementing the plan.

Submission of technology transfer reports.

Research and Development Plan

35.(1) An operator shall, before the commencement of its extractive activities, prepare and submit to the Committee, its research and development plan.

Research and development plan.

(2) A research and development plan shall contain –

- (a) a five-year plan of the research initiatives to be undertaken by the operator in Kenya;
- (b) a plan on the expenditure to be incurred in implementing the research and development plan; and
- (c) request for proposals for research and development initiatives related to the activities of the operator.

(3) An operator shall -

- (a) annually review and update the research and development plan submitted to the Committee under subsection (1); and
- (b) submit the updated plan to the Committee, annually.

36.(1) The Committee shall, pursuant to the objectives of this Act, put in place measures and implement strategies in order to bridge the knowledge gap in relation to the extractive industry and promote research and development in the extractive industry.

Implementation of strategies to promote knowledge transfer and research.

(2) The Committee shall, for the purpose of subsection (1), liaise with academic sector regulatory bodies in the formation and review of local training curricula and equipment of training facilities to be fit-for-purpose.

37. (1) An operator shall set aside, annually and for the purpose of carrying out research and development activities in Kenya, such percentage of the gross revenue received by the operator as the Cabinet Secretary in consultation with the Committee may, by notice in the *Gazette*, prescribe.

Funding of research and development.

(2) The funds set aside under subsection (1) shall be applied as follows –

- (a) fifty percent shall be allocated to research and development programmes in Kenyan universities; and
- (b) fifty percent shall be applied to research and development activities within the facilities of the operator, established in Kenya.

(3) The Cabinet Secretary for finance shall, in consultation with the Cabinet Secretary and for the purposes this section, establish a fund in accordance with the Public Finance and Management Act.

No. 18 of 2012.

Financial Services Plan

38. (1) An operator shall submit to the Committee, together with its local content plan under section 22, a financial services plan setting out –

Submission of a financial services plan.

- (a) the nature of the financial services required by the operator;
- (b) a forecast of the financial services required for the duration of the project; and
- (c) the expenditure plan relating to the use of financial services in relation to the project.

(2) An operator shall, upon the commencement of its operations under this Act, submit to the Committee, a bi-annual plan setting out –

- (a) the financial services utilised in the preceding six months and the expenditure incurred by the operator in the procurement of these services;
- (b) a forecast of financial services required in the ensuing six months and the projected expenditure for the financial services; and

- (c) the nature of financial services provided and the expenditure for the financial services made by the operator.

(3) An operator and any connected entity shall open and maintain a bank account with an indigenous Kenyan bank and transact business through banks in Kenya.

(4) The National Government shall, for the purpose of enhancing the local capabilities to participate in the extractive industry value chain, put in place measures, including financial incentives that encourage the use of local financial institutions in financing extractive operations in Kenya.

(5) For the purpose of this section, “an indigenous Kenyan Bank” means a bank that has one hundred percent Kenyan or a majority Kenyan shareholding.

Local Content Performance Reporting

39. (1) An operator shall within forty-five days of the commencement of each year after commencement of extractive activities submit to the Committee, an annual local content performance report covering all its projects and activities for the year under review.

Local content performance report.

(2) The report shall be available to the public in a format prescribed by the Committee and shall contain information regarding-

- (a) expenditure by the operator on local content including the current and cumulative cost basis by category; and
- (b) the employment achievement in terms of hours worked by local persons and foreigners as well as their job positions and remuneration.

40. (1) The Committee shall, within thirty days after receipt of the local content performance report under section 39, assess and review the report to ensure compliance with the provisions of this Act.

Assessment of performance report.

(2) For the purposes of assessment and verification of the report, an operator shall permit an employee or a designated agent of the Committee access to their facilities, documents and information as the Committee may require.

PART V — STRATEGIES FOR LOCAL CONTENT DEVELOPMENT

41. (1) An operator shall maintain a bidding process for the acquisition of goods and services which shall provide a fair opportunity to local persons to participate in the provision of goods and services in relation to the extractive activities to be undertaken by the operator.

Procurement.

(2) Any bid relating to extractive industry projects shall provide for the maximum utilization of goods and services available in Kenya throughout the extractive industry value chain.

(3) An operator shall, in considering and evaluating a bid in relation to a project in the extractive industry, —

- (a) carry out a bidding process in a manner that ensures the equal treatment of local persons and that a fair opportunity is given to local companies to compete in the bidding process;
- (b) take into account the local content; and
- (c) give preference to local persons where the price differential does not exceed ten percent of the bidding price quoted by a foreign entity.

(4) The award of a tender shall not be based solely on the principle of the lowest bidder where a local company has the capacity to undertake the project and a local company shall not be disqualified solely on the basis that it is not the lowest financial bidder unless the value exceeds the lowest bid price by ten percent.

42. An operator shall give first consideration to a local company in the grant of a license or award of a contract with respect to extractive activities, subject to the fulfilment of the conditions specified in this Act.

Preference of
local companies.

43. (1) An operator shall use goods produced in Kenya and services rendered by a local person in preference to similar goods produced outside Kenya and similar services rendered by a foreign company in such manner as may be prescribed under this Act.

Preference of
local goods and
services.

(2) Notwithstanding subsection (1), where the goods or services required in relation to an extractive activity are

not available locally, the Cabinet Secretary may, subject to such conditions as the Cabinet Secretary may impose, authorise the continued importation of the required goods or service.

44. (1) In granting concessions and other agreements relating to ventures within the extractive industry, the National Government shall encourage the establishment of joint venture between international investors and local business enterprises.

Contracting services from local companies.

(2) The Committee shall, in consultation with the Cabinet Secretary, prescribe thresholds to be met by State entities in the procurement of components in the extractive industry value chain that shall be reserved exclusively for local sourcing.

(3) A State entity shall not award a tender to an applicant for the carrying out of any extractive or related activity under this Act unless the applicant meets the local content input threshold that may be prescribed by the Cabinet Secretary which shall not be less than thirty percent.

45. (1) Subject to the provisions of this Act, the Cabinet Secretary shall, in consultation with the Committee and from time to time, issue guidelines and contracting standards on the thresholds to be attained by each operator with respect to the percentage of local equity ownership of extractive industry companies.

Thresholds for Kenyan equity stake in operator.

(2) The interest of a local Kenyan company arising in an agreement or licence with respect to an extractive activity shall be transferable to a non-indigenous Kenyan company in accordance with the provisions of the Companies Act.

46. The Cabinet Secretary responsible for matters relating to finance may, in consultation with the Committee

Financial incentives.

- (a) implement tax incentives for the promotion of capacity building and training in various aspects of the extractive industry;
- (b) adopt supportive and non-distorting tariff measures to expedite the expansion of the

capabilities of local enterprises to meet the objectives of this Act; and

- (c) allow tax deductibility for certain categories of training expenditure, including research and development expenditure, where the training is for the benefit of Kenyan nationals.

47. (1) There is established a fund to be known as the Local Content Training and Development Fund.

Fund for Training and Development.

(2) An operator shall annually remit a non-tax-deductible training levy consisting of such percentage of its net revenues as the Cabinet Secretary may, in consultation with the Committee, prescribe to the Fund in support of the objectives of this Act.

(3) The Cabinet Secretary shall prescribe in regulations under the Act the manner in which the Fund shall be operated and applied.

PART VI — MISCELLANEOUS PROVISIONS

48. (1) An operator shall prepare and submit to the Committee an annual work plan of the programmes and budget with respect to an extractive activity by the operator.

Annual work programmes.

(2) An operator shall, in preparing an annual programme and budget, set out –

- (a) an estimate of the local content component of the extractive activity; and
- (b) the activities that are to be undertaken in relation to the extractive project.

(3) The Committee shall, upon receipt of the annual work plan under subsection (1), -

- (a) determine the specific projects which shall be subject to procurement in accordance with this Act; and
- (b) publish in at least two newspapers of wide circulation, in its website and such other media as the Committee shall consider appropriate, the list of the projects and details relating to the specific projects.

(4) All tenders in the extractive industry shall only be advertised, evaluated and awarded in Kenya.

(5) An operator who intends to advertise a tender in the extractive industry outside Kenya shall apply for, and obtain the approval of the Cabinet Secretary prior to such advert.

49. (1) An operator shall maintain the records relating to its operations in such proper form as to facilitate the determination of the local content expenditure incurred by the operator with respect to its operations under this Act.

Monitoring local content of expenditure incurred.

(2) The records maintained by an operator under subsection (1) shall include supporting documentation certifying the cost of local goods, labour and local services procured by the operator and shall be subject to audit by the Committee or such other agent appointed by the Committee for that purpose.

(3) An operator shall, for the purpose of subsection (2), submit to the Committee, an annual statement of local content which shall include information regarding the—

- (a) payments made to local licensees who supply local goods and local services to the operator;
- (b) payments to local suppliers who supply local goods;
- (c) payments to local licensees and local suppliers for providing a service in the supply of non-local goods;
- (d) payments made to non-local licensees and suppliers who supply local and non-local goods;
- (e) payments of salaries, profits, dividends on shares and other tangibles paid to persons who are Kenyan nationals; and
- (f) list of all contracts awarded during the period under consideration and services or equipment contracted.

(4) For the purpose of determining the level of local content in respect of an operation under this Act, the Committee or accredited independent certifying agency under section 21 shall—

- (a) take into account all costs incurred as direct materials, direct sub-contracts, indirect materials, indirect subcontracts, construction management and other costs; and
- (b) not include any taxes or other statutory payments to government including payments made under contract or concession agreements.

50. (1) The Committee shall monitor and evaluate compliance by every person under this Act of the obligations imposed on such person under this Act.

Impact
assessment.

(2) The Committee shall prepare and submit to the Cabinet Secretary, a report on its activities under subsection (1) and shall, for this purpose, set out information on—

- (a) each licensed extractive operation;
- (b) the extent to which State entities mandated to implement specific obligations have so acted;
- (c) objectives that are yet to be attained by an operator or State agency under this Act and the reasons for such observation;
- (d) strategies for corrective measures specifying the authority to implement the objectives that are yet to be attained; and
- (e) recommend best practices for greater and faster attainment of the objectives of the Act.

(3) The Committee shall evaluate the performance of the National Government against the objectives of this Act, and shall prepare and submit to the Cabinet Secretary and to the Senate, an annual performance report.

51. (1) An operator shall ensure that its partner, contractor, subcontractor or any other connected entity is contractually bound to report local content information to the operator and, if requested, to the Committee.

Reporting by a
connected entity.

(2) An operator or connected entity shall permit an agent designated by the Committee to access the records of the operator or connected entity for the purposes of assessment and verification of the local content information reported by an operator or connected entity under this Act.

52. (1) The Committee shall make recommendations to the Cabinet Secretary on the implementation of strategies that would facilitate and sustain the adoption of local content under this Act.

Support measures.

(2) In making its recommendations under subsection (1), the Committee shall take into account the state of development of the local private sector, and may, propose strategies for the—

- (a) provision of affordable financial assistance including low-interest loans and preferential contracts from State agencies;
- (b) provision of below-market loans for projects with significant domestic content;
- (c) promotion of local assembly industries through incentives that promote the importation of components and discourage the importation of fully assembled industrial equipment;
- (d) provision of export credit assistance;
- (e) implementation of affirmative action with respect to local labour through limitations on the engagement of foreign personnel.

53. (1) The Cabinet Secretary shall, in consultation with the Committee, prescribe guidelines for the conduct and promotion of public participation of stakeholders in the extractive industry or affected by a project carried out under this Act.

Public participation.

(2) In carrying out public participation under this Act, an operator, the Committee and any other person required to undertake public participation shall –

- (a) be guided by the principles of citizen participation in counties set out under section 87 of the County Governments Act; and
- (b) conduct the public participation through such means as may be necessary to ensure that the greatest number of citizens within the respective county and the relevant stakeholders –
 - (i) are informed of any decision to be undertaken under this Act which affects them; and

No. 17 of 2012.

- (ii) have an opportunity to participate in the decision-making process including the submission of any memorandum or information that they may have with respect to the matter;
 - (c) employ such measures as may be necessary to ensure maximum efficiency in public participation including usage of the structures for citizen participation established by a county government pursuant to section 91 of the County Governments Act.
- (3) The Committee shall, for the purpose of subsection (1)—
- (a) develop the human resources in the extractive industry through education and training activities;
 - (b) stimulate and increase the participation of the local communities in the human resources development activities, improving the capability of the locals and small-scale businesses to engage in the provision of goods and services in the extractive industry chain;
 - (c) stimulate and direct the participation of professional associations and organizations in the field of local content;
 - (d) stimulate and support the activities of technological research and development in the extractive industry;
 - (e) carry out public education activities in order to educate operators, the public and industry stakeholders on local content policy and requirements for the implementation of this Act; and
 - (f) promote international cooperation in the extractive industry in accordance with the national interest.
- (4) In carrying out the activities specified under subsection (3) the Committee shall promote –
- (a) the involvement of the National Government in the setting of policies and plans for the implementation of the objectives of this Act;

- (b) engagement with county governments in their interactions with the National Government, the operators and connected entities engaged in the extractive industry;
- (c) co-operation between non-state actors including community-based organisations and non-governmental organisations and the State agencies in advocacy, provision of local services and capacity building; and
- (d) involvement of local communities in identifying their needs, enhancing their capacity to produce and deliver goods and services that meet the established standards and to engage in various stages of the extractive industry value chain.

54. (1) A person who submits a plan, returns, report or other document and knowingly makes a false statement, commits an offence and shall be liable, upon conviction, to a fine of not more than two million shillings or to imprisonment for a term of not more than three years, or to both.

Offences and penalties.

(2) A Kenyan citizen who acts as a front or connives with a foreign citizen or company to deceive the Committee as representing an indigenous Kenyan company to achieve the local content requirement under this Act, commits an offence and is liable, on conviction, to a fine of not more than three million shillings or to imprisonment for a term of not more than five years, or to both.

(3) A person who connives with a Kenyan citizen or an indigenous Kenyan company to deceive the Committee as representing an indigenous Kenyan company to achieve the local content requirement under this Act commits an offence and shall be liable, on conviction, to a fine of not more than three million shillings or to imprisonment for a term of not more than five years, or to both.

- (4) An operator or other connected entity which—
- (a) carries out extractive activities without the required local content requirement;
 - (b) fails to submit a local content plan;
 - (c) fails to satisfy the content requirement of a local content plan; or

(d) fails to submit its local content performance report or annual work plan to the Committee,

commits an offence and is, on conviction, liable to a fine of five percent of the value of the proceeds obtained from the extractive activity in respect of which the breach is committed but which shall not exceed two million shillings, or to the cancellation of a contract with respect to the extractive activity.

(5) A person who is convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding eight hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

55. (1) Where an offence is committed by a body corporate or an association of persons under this Act, a person—

- (a) who is its director, officer, or partner; or
- (b) who is concerned in the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without the consent or connivance of that person and that the person exercised diligence to prevent the commission of the offence as the person ought to have exercised, having regard to the nature of the person's function in that capacity and to the circumstances.

(2) A person may be prosecuted for an offence under subsection (1) notwithstanding that the body corporate or association of persons has not been convicted of the offence.

(3) Subsection (1) shall not affect the liability of the body corporate or association of persons for the offence referred to in that subsection.

56. The Cabinet Secretary may revoke or suspend the licence issued to an operator that is subsequently convicted of an offence under this Act for such period as may be prescribed;

57. (1) The Cabinet Secretary shall, in consultation with the Committee, make regulations generally for the better carrying out of the provisions of this Act.

Offence by a body corporate.

Revocation of licence.

Regulations.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary may make Regulations –

- (a) setting out the minimum standards required to be met by operators and connected entities under this Act;
- (b) the minimum standards, facilities, personnel and technology for the training of personnel in the extractive industry;
- (c) for the conditions and targets for the formation of joint ventures or partnerships between multinational entities and manufacturing or Service companies in all sectors of the economy and certified indigenous companies for the purpose of technology acquisition;
- (d) setting out targets for the utilization and growth of in-country capacity of companies in Kenya in the respective extractive activities along the value chain;
- (e) setting out the requirements and targets for growth in research and development of the extractive industry in Kenya;
- (f) setting out details of information required to be submitted by an operator or connected entity under this Act;

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(3) Regulations made under subsection (2) may prescribe different standards and other requirements—

- (a) for services of different types or descriptions rendered in relation to neglected children; and
- (b) in respect of different kinds of licencing.

(4) For the purposes of Article 94(6) of the Constitution—

- (a) the authority of the county executive committee member to make Regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and
- (b) the principles and standards set out under the Interpretation and General Provisions Act and the

Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to Regulations made under this Act.

PART VII — TRANSITIONAL PROVISIONS

58. Upon the commencement of this Act, all oil and gas arrangements, agreements, contracts or memoranda of understanding relating to any operation or transaction in the extractive industry in Kenya—

Existing contracts and agreements.

- (a) existing before the commencement of this Act shall continue in force as if entered into pursuant to this Act; and
- (b) entered into after the commencement of this Act shall be in conformity with the provisions of this Act.

**SCHEDULE
17)**

(s.

**PROVISIONS RELATING TO THE CONDUCT OF MEETINGS
OF THE COMMITTEE**

1. The Committee shall meet at least once in every three months to conduct the business of the Committee.

2. The chairperson may on his or her own motion, or upon request by a member, call a special meeting of the Committee at any time, where he or she considers it expedient for the transaction of the business of the Committee.

3. Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Committee shall be given to every member of the Committee by the Director.

4. The quorum at a meeting of the Committee shall be half of the members or such greater number as may be determined by the Committee in respect of an important matter.

5. The chairperson shall preside at the meetings of the Committee and in the absence the chairperson, the vice-chairperson or a member of the Committee elected by the members present from among their number shall preside.

6. The matters of the Committee shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

7. The proceedings of the Committee shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

8. At the first meeting of the Committee, the members shall elect a vice-chairperson, not being an *ex-officio* member, from among its members.

9. Subject to the provisions of this Schedule, the Committee may determine its own procedure and the procedure for any sub-committee of the Committee and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

This Bill seeks to provide a framework for the development and adoption of local content through ownership, control and financing of activities connected with the exploitation of gas, oil and other hydro-carbon resources by local persons and local enterprises in order to ensure –

- (a) the development of local economies;
- (b) stimulation of industrial development;
- (c) increase in local capability;
- (d) building of a skilled workforce; and
- (e) the creation of a competitive supplier base.

The Bill is premised on Article 69(1) of the Constitution which imposes an obligation on the State to, among other things,–

- (a) ensure the sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure the equitable sharing of the accruing benefits; and
- (b) utilize the environment and natural resources for the benefit of the people of Kenya.

In addition, Article 66(2) of the Constitution further provides that—

Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.

The discovery and exploitation of natural resources in a particular area has always led to the expectation that the local communities and country in which the resources are found would develop economically and socially and that the benefits of such resource exploitation would trickle down to the communities. It has however been found that this is often not the case particularly owing to—

- (a) lack of capacity by the local communities to participate in the extractive or connected activities owing to lack of capacity or involvement in the said processes;
- (b) lack of technology and technical know-how;
- (c) lack of public participation; and
- (d) lack of a legal framework for the exploitation of natural resources in a manner that ensures that the benefits accruing from such

exploitation find their way to the communities and country as a whole.

This Bill therefore seeks to provide a framework to ensure that local content is entrenched in every aspect of the extractive industry value chain through—

- (a) involvement of local communities in the extractive industry value chain and hence, the enhancement of the income received by such locals following their involvement in the extractive processes;
- (b) ensuring that land owners and owners of resources receive the revenue due to them;
- (c) targeting income streams to local communities, local enterprises and financial institutions.

This Bill will therefore be expected to facilitate the development of local economies through the creation of employment opportunities and by ensuring the procurement of goods and services that are produced locally, stimulating local industrial development, capacity building and to increase the local capability to meet international standards in the supply of goods and services.

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

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

Statement on how the Bill concerns county governments

The Bill provides a framework through which the benefits relating to the exploration of natural resource will cascade to the local communities in which the resources are found. As a result, it is expected that the county governments' economies will be directly impacted by the exploitation of these resources. The county governments would therefore be expected to be at the forefront in ensuring that local content is realised under this Act. The Bill is therefore a Bill concerning county governments in terms of Article 110 (1) (a) of the Constitution.

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

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

Dated the 10th October, 2023.

WAMATINGA WAHOME,
Chairperson, Standing Committee on Energy.

ANNEX 3
COPY OF NEWSPAPER
ADVERTISEMENT

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sittings of the Senate held on Tuesday, 26th March, 2024, Wednesday, 27th March, 2024 and Thursday 28th March 2024, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Tuesday, 16th April, 2024 at 5.00 p.m.**

	Bill	Committee Referred To	Email Address
a)	The Cancer Prevention and Control (Amendment) (No.2) Bill, 2022 (National Assembly Bills No.45 of 2022)	Standing Committee on Health	healthcommittee.senate@parliament.go.ke
b)	The Houses of Parliament (Bicameral Relations) Bill, 2023 (National Assembly Bills No.44 of 2023)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
c)	The Division of Revenue Bill, 2024 (National Assembly Bills No.14 of 2024)	Standing Committee on Finance and Budget	financebudgetcomm.senate@parliament.go.ke
d)	The Local Content Bill, 2023 (Senate Bills No.50 of 2023)	Standing Committee on Energy	energycommittee.senate@parliament.go.ke

The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

ANNEX 4
PUBLIC PARTICIPATION
MATRIX

THIRTEENTH PARLIAMENT | THIRD SESSION

THE SENATE

STANDING COMMITTEE ON ENERGY

CONSIDERATION OF PUBLIC VIEWS RECEIVED ON THE LOCAL CONTENT BILL, 2023

Stakeholders

1. Ministry of Mining, Blue economy and Maritime Affairs
2. Council of Governors
3. Extractive Insight Centre
4. Bunge Youth Dialogue

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
2	Ministry of Mining, Blue economy and Maritime Affairs	<ul style="list-style-type: none">• Amend the definition of Cabinet Secretary to mean “Cabinet Secretary” means either the Cabinet Secretary responsible for Energy or the Cabinet Secretary responsible for mining as the case may be”	<ul style="list-style-type: none">• The Extractive Industry in Kenya is composed of extraction of oil and gas and mineral resources and governed by two separate Ministries therefore a distinction ought to be made.	proposal adopted.

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Extractive Insight Centre	Amend the definition of Cabinet Secretary to: <ul style="list-style-type: none"> • Designate a single Cabinet Secretary as responsible for administering Local Content. • Establish a mandatory interministerial coordination committee with clearly defined roles and decision making procedures. 	<ul style="list-style-type: none"> • The broad definition of 'Cabinet Secretary', referring to the Minister responsible for the extractive industry, doesn't address the reality that Kenya often has separate Cabinet Secretaries for petroleum and mining. 	Proposal partially accepted. The committee agreed to amend the definition of the CS.

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
	Bunge Youth Dialogue	<ul style="list-style-type: none"> Amend the definition of Cabinet Secretary to mean: Cabinet Secretary in charge of "Local Content" for reporting, development, and implementation is the Cabinet secretary for energy (oil, gas and other petroleum resources) 	<ul style="list-style-type: none"> Clarity is needed in defining the extractive industry according to the Bill and distinguishing between the Cabinet Secretary of Energy and the Cabinet Secretary for Petroleum, rather than labeling both as the Cabinet Secretary for the "extractive industry." 	<p>Proposal partially accepted.</p> <p>The committee agreed to amend the definition of the CS.</p>
		<ul style="list-style-type: none"> Amend the definition of Extractive Industry to mean: "Extractive industry" can be defined as processes that involve different activities lead to the extraction of raw materials from the earth (such as oil, metals, mineral and aggregates), 	<ul style="list-style-type: none"> The Extractive Industry cannot be limited to only petroleum and gasses. 	<p>Proposal Rejected.</p> <p>The committee rejected the proposal to amend the definition of "Extractive Industry" as it is not necessary. The current definition in the bill is specifically tailored to cover the scope of activities addressed within the bill.</p> <p>The interpretation section of the bill is designed to provide clarity</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		Processing and utilization by consumers. Therefore, the Extractive Industry cannot be limited to only petroleum and gasses.		and precision for the legislative context, rather than serving as a comprehensive textbook definition.
7	Extractive Insights Centre	<p>Revise clause (b)(v) to:</p> <ol style="list-style-type: none"> 1. Gradually increase the quota overtime 2. Focus on providing incentives and support to local business. 3. Prioritize investments in mining-specific education and skills development programs in partnership with local educational institutions. 	<p>1. Skillset Mismatch:</p> <ul style="list-style-type: none"> • Specialized Skills: Lack of sufficient specialized education and experience in the Kenyan workforce to meet the 30% quota • Safety & Efficiency: Rushing to replace experienced personnel with less-qualified locals could compromise safety and operational efficiency. <p>2. Sector-Specific Challenges:</p>	<p>Proposal Rejected</p> <p>The committee stated that there is no evidence presented to support the claim that Kenyans currently lack the necessary skills or that the existing 30% quota will not be achievable. The current provisions are designed to encourage immediate and meaningful participation of local businesses and professionals in the mining sector</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<ul style="list-style-type: none"> • Capital Intensity: High upfront investment requirements could deter investors. • Global Supply Chains: Strict quotas could disrupt supply chains, leading to delays and cost overruns. • Long-term Development: Sudden quotas could harm local business development by forcing premature roles. 	
	Council of Governors	<p>Remove Clause 7(b)(iii)</p> <p>Remove Clause 7(b)(iv) to read as follows;</p>	<ul style="list-style-type: none"> • The implementation function is already vested in the role of counties. The national government, through its committee, should 	<p>Proposal adopted.</p> <p>This proposal aligns with the principle that the national government, through its committee, should concentrate</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>“the development and of strategies for the development of local skills”</p> <p>Amend clause 7(b)(v) to read:</p> <p>“provision of guidelines to ensure local content activities shall include participation of local persons at a quota of not less than thirty percent”</p>	<p>focus on establishing standards, norms and guidelines, as well as providing capacity-building support. This will enable counties to effectively implement the strategies.</p>	<p>on setting standards, norms, and guidelines while providing capacity-building support. This approach empowers county governments to effectively implement local content strategies.</p>
8	Extractive Insights Centre	<p>Revise Clause 8(1) (d) to:</p> <ol style="list-style-type: none"> 1. Limit County Role to Information Gathering <p>Counties gather and report data on local content to the Local Content Development Committee, without acting independently.</p> <ol style="list-style-type: none"> 2. Collaborative Partnership Model <p>Establish a framework for Committee-county coordination, standardize local</p>	<ol style="list-style-type: none"> 1. Duplicated Oversight: <ul style="list-style-type: none"> • Overlapping duties with the Local Content Development Committee and national regulatory bodies could cause delays and confusion for operators. 2. Conflicting Standards: <ul style="list-style-type: none"> • Counties might create differing local content 	<p>Proposal rejected</p> <p>The committee noted that the proposal to revise Clause 8(1)(d) to limit the role of counties to information gathering is unnecessary because the bill already ensures that counties do not operate independently. The bill mandates collaboration between the counties and the Local Content Development Committee (LCDC). According to Section 9 of the bill, the functions of the LCDC include overseeing, coordinating, and managing the development of</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>content reporting, and designate trained liaison officers in each county.</p> <p>3. Capacity-Focused Approach</p> <p>Remove counties' audit rights, fund training for county staff, and equip them to advise on local content without formal oversight.</p> <p>4. Enhanced Public Participation and Transparency</p> <p>Require county-led consultations before local content plan submission, assess project impacts, document outcomes, and ensure Committee considers county reports during plan reviews. Include dispute resolution by the Committee.</p>	<p>requirements, complicating compliance for businesses operating in multiple regions.</p> <p>3. Increased Opportunity for Corruption:</p> <ul style="list-style-type: none"> Broad discretionary power at the county level could lead to rent-seeking behavior, unnecessary audits, and roadblocks. <p>4. Slowing Down Operations:</p> <ul style="list-style-type: none"> Added bureaucracy and dual requirements could extend project timelines, increase costs, and deter investment. 	<p>local content in consultation with county governments.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>5. Counterproductive to Investment Attractiveness:</p> <ul style="list-style-type: none"> Investor confidence could decline due to unpredictable regulatory environments and perceived corruption risks, undermining national goals of standardization and efficiency. 	
	<p>Bunge Youth Dialogue</p>	<ol style="list-style-type: none"> The County Government should allocate resources and establish training centers/ units on local content (oil, gas and petroleum resources). The County Government (i.e. the directorates gender, youth affairs, culture and environment 	<ol style="list-style-type: none"> The bill should describe how county governments will implement the act if passed at the county level. This will give a transparent structure to guide county governments in implementing 	<p>Proposal rejected</p> <p>The committee noted that clause 8 of the bill effectively covers the proposal by outlining the specific duties and functions of county governments in implementing the local content requirements within their respective counties.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>should work towards supporting the establishment/ operationalizing enterprises or companies as local contractors along the local content value chain by women, indigenous groups, youth PWD</p> <p>3. County Government to establish local content management committees at the county level to reduce lengthy bureaucratic procedures and enhance clear transparency of projects and operations and monitoring and evaluation of the same.</p>	<p>policies at the national government. There is a need for additional departments and budgetary allocation for assisting local contractors.</p> <p>2. The local development committees ought to be at the county level rather than just at the national level since implementation of the local content act will definitely take place in counties.</p>	
9	Extractive Insights Centre	<p>Revise the Clause to:</p> <p><input type="checkbox"/> Strengthen Existing Bodies:</p>	<p><input type="checkbox"/> Duplication of Duties and Regulatory Burden:</p> <ul style="list-style-type: none"> • Redundancy with Existing Bodies: 	Proposal rejected

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> • Amend the Bill to empower the MRB and EPRA to consider local content during their license review and compliance monitoring processes. <p><input type="checkbox"/> Coordination Committee:</p> <ul style="list-style-type: none"> • Create a smaller inter-ministerial committee to coordinate local content strategies across sectors, avoiding duplication of existing regulatory work. <p><input type="checkbox"/> Focus on Core Competencies:</p> <ul style="list-style-type: none"> • Utilize MRB and EPRA's established expertise in technical oversight, enhancing their roles rather than creating a new, broader committee. 	<p>MRB and EPRA already handle many responsibilities proposed for the LCDC, leading to potential confusion and inefficiency.</p> <ul style="list-style-type: none"> • Increased Costs for Industry: Additional regulatory body interactions and reporting requirements could lead to delays and higher costs for companies. <p><input type="checkbox"/> Erosion of Established Systems:</p> <ul style="list-style-type: none"> • Weakening Existing Regulators: LCDC's broad powers could undermine MRB and EPRA, creating uncertainty about enforcement and dispute resolution. 	<p>The committee resolved to do Consequential amendments to harmonize existing Acts.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<input type="checkbox"/> Leverage Existing Expertise: <ul style="list-style-type: none"> • Strengthen MRB and EPRA with additional resources and authority to manage local content considerations within their existing mandates. <input type="checkbox"/> Streamlined Regulatory Framework: <ul style="list-style-type: none"> • Establish clear lines of authority with a single point of contact for local content requirements, simplifying compliance for companies and benefiting both industry and government. 	<input type="checkbox"/> Disruption and Transition Costs: <ul style="list-style-type: none"> • Disruption: Transitioning oversight to a new Committee could disrupt the industry. • Transition Costs: Businesses would face adaptation costs and delays as they adjust to a new regulatory framework. 	
10	Ministry of Mining, Blue Economy and Maritime Affairs	<ul style="list-style-type: none"> • Provide funding model for the activities of the Committee. 	<ul style="list-style-type: none"> • The functions of the Local Content Development Committee are capital intensive and it is unclear from the Bill 	The proposal adopted.

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			how these activities will be funded.	
		Delete the term “approve local content plans” in clause 10(d)	<p>The Mining (Use of Local Goods and Services) Regulations, 2017 already provides for applicants of mineral rights /licences to submit to the Cabinet Secretary for Mining (CS) procurement plans which must</p> <ul style="list-style-type: none"> i) Set the levels of local procurement based on a procurement list to be developed and communicated by the Director of Mines; and ii) Indicate specific support to be provided by mineral rights/license holders to local 	<p>Proposal rejected</p> <p>The committee resolved to do consequential amendments to harmonize existing Acts.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>providers or suppliers as well as other measures being implemented to develop the supply of local goods and services including broadening access to opportunities and technical support.</p>	
;	Council of Governors	<p>Amend Clause 10(1)(a) to read as follows: ‘coordinate the development of local content in the country’ Delete clause 10(1)(e)</p>	<ul style="list-style-type: none"> According to Article 174, 176 and 186 of the Kenyan Constitution, devolution promotes democratic accountable governance and public participation, with county governments responsible for local services and resource 	<p>Proposal rejected The Bill is sufficiently drafted.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>management. Functions are allocated to the level of government best suited to perform them, ensuring effective responsive and accountable local governance. Counties should therefore oversee the implementation of local content policies and strategies.</p>	
11	Extractive Insights Centre	<p>Recommendations for Implementing the Local Content Development Committee (LCDC)</p> <ol style="list-style-type: none"> 1. Phased & Iterative Process: <ul style="list-style-type: none"> o Prioritize Core Functions First: Focus initially on establishing operational procedures, 	<ol style="list-style-type: none"> 1. Unrealistic Timelines: <ul style="list-style-type: none"> • Six months is too short for the complex tasks in the extractive industries, such as understanding equipment and service needs and assessing local capacity gaps. 	<p>Proposal partially adopted.</p> <p>The committee resolved to increase the period from six months to one year.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>building internal capacity, and outlining processes for reviewing local content plans.</p> <ul style="list-style-type: none"> ○ Ongoing Data Collection: Integrate continuous information gathering on industry needs and local capabilities into the Committee's regular tasks. ○ Periodic Reviews: Conduct regular assessments (e.g., every 2-3 years) to adapt to changing conditions. <p>2. Collaboration and Stakeholder Input:</p> <ul style="list-style-type: none"> ○ Avoid Isolation: Involve industry associations, mining and petroleum companies, and relevant government agencies as 	<p>2. Data & Information Gaps:</p> <ul style="list-style-type: none"> • Kenya lacks comprehensive, up-to-date data on extractive industry needs and domestic supply capacities, making accurate data gathering crucial for meaningful analysis. <p>3. Cost and Expertise:</p> <ul style="list-style-type: none"> • The effort would be costly, likely requiring outside consultants due to the Committee's initial lack of industry-specific knowledge and data-gathering infrastructure, burdening taxpayers and risking flawed decision-making if rushed. 	

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		<p>partners and information sources.</p> <ul style="list-style-type: none"> ○ Leverage Existing Data: Use existing data from ministries, industry bodies, or companies to save time and resources. <p>3. Mandate Flexibility and Agility:</p> <ul style="list-style-type: none"> ○ Amendments to Clause 11: Replace rigid timelines with a phased approach and regular review cycles. ○ Process Over Product: Focus on establishing transparent and collaborative data collection and analysis mechanisms rather than a specific, potentially outdated end product. 		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
12	Ministry of Mining, Blue Economy and Maritime Affairs.	<ul style="list-style-type: none"> • Include the Principal Secretary responsible for Mining as a member of the Local Content Development Committee 	<ul style="list-style-type: none"> • The Extractive Industry is composed of the oil and gas sector as well as the the mining sector it is therefore crucial that the Principal Secretary for Mining is included as a member of the Committee. 	<p>Proposal adopted.</p> <p>Ps mining to be included in the Committee.</p>
	Extractive Insights Centre	<ol style="list-style-type: none"> 1. Include Relevant Permanent Secretary: <ul style="list-style-type: none"> • Amend Clause 12(1) to include the Permanent Secretary from the Ministry responsible for mining on the LCDC. 2. Mandate Industry Experience for Chairperson: <ul style="list-style-type: none"> • Amend Clause 12(1) to require the President to appoint a Chairperson with at least 10 years of 	<ol style="list-style-type: none"> 1. Absence of Principal Secretary (PS): <ul style="list-style-type: none"> • Lack of PS representation from the mining state department creates a gap in high-level involvement from the department most affected by the Committee's work, hindering collaboration and policy considerations. 	<p>Proposal partially adopted.</p> <p>Ps mining to be included in the Committee.</p> <p>The chairperson be competitively recruited by the PSC with atleast 10 years experience.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>experience in the extractive industries.</p> <p>3. Streamline Operational Structure:</p> <ul style="list-style-type: none"> • Alternatives to Dedicated Director Position (Clause 19): <ul style="list-style-type: none"> ◦ Ministry Official Assignment: Authorize the relevant Ministry, with Public Service Commission approval, to assign an existing qualified officer to manage daily operations. ◦ Secondment: Use a Director-level officer on secondment from EPRA or the 	<p>2. Cabinet Secretary as Chair:</p> <ul style="list-style-type: none"> • Potential Conflict of Interest: <ul style="list-style-type: none"> ◦ The Cabinet Secretary's policy-making role conflicts with chairing the LCDC, which advises the government on local content strategies. <p>3. Reduced Committee Independence:</p> <ul style="list-style-type: none"> ◦ The Cabinet Secretary's role as Chair may stifle independent and objective advice from 	

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		<p>Department of Mines.</p> <ul style="list-style-type: none"> ○ Hybrid Model: Appoint a senior Ministry official to oversee the Committee, supported by a dedicated (non-Director level) staff member for administrative tasks. 	<p>the Committee.</p>	
	<p>Bunge Youth Dialogue</p>	<ul style="list-style-type: none"> • Inclusion and catering of the representation of women, youth and persons with disabilities. 	<ul style="list-style-type: none"> • National and county governments to ensure mainstreaming representation of the women, PWD, indigenous communities and youth and that they benefit as part of host communities and also as local contractors. Add more slots to 	<p>Proposal rejected. Clause 13(2) sorts that issue.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>cater for Youth, women, indigenous community and Persons with Disabilities in the committee. Part (e) and (f) to include the names of male and female</p>	
18	Bunge Youth Dialogue	<ul style="list-style-type: none"> • Limit the number of sub-committee members to attend a sub-committee to nine (9) • Committee and subcommittee members should be gender representative [male and female] (indigenous communities, PWD, youth) nominations in committee appointments 	<ul style="list-style-type: none"> • Regulate the composition of the committee, as an undefined number could potentially create an open-ended scenario, allowing for unrestricted participation and potentially causing delays in decision-making within the technical working group. 	<p>Proposal rejected.</p> <p>The committee resolved that we should not over legislate.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
19	Ministry of Mining Blue Economy and Maritime Affairs	<ul style="list-style-type: none"> Incorporate the Mining Sector in the Secretariat committee so as to have it as a Joint Secretariat 	<ul style="list-style-type: none"> The proposal to have a technical and administrative unit from the Ministry responsible for Petroleum as secretariat to the committee means that the Local Content Bill relates to the local content of petroleum resource in Kenya excluding the Mining Sector. 	<p>Proposal adopted.</p> <p>The committee resolved to include the Mining sector.</p>
20	Extractive Insight Centre	<ol style="list-style-type: none"> Re-Allocation of Functions to Existing Bodies: <ul style="list-style-type: none"> Expand EPRA and MRB Mandate: Amend the bill to assign local content assessment and advisory roles to EPRA and MRB, eliminating the need for a separate Committee. 	<ol style="list-style-type: none"> Redundancy and Bureaucracy: <ul style="list-style-type: none"> Duplication of functions with EPRA and Minerals Rights Board increases bureaucracy and costs, risking conflicting instructions and slowdowns. 	<p>Proposal rejected.</p> <p>Committee resolved that consequential amendments be done so that all matters local content will be in the Local Content Bill.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> • Periodic Reports: These bodies could provide regular reports on local content progress to a streamlined inter-ministerial coordination committee for cross-sector policy discussions. 2. Streamlined Committee Focused on Specific Gaps: <ul style="list-style-type: none"> • Identify Specific Gaps: Analyze areas of local content development not effectively addressed currently. • Create a Smaller Committee: Form a focused committee to address these gaps, such as public outreach, data collection, or cross-sector policy coordination. 	<ol style="list-style-type: none"> 2. Erosion of Existing Expertise: <ul style="list-style-type: none"> • New Committee lacks sector knowledge initially, may duplicate efforts or overly rely on existing bodies, questioning its value. 3. Increased Government Costs: <ul style="list-style-type: none"> • Standalone secretariat raises wage bill and operational costs, impacting taxpayer efficiency concerns. 	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
21	Extractive Insight Centre	<p>Delete Clause 21</p> <ul style="list-style-type: none"> • Flexibility for Specifics: • Delegate Specific Requirements to Regulations: Bill sets minimum threshold, regulations determine specific local content requirements (e.g., percentages), allowing flexibility based on sector specifics and market conditions. • Review and Revision Clauses: • Include Provisions for Periodic Review: Bill allows for periodic review of minimum local content thresholds, ensuring stability for day-to-day operations 	<p>1. Lack of Clarity: Leaving minimum local content quotas to regulations creates uncertainty for investors. They won't have a clear picture of compliance requirements upfront, making project planning and budgeting difficult.</p> <p>2. Frequent Policy Shifts: Regulations are easier to amend than legislation. Investors need stability in the regulatory environment to justify long-term investments in the extractive sector.</p> <p>3. Clear Expectations from the Start: Specifying minimum local content requirements directly in</p>	Quota already set at 30% in 7 (b)(v)

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		through a deliberate legislative process.	<p>the bill sets a transparent benchmark from the outset. Investors understand their obligations clearly and can factor them into their business decisions.</p> <p>4. Level Playing Field: A consistent, legislatively mandated minimum content level ensures fairness across all operators in the extractive sector.</p>	
22	Ministry of Mining, Blue Economy and Maritime Affairs.	<ul style="list-style-type: none"> Delete the provision on submission and approval of local content plans by a licence/permit applicant as it conflicts with the mining Act, Cap 306 and its attendant regulation. 	<ul style="list-style-type: none"> The Mining Act, Cap 306 provides with clarity that an applicant for a mineral right be it a prospecting licence, a mining licence, a reconnaissance licence or retention licence is required to submit to the Cabinet Secretary a plan giving particulars with respect to the procurement of local goods and services. 	<p>Proposal rejected.</p> <p>The committee resolved that consequential amendment for the local content bill to cover everything local content.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<ul style="list-style-type: none"> The Act Further requires that an applicant must submit a plan giving particulars of the applicant's proposals with respect to social responsible investments for the local community. 	
	Extractive Insights Centre	<ul style="list-style-type: none"> <input type="checkbox"/> Clause 22 Deletion: Remove pre-application local content plan requirement. <input type="checkbox"/> Harmonization with Existing Acts: <ul style="list-style-type: none"> • Integrate local content provisions from Mining Act and Petroleum Act into standard application. <input type="checkbox"/> Post-License Local Content Plans: <ul style="list-style-type: none"> • Require submission after license grant for tailored plans. 	<ul style="list-style-type: none"> Clause 22 of the Local Content Bill mandates pre-application submission of local content plans, posing challenges: <ul style="list-style-type: none"> • Delaying Investment: Hurdle may discourage investment due to upfront planning requirements. • Uncertainty and Inflexibility: Plans may lack accuracy without project specifics. 	<p>Proposal rejected</p> <p>Committee resolved that consequential amendments be done so that all matters local content will be in the Local Content Bill.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> • Committee review during initial licensing stages. ☐ Local Content Reporting: <ul style="list-style-type: none"> (a) Biennial or longer submissions for better project planning. (b) Tie reporting to project milestones for relevance. (c) Focus on concise annual progress reports instead of comprehensive plans. 	<ul style="list-style-type: none"> • Increased Costs: Preparation demands resources, burdening applicants. • Annual local content plans face challenges: • Dynamic Nature: Plans quickly outdated due to project changes. • Administrative Burden: Annual submissions and revisions strain resources. • Lack of Value-Add: Risk of plans becoming bureaucratic rather than strategic 	
23	Council of Governors	<ul style="list-style-type: none"> • Introduce the following Clause: “23(2) obtain approval of the County governments” 	<ul style="list-style-type: none"> • The clause ensures that county governments are directly involved in decisions regarding local content plans, aligning with the constitutional 	<p>Proposal rejected.</p> <p>Likely to create bureaucratic implications.</p> <p>Increased administrative steps.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>mandate for devolution, local governance, and community participation. This promotes accountability, responsiveness, and ensures that local interests are adequately represented and protected.</p>	<p>Delays.</p>
	<p>Extractive Insight Centre</p>	<p>1. Delete Clause 23:</p> <ul style="list-style-type: none"> • Remove the requirement for public participation before license issuance. <p>2. Public Access to Approved Plans: Make approved local content plans publicly available for inspection at the Committee's offices or upon a written request, following the Freedom</p>	<ul style="list-style-type: none"> • Clause 23 mandates public participation in reviewing local content plans submitted by applicants before a license is granted. This occurs within a 60-day timeframe. • Concerns with Public Participation at this Stage: <ul style="list-style-type: none"> ◦ Investor Apathy: 	<ul style="list-style-type: none"> • Proposal rejected. <p>Community Buy-In:</p> <ul style="list-style-type: none"> • When local communities and stakeholders are involved in the decision-making process, it fosters a sense of ownership and acceptance of the outcomes. This can lead to smoother implementation of the extractive activity, as local support and cooperation are critical for

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		of Information Act (FOIA) guidelines	<p>Making detailed plans public before license approval could discourage investors. They may be hesitant to reveal commercially sensitive information or invest resources in plans that might be rejected.</p> <ul style="list-style-type: none"> • Frivolous Objections: The 60-day window creates a risk of frivolous objections from third parties, potentially delaying or derailing projects for strategic or non-constructive reasons. 	<p>the success of such projects.</p> <p>Public participation is a constitutional mandate.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<ul style="list-style-type: none"> Limited Impact: Public participation might be less effective at this early stage when project details and local content opportunities are still under development. 	
24	Extractive Insight Centre	<p>Delete Clause 24:</p> <ul style="list-style-type: none"> Remove the entire provision on local content certification and certifying agents. Strengthen the Committee: Clearly establish the Local Content Development Committee as the sole authority for reviewing and approving local content plans. If necessary, amend the 	<ul style="list-style-type: none"> Redundancy with the Committee: Duplicates efforts and creates potential conflicts over authority on approving local content compliance. Questionable Added Value: Unclear if certifying agents offer more specialized knowledge than the Committee. 	<p>Proposal partially adopted.</p> <p>Let the LCDC do the approval and certification.</p> <p>It will ensure a streamlined process.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>bill to ensure the Committee possesses the expertise to fulfil this role effectively.</p>	<ul style="list-style-type: none"> • Bureaucracy and Cost: Adds administrative and financial burdens without clear benefits. • Potential for Corruption: • Introduces new avenues for rent-seeking behavior, increasing project costs and delays. 	
	<p>Ministry of Mining, Blue economy and Maritime Affairs</p>	<ul style="list-style-type: none"> • Align this provision with the Mining (Use of Local Goods and Services) Regulations, 2017 	<ul style="list-style-type: none"> • Kenya introduced the Mining (Use of local Goods and Services) Regulations, 2017 which require holders of existing mineral rights submit to the CS for Mining procurement plans. • The regulations also require engineering services to be rendered by Kenyan engineering 	<p>Proposal rejected.</p> <p>Committee resolved that consequential amendments be done so that all matters local content will be in the Local Content Bill.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			companies registered with the relevant regulatory bodies or by foreign engineering consultants working in collaboration with firms or companies licenced to provide such engineering services.	
26	Ministry of Mining, Blue Economy and Maritime Affairs	<ul style="list-style-type: none"> Align the Clause with section 101(2)(g) of the Mining Act, Cap 306 which requires an applicant for any mineral rights in Kenya to submit a plan to the Cabinet Secretary for Mining giving particulars of the applicant's proposals with respect to the employment and training of Kenya citizens. 	<ul style="list-style-type: none"> The clause conflicts with provisions of the Mining Act and its attendant regulations and thus needs to be aligned accordingly. 	<p>Proposal rejected.</p> <p>Committee resolved that consequential amendments be done so that all matters local content will be in the Local Content Bill.</p>
25 -29	Extractive Insight Centre	<ul style="list-style-type: none"> Revise to include: 	<ul style="list-style-type: none"> Implementation Challenges: 	Proposal rejected.

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>1. Phased-In Approach:</p> <ul style="list-style-type: none"> • Gradually increase local hiring quotas with realistic targets set in consultation with industry and training providers. <p>2. Exemptions When Necessary:</p> <ul style="list-style-type: none"> • Include a process for temporary exemptions when no qualified Kenyans are available, agreed upon by the Committee and operator. <p>3. Strengthen Skills Focus:</p> <ul style="list-style-type: none"> • Collaboration with Training Institutions: Tailor curriculum to industry needs. • Funding for Scholarships and Internships: Provide 	<p>The bill may underestimate the skills gap in Kenya's extractive sectors. How will the Committee handle situations with no qualified Kenyan workers?</p> <ul style="list-style-type: none"> • Inflexibility: <p>Strict local hiring requirements could backfire by forcing companies to hire less-qualified individuals, reducing productivity, and deterring investors concerned about workforce availability for complex projects.</p> <ul style="list-style-type: none"> • Training Provisions: <ul style="list-style-type: none"> • The bill should detail how to build a robust 	<p>No evidence provided that Kenyans are not skilled.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>financial support for Kenyan students.</p> <p>4. Embedding in Other Acts:</p> <ul style="list-style-type: none"> • Incorporate workforce provisions into the Mining Act and Petroleum Act for cross-sector application. 	<p>skills pipeline, including partnerships with educational institutions and funding for scholarships.</p>	
34	Extractive Insights Centre	<ul style="list-style-type: none"> • Delete Clause 34 <p>Alternatives:</p> <p>1. Accountability without Excessive Punishment:</p> <ul style="list-style-type: none"> ○ Graded Penalties: Implement tiered fines or warnings for minor or first-time non-compliance, reserving license revocation for severe cases. ○ Remedial Action Plans: Require 	<p><input type="checkbox"/> Excessive Penalty:</p> <ul style="list-style-type: none"> • Non-renewal of license is overly harsh for minor delays or unintentional shortcomings, posing a disproportionate risk to investors. <p><input type="checkbox"/> Disincentive for Complex Projects:</p> <ul style="list-style-type: none"> • Harsh penalties could deter investment in projects involving 	<p>Proposal rejected.</p> <p>This not only helps in building local capacity and expertise but also ensures that operators contribute to the sustainable development of the host country by sharing advanced technologies and practices. Such a requirement fosters a continuous improvement process, driving innovation and aligning the operators' activities with national development goals.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>operators to submit revised technology transfer plans to address shortcomings, focusing on solutions rather than immediate punishment.</p>	<p>complex, long-term technology transfer.</p> <p><input type="checkbox"/> Counterproductive to Partnership:</p> <ul style="list-style-type: none"> • A punitive approach could harm the collaborative relationship necessary for effective technology transfer between the operator and the Committee. 	
35-37	Extractive Insights Centre	<ul style="list-style-type: none"> • Revise Clauses to include: <p>For Exploration-Stage Operators:</p> <ol style="list-style-type: none"> 1. Flexibility in Early Stages: <ul style="list-style-type: none"> ◦ Defer R&D spending requirements until a revenue threshold is 	<p>Key Issues with R&D Provisions in the Bill</p> <ul style="list-style-type: none"> • Clarity and Specificity: Lack of detailed guidelines for acceptable research activities and plan requirements could 	<p>Proposal rejected.</p> <p>The clauses in the Bill are sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>met or scale contributions based on exploration and development stages.</p> <p>2. Tailored R&D Plans:</p> <ul style="list-style-type: none"> o Allow submission of general R&D plans focused on initial outcomes and potential impacts, with detailed plans as projects progress. <p>For Established Producers:</p> <p>1. Flexible Allocation of R&D Funds:</p> <ul style="list-style-type: none"> o Allow companies to allocate R&D funds where most effective, with Committee consultation for customized funding plans. <p>2. Economic Conditions Consideration:</p> <ul style="list-style-type: none"> o Adjust R&D revenue 	<p>lead to inconsistent implementation.</p> <ul style="list-style-type: none"> • Regulatory Burden: Annual updates and proposals may be seen as a burden, deterring investors due to potential inefficiencies and bureaucratic hurdles. • Funding Allocation: Fixed percentage allocation for R&D may not reflect the actual needs or capacities of universities and in-house facilities, potentially reducing R&D effectiveness. • Coordination with Academic Institutions: The bill mandates collaboration but lacks mechanisms to ensure effective partnerships and 	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>percentages based on economic conditions or profitability metrics to provide relief during market downturns.</p> <p>3. Streamlined Regulatory Processes:</p> <ul style="list-style-type: none"> o Simplify the process for submitting and updating R&D plans with clear guidelines, expected feedback timeframes, and a robust digital submission system. 	<p>alignment with industry needs.</p> <ul style="list-style-type: none"> • Financial Implications: The financial burden of a fixed percentage of gross revenue for R&D could affect profitability and competitiveness, especially if the percentage is high. <p>Impact on Exploration-Stage Operators</p> <ul style="list-style-type: none"> • Financial Burden: Clarification needed on "gross revenue" for companies not yet generating revenue; this requirement could strain finances and complicate funding. • Planning Challenges: • Submitting a detailed five-year R&D plan is difficult without 	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>sufficient data or project certainty.</p> <p>Challenges for Established Producers</p> <ul style="list-style-type: none"> • Cost Impact: Fixed percentage allocation to R&D can impact financial planning and profitability, especially in fluctuating markets. • Operational Rigidity: Rigid 50/50 fund allocation may not align with company priorities, leading to inefficient spending. • Regulatory Compliance: Annual R&D plan updates and bureaucratic processes increase operational burden and divert focus from 	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			core business activities.	
36	Ministry of Mining, Blue Economy and Maritime Affairs	<ul style="list-style-type: none"> Align this clause with section 46(3) of the Mining Act, which provides that the CS shall provide for the replacement of expatriates, the number of years such expatriates shall serve and provide for collaboration and linkage with universities and research institutions to train citizens. 	<ul style="list-style-type: none"> To ensure consistency with existing legislation on the extractive industry. 	<p>Proposal rejected.</p> <p>Committee resolved that consequential amendments be done so that all matters local content will be in the Local Content Bill.</p>
38	Extractive Insight Centre	<ul style="list-style-type: none"> Delete the clause mandating use of indigenous Kenyan Banks. <p>Alternatives:</p> <ol style="list-style-type: none"> Encouragement Over Mandate: 	<ol style="list-style-type: none"> Investor Concerns: <ul style="list-style-type: none"> Restricting investors to local banks may reduce Kenya's attractiveness if these banks can't offer competitive services. Operational Flexibility: 	<p>Proposal rejected.</p> <p>Clause in the Bill are sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> • Encourage, rather than mandate, the use of local banks through incentives, allowing operators to choose the best financial services. <p>2. Benchmarking and Standards:</p> <ul style="list-style-type: none"> • Promote local banks to meet global standards through government-supported training and collaboration with international institutions. <p>3. Gradual Integration:</p> <ul style="list-style-type: none"> • Implement a phased approach to increase local banking requirements as local banks improve their capabilities. 	<ul style="list-style-type: none"> • Forcing a switch to local banks could disrupt operators' global banking arrangements, increasing risks and costs. <p>4. Market Competitiveness: Mandating specific banks may reduce competition among local banks to improve services.</p>	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
41	Ministry of Mining, Blue Economy and Maritime Affairs	<ul style="list-style-type: none"> • Align with the Mining (Use of Local Goods and Services) Regulations, 2017 and the provisions of the Mining Act, Cap 306 	<ul style="list-style-type: none"> • The Mining (Use of Local Goods and Services) Regulations, 2017 requires holders of existing mineral rights to submit to the CS procurement plans which must <ul style="list-style-type: none"> i) Set the levels of local procurement based on a procurement list to be developed and communicated by the Director of Mines; and ii) Indicate specific support to be provided by mineral rights/license holders to local providers or suppliers as well as other measures being 	<p>Proposal rejected.</p> <p>Committee resolved that consequential amendments be done so that all matters local content will be in the Local Content Bill.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>implemented to develop the supply of local goods and services including broadening access to opportunities and technical support.</p>	
	<p>Extractive Insight Centre</p>	<p>Revise to:</p> <ol style="list-style-type: none"> 1. Clarify and Refine Bidding Guidelines: <ul style="list-style-type: none"> • Provide detailed guidelines on bid evaluation, including how local content is weighed against other factors for transparency and fairness. 2. Cap the Price Differential: <ul style="list-style-type: none"> • Set a cap on acceptable price differentials for local content to prevent 	<ol style="list-style-type: none"> 1. Operational Costs: <ul style="list-style-type: none"> • Accepting bids up to 10% higher to favor local content could increase project costs, affecting financial viability in a competitive market. 2. Complexity in Bid Evaluation: <ul style="list-style-type: none"> • Including factors beyond cost, such as local content and local company capacity, complicates 	<p>Proposal rejected</p> <p>Clause sufficient on the procurement bidding process.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>excessive financial burdens. Adjust the 10% differential based on market studies and economic impact assessments.</p> <p>3. Monitor and Evaluate the Impact:</p> <ul style="list-style-type: none"> • Require regular assessments of the bidding provisions' impact on local businesses and project costs, involving feedback from local and international stakeholders. <p>4. Incentivize Quality and Efficiency in Local Companies:</p> <ul style="list-style-type: none"> • Implement programs to enhance local companies' competitiveness in quality, efficiency, and 	<p>the procurement process and may cause delays.</p> <p>3. Potential for Reduced Competition:</p> <ul style="list-style-type: none"> • Preferential treatment for local businesses might discourage foreign competitors, reducing competitive bids and potentially impacting quality and innovation. 	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>cost through training, technology access, and partnerships with global entities.</p>		
44	Extractive Insight Centre	<p>Delete the sub-clause 3</p> <p>Alternative Options:</p> <ul style="list-style-type: none"> • Replace the fixed threshold with a progressive realization approach where the required percentage of local content increases gradually as local capacity builds. • Implement a tiered threshold system that takes into account the varying capabilities across different sectors of the extractive industry. 	<ul style="list-style-type: none"> • Potentially limit foreign investment due to several factors. <p><input type="checkbox"/> Increased Project Costs and Delays:</p> <p>Rigid local content thresholds can raise costs and cause delays if local suppliers are more expensive or less efficient.</p> <p><input type="checkbox"/> Discouragement of Foreign Investment:</p> <ul style="list-style-type: none"> • High local content requirements may deter foreign investors concerned 	<p>Proposal rejected.</p> <p>No evidence presented.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> • Encourage local enterprises by linking local content requirements to quality and performance benchmarks rather than a fixed percentage. <p>Ensure that local content policies are compatible with international trade laws to avoid potential disputes and sanctions.</p>	<p>about finding suitable local partners.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Lack of Local Capacity: <ul style="list-style-type: none"> • In high-tech or specialized sectors, insufficient local capacity could force investors to compromise on quality or efficiency. <input type="checkbox"/> Promotion of Quality and Competitiveness: <ul style="list-style-type: none"> • Guaranteed participation for local businesses might reduce their incentive to improve quality and competitiveness. <input type="checkbox"/> Alignment with International Trade Agreements: <ul style="list-style-type: none"> • Strict local content requirements may 	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>conflict with international trade agreements and fair competition principles.</p>	
45	Extractive Insight Centre	<p>Delete Clause 45:</p> <ul style="list-style-type: none"> • Other provisions in the Bill, like skills development and procurement focus, are more effective in maximizing Kenyan benefits from the extractive sector. <p>Alternative Measures:</p> <ul style="list-style-type: none"> • Market-Driven Approach: Encourage joint ventures and local equity participation through incentives rather than mandates. <ul style="list-style-type: none"> ◦ Examples: 	<ul style="list-style-type: none"> <input type="checkbox"/> Investor Uncertainty: <ul style="list-style-type: none"> • Unclear equity thresholds create unpredictability, disrupting investment plans. <input type="checkbox"/> Disincentive for Investment: <ul style="list-style-type: none"> • High local ownership requirements may deter investors, especially for capital-intensive or specialized projects. <input type="checkbox"/> Forced Partnerships: <ul style="list-style-type: none"> • Foreign operators might be pressured into inefficient 	<p>Proposal rejected.</p> <p>Clause is sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> ▪ Tax breaks for companies with significant Kenyan ownership. ▪ Matching programs to connect foreign investors with qualified Kenyan partners. • Strengthen Equity Transfer Regulations: <ul style="list-style-type: none"> ○ Ensure equity transfers support local content objectives, possibly requiring milestones in local capacity 	<p>partnerships, raising costs and hindering efficiency.</p> <p><input type="checkbox"/> Limited Impact:</p> <ul style="list-style-type: none"> • Mandated equity ownership doesn't ensure local capacity building or technology transfer, risking token partnerships with minimal local benefit. 	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		building or a defined period before transfers.		
46	Extractive Insight Centre	<p>Amend Clause 46</p> <ul style="list-style-type: none"> • Add Specificity: Amend the bill to provide more detail on the types of tax incentives that can be used and which categories of training might qualify. • Expand Scope of Incentives: Consider a broader array of fiscal tools beyond deductions. • Clearly Define "Non-Distorting": Ensure the language prevents unfair market manipulations. 	<p><input type="checkbox"/> Lack of Specificity:</p> <ul style="list-style-type: none"> • Broad Language: Too much discretion given to the Cabinet Secretary. Amend to outline specific tax incentives (e.g., exemptions, reductions, credits). • Priority Areas: List priority areas for training incentives based on industry needs (e.g., technical skills, safety, environmental sustainability). <p><input type="checkbox"/> Vague Language:</p> <ul style="list-style-type: none"> • "Supportive and non-distorting": Define further to ensure 	<p>Proposal rejected.</p> <p>The CS finance in consultation with the Committee are better placed to advise on the issues tax incentives.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>incentives are accessible to any qualifying company, preventing unfair advantages.</p> <p><input type="checkbox"/> Narrow Focus on Deductibility:</p> <ul style="list-style-type: none"> • Expand Incentives: <ul style="list-style-type: none"> ◦ Matching Grants: Government matches a percentage of company spending on qualified training initiatives. ◦ Tax Credits for Hiring Trainees: Incentivize companies to provide on-the-job training. 	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
47	Extractive Insight Centre	<p>1. Amend Clause 47:</p> <p>Make contributions to the Local Content Training and Development Fund tax-deductible. This aligns the approach with the implied provision of section 52 of the Petroleum Act and creates a stronger incentive for operator participation.</p> <p>2. Consider Consolidated Fund: If the overarching goal is effective training across the extractive sector, explore merging these separate funds into a single well-managed, consolidated fund. This would:</p> <ul style="list-style-type: none"> • Streamline administration 	<p>Non-Deductibility Disincentive: The Local Content Bill might discourage robust contributions from operators if they cannot deduct those costs from their taxes. This could limit the fund's impact.</p>	<p>Proposal partially adopted.</p> <p>The Committee resolved to make contributions to the Local Content Training and Development Fund tax-deductible.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>and reduce duplication.</p> <ul style="list-style-type: none"> • Allow for targeted training investment based on the most pressing needs across the whole sector. <p>3. Governance and Transparency:</p> <p>Both Acts leave details about fund operation to future regulations. The success of these training initiatives depends on robust regulations that ensure:</p> <ul style="list-style-type: none"> • Clear eligibility criteria for accessing funds • Transparent accounting and reporting • Oversight by a multistakeholder 		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		body to promote accountability.		
48	Extractive Insight Centre	<p>Delete Clause 48</p> <p>Alternatively:</p> <ol style="list-style-type: none"> 1. Concise Local Content Extract: Require operators to submit a concise annual extract of their existing work plan, highlighting elements directly relevant to local content, such as: <ul style="list-style-type: none"> ○ Estimated spending on local goods and services. ○ Current and projected Kenyan employment. ○ Training and skills development initiatives. 2. Leverage Existing Data: Explore ways to streamline data sharing 	<ul style="list-style-type: none"> • Potential Redundancy: Operators likely already submit extensive work plans to other regulatory bodies (EPRA, Mining Department). Requiring a separate plan for the Committee risks creating unnecessary duplication. • Administrative Burden: Preparing a separate work plan specifically focused on local content adds administrative work for operators and the Committee, potentially diverting resources from core activities. 	<p>Proposal rejected.</p> <p>Clause in the Bill is sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>between the Committee and relevant regulators for local content tracking purposes, avoiding duplication of reporting requirements.</p>	<ul style="list-style-type: none"> • Focus on Intent, Not Details: The Committee's primary role is to promote and oversee local content development, not to micromanage operations covered by other regulatory bodies' mandates 	
49	Extractive Insights Centre	<p>Delete Clause 49</p> <p>Alternatively</p> <ul style="list-style-type: none"> • Risk-Based Audits: Implement a risk-based audit approach where the Committee selects a sample of operators for in-depth auditing each year, rather than auditing everyone extensively. Focus audits on areas or projects where local content compliance is of particular concern. 	<ul style="list-style-type: none"> • Extensive Documentation: The requirement to maintain detailed records on all aspects of local content expenditure could be excessive for smaller operators or projects. • Audit Scope: Auditing every operator annually might be an inefficient use of the 	<p>Proposal rejected</p> <p>The Clause in the Bill is sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> • Targeted Data: Refine the required data to focus on the most essential metrics for tracking local content progress, minimizing administrative burdens for operators. • Technology Leverage: Consider a secure online platform for data submission and reporting to streamline the process and enhance the Committee's analysis capabilities. • 	Committee's resources.	
50	Extractive Insight Centre	<p>Delete Clause 50</p> <ul style="list-style-type: none"> • Prioritized Metrics: Work with stakeholders to identify a core set of key performance indicators for local content, focusing reporting on those metrics. 	<ul style="list-style-type: none"> • Reporting Overload: The extensive reporting requirements on individual operations, State agencies, and overall performance could create an excessive workload for both operators and the Committee. 	<p>Proposal rejected.</p> <p>The Clause in the Bill is sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> • Qualitative Assessment: Supplement quantitative data with qualitative analysis of challenges and best practices, providing a more comprehensive picture to the Cabinet Secretary and Senate. • Public-Facing Dashboard: Develop a simplified public dashboard with key local content indicators across the extractive sector, promoting transparency and accountability. 	<ul style="list-style-type: none"> • Data Use: It's unclear how the Committee will meaningfully utilize such a vast amount of data to drive actionable insights and improvements in local content development 	
	Bung Youth Dialogue	<ul style="list-style-type: none"> • The national committee together with the proposed county committees should prepare annual performance reports to the Cabinet Secretary incharge of the Energy 	<ul style="list-style-type: none"> • A monitoring, evaluation, and reporting system should be developed in order to outline and fully account for the value of the operators to the local community and 	<p>Proposal rejected</p> <p>Clause in the Bill is sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		Ministry and the respective senators respectively.	areas. This annual performance report will give a benefit analysis to inform whether the operation is viable and give accountability to how resources are exploited at the same time limiting corruption and embezzlement loopholes. 50(3)	
51	Extractive Insight Centre	Delete Clause 51: Removing this provision streamlines compliance and avoids potential legal and contractual disputes. Alternatives: • Strengthened Operator Responsibility: Amend other sections of the bill to clearly hold	1. Excessively Broad Scope: • The definition of "connected entity" could be vast and vague. Forcing contractual obligations onto this wide network creates complex legal	Proposal rejected. Cause in the Bill is sufficient.

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>operators accountable for accurate and complete local content reporting, including data sourced from their supply chain.</p> <ul style="list-style-type: none"> • Risk-Based Audits: Empower the Committee to conduct focused audits of specific operators and, when justified by evidence, request relevant supporting documentation from specific contractors or subcontractors. • Confidentiality Agreements: If direct Committee access to certain records is deemed necessary in some cases, establish clear protocols and confidentiality agreements to protect commercially sensitive information. 	<p>entanglements beyond the operator's immediate control.</p> <ul style="list-style-type: none"> • Unrestricted access to records of all connected entities raises potential privacy, confidentiality, and commercial sensitivity concerns. <p>2. Potential Overreach:</p> <ul style="list-style-type: none"> • Directly involving the Committee in supply chain contracts risks overreach, blurring the lines between the Committee's oversight role and an operator's commercial dealings. • It could complicate negotiations between operators and their partners, particularly 	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>when international entities are involved.</p> <p>3. Duplication and Burden: The operator should be responsible for collecting and consolidating local content data from its supply chain. The Committee can verify this information through targeted audits, without needing direct access to the records of every entity.</p>	
57	Council Of Governors	<ul style="list-style-type: none"> Amend Clause 57(4)(a) include that the CECM power to make regulations shall not be limited to implementation of the provisions of this Act but should also include development of additional regulations to 	<ul style="list-style-type: none"> The proposed amendment aligns with constitutional principles, including the promotion of devolution and local governance (Article 174), recognizing the distinctive yet interdependent nature of national and 	<p>Proposal rejected.</p> <p>The Clause is sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>address local needs and contexts, provided these regulations do not conflict with the Act's primary objectives.</p>	<p>county governments (Article 6(2)). It facilitates the efficient discharge of county functions by allowing counties to develop additional regulations and participate in the national regulatory process, as outlined in Article 186. Moreover, it upholds national values such as public participation and inclusiveness (Article 10) by actively involving county governments in the regulatory process and empowering them to address local needs effectively.</p>	
<p>General Comments</p>	<p>Council of Governors</p>	<ul style="list-style-type: none"> The proposed Bill is progressive as it aims to enhance value-addition and create employment 		<p>The comments are noted.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>in the extractive industry by using and retaining local expertise, goods, services, businesses and financing.</p> <ul style="list-style-type: none"> • There is need for consideration to amend the Mining Act to incorporate provisions from the Local Content Bill, ensuring cross-referencing and alignment with licencing requirements. • Operational level activities should be managed at the county level rather than by the Committee. This ensures that county governments , who are more familiar with the specific needs and contexts of their counties, handle the implementation and oversight , leading to more effective and responsive governance. 		

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		body to promote accountability.		
48	Extractive Insight Centre	<p>Delete Clause 48</p> <p>Alternatively:</p> <ol style="list-style-type: none"> 1. Concise Local Content Extract: Require operators to submit a concise annual extract of their existing work plan, highlighting elements directly relevant to local content, such as: <ul style="list-style-type: none"> ○ Estimated spending on local goods and services. ○ Current and projected Kenyan employment. ○ Training and skills development initiatives. 2. Leverage Existing Data: Explore ways to streamline data sharing 	<ul style="list-style-type: none"> • Potential Redundancy: Operators likely already submit extensive work plans to other regulatory bodies (EPRA, Mining Department). Requiring a separate plan for the Committee risks creating unnecessary duplication. • Administrative Burden: Preparing a separate work plan specifically focused on local content adds administrative work for operators and the Committee, potentially diverting resources from core activities. 	<p>Proposal rejected.</p> <p>Clause in the Bill is sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>and reduce duplication.</p> <ul style="list-style-type: none"> • Allow for targeted training investment based on the most pressing needs across the whole sector. <p>3. Governance and Transparency:</p> <p>Both Acts leave details about fund operation to future regulations. The success of these training initiatives depends on robust regulations that ensure:</p> <ul style="list-style-type: none"> • Clear eligibility criteria for accessing funds • Transparent accounting and reporting • Oversight by a multistakeholder 		

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
47	Extractive Insight Centre	<p>1. Amend Clause 47:</p> <p>Make contributions to the Local Content Training and Development Fund tax-deductible. This aligns the approach with the implied provision of section 52 of the Petroleum Act and creates a stronger incentive for operator participation.</p> <p>2. Consider Consolidated Fund: If the overarching goal is effective training across the extractive sector, explore merging these separate funds into a single well-managed, consolidated fund. This would:</p> <ul style="list-style-type: none"> • Streamline administration 	<p>Non-Deductibility Disincentive: The Local Content Bill might discourage robust contributions from operators if they cannot deduct those costs from their taxes. This could limit the fund's impact.</p>	<p>Proposal partially adopted.</p> <p>The Committee resolved to make contributions to the Local Content Training and Development Fund tax-deductible.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>between the Committee and relevant regulators for local content tracking purposes, avoiding duplication of reporting requirements.</p>	<ul style="list-style-type: none"> Focus on Intent, Not Details: The Committee's primary role is to promote and oversee local content development, not to micromanage operations covered by other regulatory bodies' mandates 	
49	Extractive Insights Centre	<p>Delete Clause 49</p> <p>Alternatively</p> <ul style="list-style-type: none"> Risk-Based Audits: Implement a risk-based audit approach where the Committee selects a sample of operators for in-depth auditing each year, rather than auditing everyone extensively. Focus audits on areas or projects where local content compliance is of particular concern. 	<ul style="list-style-type: none"> Extensive Documentation: The requirement to maintain detailed records on all aspects of local content expenditure could be excessive for smaller operators or projects. Audit Scope: Auditing every operator annually might be an inefficient use of the 	<p>Proposal rejected</p> <p>The Clause in the Bill is sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> • Targeted Data: Refine the required data to focus on the most essential metrics for tracking local content progress, minimizing administrative burdens for operators. • Technology Leverage: Consider a secure online platform for data submission and reporting to streamline the process and enhance the Committee's analysis capabilities. • 	Committee's resources.	
50	Extractive Insight Centre	<p>Delete Clause 50</p> <ul style="list-style-type: none"> • Prioritized Metrics: Work with stakeholders to identify a core set of key performance indicators for local content, focusing reporting on those metrics. 	<ul style="list-style-type: none"> • Reporting Overload: The extensive reporting requirements on individual operations, State agencies, and overall performance could create an excessive workload for both operators and the Committee. 	<p>Proposal rejected.</p> <p>The Clause in the Bill is sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<ul style="list-style-type: none"> • Qualitative Assessment: Supplement quantitative data with qualitative analysis of challenges and best practices, providing a more comprehensive picture to the Cabinet Secretary and Senate. • Public-Facing Dashboard: Develop a simplified public dashboard with key local content indicators across the extractive sector, promoting transparency and accountability. 	<ul style="list-style-type: none"> • Data Use: It's unclear how the Committee will meaningfully utilize such a vast amount of data to drive actionable insights and improvements in local content development 	
	Bung Youth Dialogue	<ul style="list-style-type: none"> • The national committee together with the proposed county committees should prepare annual performance reports to the Cabinet Secretary in charge of the Energy 	<ul style="list-style-type: none"> • A monitoring, evaluation, and reporting system should be developed in order to outline and fully account for the value of the operators to the local community and 	<p>Proposal rejected</p> <p>Clause in the Bill is sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		Ministry and the respective senators respectively.	areas. This annual performance report will give a benefit analysis to inform whether the operation is viable and give accountability to how resources are exploited at the same time limiting corruption and embezzlement loopholes. 50(3)	
51	Extractive Insight Centre	Delete Clause 51: Removing this provision streamlines compliance and avoids potential legal and contractual disputes. Alternatives: • Strengthened Operator Responsibility: Amend other sections of the bill to clearly hold	1. Excessively Broad Scope: • The definition of "connected entity" could be vast and vague. Forcing contractual obligations onto this wide network creates complex legal	Proposal rejected. Cause in the Bill is sufficient.

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>operators accountable for accurate and complete local content reporting, including data sourced from their supply chain.</p> <ul style="list-style-type: none"> • Risk-Based Audits: Empower the Committee to conduct focused audits of specific operators and, when justified by evidence, request relevant supporting documentation from specific contractors or subcontractors. • Confidentiality Agreements: If direct Committee access to certain records is deemed necessary in some cases, establish clear protocols and confidentiality agreements to protect commercially sensitive information. 	<p>entanglements beyond the operator's immediate control.</p> <ul style="list-style-type: none"> • Unrestricted access to records of all connected entities raises potential privacy, confidentiality, and commercial sensitivity concerns. <p>2. Potential Overreach:</p> <ul style="list-style-type: none"> • Directly involving the Committee in supply chain contracts risks overreach, blurring the lines between the Committee's oversight role and an operator's commercial dealings. • It could complicate negotiations between operators and their partners, particularly 	

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
			<p>when international entities are involved.</p> <p>3. Duplication and Burden: The operator should be responsible for collecting and consolidating local content data from its supply chain. The Committee can verify this information through targeted audits, without needing direct access to the records of every entity.</p>	
57	Council Of Governors	<ul style="list-style-type: none"> Amend Clause 57(4)(a) include that the CECM power to make regulations shall not be limited to implementation of the provisions of this Act but should also include development of additional regulations to 	<ul style="list-style-type: none"> The proposed amendment aligns with constitutional principles, including the promotion of devolution and local governance (Article 174), recognizing the distinctive yet interdependent nature of national and 	<p>Proposal rejected.</p> <p>The Clause is sufficient.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>address local needs and contexts, provided these regulations do not conflict with the Act's primary objectives.</p>	<p>county governments (Article 6(2)). It facilitates the efficient discharge of county functions by allowing counties to develop additional regulations and participate in the national regulatory process, as outlined in Article 186. Moreover, it upholds national values such as public participation and inclusiveness (Article 10) by actively involving county governments in the regulatory process and empowering them to address local needs effectively.</p>	
<p>General Comments</p>	<p>Council of Governors</p>	<ul style="list-style-type: none"> The proposed Bill is progressive as it aims to enhance value-addition and create employment 		<p>The comments are noted.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	RATIONALE	COMMITTEE DETERMINATION
		<p>in the extractive industry by using and retaining local expertise, goods, services, businesses and financing.</p> <ul style="list-style-type: none"> • There is need for consideration to amend the Mining Act to incorporate provisions from the Local Content Bill, ensuring cross-referencing and alignment with licencing requirements. • Operational level activities should be managed at the county level rather than by the Committee. This ensures that county governments , who are more familiar with the specific needs and contexts of their counties, handle the implementation and oversight , leading to more effective and responsive governance. 		

ANNEX 5: SCHEDULE OF COMMITTEE
SITTINGS

REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THE SENATE

Standing Committee on Energy

13th Parliament | Second Session

SCHEDULE OF COMMITTEE SITTINGS ON
THE LOCAL CONTENT BILL (SENATE BILLS NO. 50 OF 2023)

No.	ACTIVITY	DESCRIPTION	PROPOSED TIMELINES
1.	Advertisement for submission of written memoranda	1. Publish advertisement on: a) two newspapers with national distribution b) Parliament website c) Parliament social media pages	a) Newspaper Adverts - Date of publication: Tuesday, 3 rd April, 2024 - Proposed deadline for submission of memoranda: Tuesday, 16 th April, 2024.
2.	<i>Consideration of -</i>	a) The Committee Report on Public Participation	13 th June, 2024
		b) Committee Stage Amendments	14 th June, 2024
3.	<i>Adoption of -</i>	c) The Committee Report on Public Participation	2 nd July, 2024
		d) Committee Stage Amendments	

ANNEX 6: SUBMISSIONS BY THE MINISTRY
OF MINING



REPUBLIC OF KENYA

**MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS
OFFICE OF THE CABINET SECRETARY**

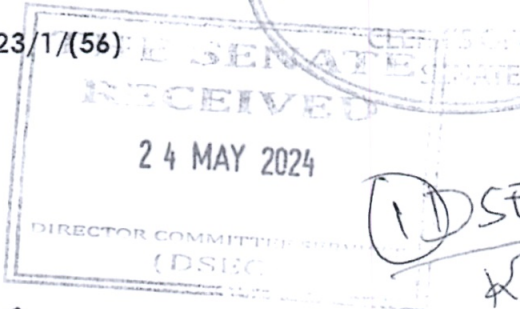
Telephone: 254-20- 2727434
Email : cs@mining.go.ke
Website:www.mibema.go.ke

WORKS BUILDING
NGONG ROAD
P.O. BOX 30009- 00100
NAIROBI

Ref: MIBEMA/SDM/LEG/CR/23/1/(56)

20th May, 2024

J. M. Nyegenye, CBS
The Clerk of the Senate
Parliament Buildings
P.O Box 41842-00100
NAIROBI



① DSEC
Windy Seal
24/05/2024

② DDSEC (BL)
Windy Seal
24/05/2024

Dear *Mr. Nyegenye,*

**REQUEST FOR SUBMISSION OF MEMORANDA ON THE LOCAL CONTENT BILL, 2023
(SENATE BILLS NO. 50 OF 2023)**

Reference is made to the above matter and your letter Ref. No. SEN/DSEC/ENERGY/CORR/2024/150 dated 8th May, 2024.

This Ministry has taken note that the Local Content Bill, 2023 (Senate Bills No. 50 of 2023) was introduced in the Senate by way of First Reading on Tuesday, 26th March, 2024. We have reviewed the contents of the Bill and enclosed herewith is a Memorandum with comments on the Bill for consideration by the Committee.

We thank you for the continued support and collaboration.

Yours Sincerely,

**HON. SALIM MVURYA, EGH
CABINET SECRETARY**



③ Mr. Njog
Dr. Segin
Please see
27/05/24

Encl.

Copy to: **Elijah Mwangi, CBS**
Principal Secretary
Ministry of Mining, Blue Economy and Maritime Affairs
Public Works Building
NAIROBI

THE LOCAL CONTENT BILL, 2023

S/NO	Clause in the Bill	Provision	Proposed Amendment	Justification
1.	2	<p>Definitions</p> <p>"Cabinet Secretary" means the Cabinet Secretary responsible for matters related to the Extractives Industry.</p>	<p>"Cabinet Secretary" means either the Cabinet Secretary responsible for Energy or the Cabinet Secretary responsible for Mining as the case may be.</p>	<ul style="list-style-type: none"> The Extractives industry in Kenya is composed of extraction of oil and gas and mineral resources, these resources are governed by two separate Ministries in Kenya and therefore a distinction ought to be made on the relevant Cabinet Secretaries involved.
2.	10.	<p>Functions of the Local Content Development Committee</p>	<p>Provide a funding model for the activities of the Committee</p>	<p>The functions of the Local Content Development Committee are capital intensive and it's unclear from the Bill how these activities will be funded. We propose that a clause be included on funding of the committee.</p>

3.	10(d)	The functions of the Committee shall be to (d) appraise, evaluate and approve local content plans and reports submitted to the Committee pursuant to section 22;	Delete the term " approve local content plans "	<p>The Mining (Use of Local Goods and Services) Regulations, 2017 already provides a framework for applicants of mineral rights/licences to submit to the Cabinet Secretary for Mining (CS) procurement plans which must</p> <ul style="list-style-type: none"> (i) set target levels of local procurement based on a procurement list to be developed and communicated by the Director of Mines ;and (ii) indicate specific support to be provided by mineral rights/licence holders to local providers or suppliers as well as other measures being implemented to develop the supply of local goods and services including broadening access to opportunities and technical support.
4.	12	Membership of the Local Content Development Committee	Include the Principal Secretary responsible for Mining as a member of the Local Content Development Committee.	<ul style="list-style-type: none"> • The Extractives Industry is composed of the oil and gas sector as well as the mining sector it is therefore crucial that the Principal Secretary for Mining is included as a member of the Committee.

5.	19(1)	The Cabinet Secretary shall designate an appropriate administrative unit within the Ministry responsible for matters relating to the petroleum industry to serve as the Secretariat of the Committee.	The proposal to have a technical and administrative unit from the Ministry responsible for Petroleum as secretariat to the Committee means that the Local Content Bill relates to local content of petroleum resources in Kenya excluding the mining sector.	<ul style="list-style-type: none"> • Incorporate the Mining Sector in the secretariat committee so as to have it as a Joint Secretariat.
6.	22(1)	A person shall, before applying for, or bidding for a licence, permit or interest and before engaging in any extractive activity, prepare and submit to the Committee a local content plan with respect to the extractive activity in the prescribed form.	We propose to delete the provision on submission and approval of a Local content plan by a licence/permit applicant as it conflicts with the Mining Act, Cap 306 and its attendant Regulations.	<ul style="list-style-type: none"> • The Mining Act, Cap 306 provides with clarity that any applicant for a mineral right be it a prospecting licence, a reconnaissance licence, a mining licence or a retention licence is required to submit to the Cabinet Secretary a plan giving particulars with respect to the procurement of local goods and services. • The Act further requires that an applicant must submit a plan giving particulars of the applicant's proposals with respect to social responsible investments for the local community.
7.	24(1)	The Cabinet Secretary shall, in consultation with the Committee, prescribe rules	Align this provision with the provisions of the Mining (Use of Local Goods and Services) Regulations, 2017	<ul style="list-style-type: none"> • Kenya introduced the Mining (Use of Local Goods and Services) Regulations, 2017 which require holders of existing mineral rights to

	on local content certification and in so doing shall.....-	submit to the Cabinet Secretary for Mining (CS) procurement plans which must
		<ul style="list-style-type: none"> (i) set target levels of local procurement based on a procurement list to be developed and communicated by the Director of Mines and ; (ii) indicate specific support to be provided by mineral rights holders to local providers or suppliers as well as other measures being implemented to develop the supply of local goods and services including broadening access to opportunities and technical support.
		<ul style="list-style-type: none"> • The Regulations also require engineering services to be rendered by Kenyan engineering companies registered with the relevant regulatory bodies or by foreign engineering consultants working in collaboration with firms or companies licenced to provide such engineering services in Kenya.
8.	26(1) An operator shall prepare and submit to the Employment Committee,	<ul style="list-style-type: none"> • This Clause conflicts with provisions of the Mining Act and its attendant

		together with its local content plan, an employment and skills development plan with respect to the extractive activity to be carried out by the operator.	Kenya to submit a plan to the Cabinet Secretary for Mining giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens;	Regulations and thus needs to be aligned accordingly.
9.	36(1)	The Committee shall, pursuant to the objectives of this Act, put in place measures and implement strategies in order to bridge the knowledge gap in relation to knowledge in the extractive industry and promote research and development in the extractives industry.	Align this clause with section 46(3) of the Mining Act which provides that the Cabinet Secretary shall provide for the replacement of expatriates, the number of years such expatriates shall serve and provide for collaboration and linkage with universities and research institutions to train citizens.	<ul style="list-style-type: none"> To ensure constituency with existing legislation on the extractives Industry.
10.	41(1)	An operator shall maintain a bidding process for the acquisition of goods and services which shall provide a fair opportunity to local persons to participate in the provision of goods and services in relation to t h e	This Clause should be aligned with the Mining(Use of Local Goods and Services)Regulations,2017 and the provisions of the Mining Act,Cap 306	<ul style="list-style-type: none"> The Mining(Use of Local Goods and Services) Regulations,2017 requires holders of existing mineral rights to submit to the Cabinet Secretary for Mining (CS) procurement plans which must <p>(iii) set target levels of local procurement based on a procurement list to be</p>

		extractive activities to be undertaken by the operator.		developed and communicated by the Director of Mines and ; (iv) indicate specific support to be provided by mineral rights holders to local providers or suppliers as well as other measures being implemented to develop the supply of local goods and services including broadening access to opportunities and technical support.
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ANNEX 7: SUBMISSIONS BY THE COUNCIL OF
GOVERNORS

THE SENATE
RECEIVED
07 JUN 2024
COUNCIL OF GOVERNORS



THE SENATE
RECEIVED
05 JUN 2024
DEPUTY CLERK

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref: COG /6/41 Vol. 7 (51)

3rd June 2024

Mr. J. M. Nyegenye, CBS
The Clerk of the Senate
Parliament Buildings
Nairobi

THE SENATE
RECEIVED
05 JUN 2024
CLERK'S OFFICE
SENATE

Dear Clerk,

THE LOCAL CONTENT BILL, 2023 (SENATE BILLS NO. 50 OF 2023)

The above matter refers.

The Council of Governors wishes to forward for your consideration the legislative memoranda attached here in on the **Local Content Bill, 2023 (Senate Bill No. 50 of 2023)**.

Thank you for your continued support.

Yours sincerely,

Mary Mwiti
Chief Executive Officer

① DSFL

① DSSEEC (BSE)
Kindly deal.
Wobah
07/06/2024

Kindly deal

Ep
07/06/2024

Dr. Sagini
You are dealing
AB
10/06/24



LEGISLATIVE MEMORANDUM ON THE LOCAL CONTENT BILL, 2023

TO

SENATE

FROM

**THE COUNCIL OF GOVERNORS
TRANSPORT, INFRASTRUCTURE AND ENERGY**

THE COUNCIL OF GOVERNORS:

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2);

In further recognition of the need to ensure that all legislation is cognizant of devolved governments; and

Aware of the need for coordinated action between the National and County Governments to ensure that these legislations properly respond to the key issues, and further reflects the spirit and purpose of the devolution process.

The Council recommends as follows on the bill:

A) General Comments:

1. The proposed bill is progressive as it aims to enhance value-addition and create employment in the extractive industry by using and retaining local expertise, goods, services, businesses, and financing. It seeks to facilitate local ownership and control of gas, oil, and petroleum resource activities, and increase local value capture throughout the exploration value chain. This progressive approach supports economic growth, job creation, and national self-reliance. However, the regulation should be in line with the mandates assigned to both levels of governments.
2. There is a need for consideration to amend the Mining Act to incorporate provisions from the Local Content Bill, ensuring cross-referencing and alignment with licensing requirements. This integration will ensure that all mining activities comply with local content regulations, promoting the use of local expertise, goods, services, and financing in the industry.
3. Operational level activities should be managed at the county level rather than by the committee. This ensures that county governments, who are more familiar with the specific needs and contexts of their counties, handle the implementation and oversight, leading to more effective and responsive governance.

B) SPECIFIC CONCERNS

Clause	Provision	CoG's Proposal	Justification
<p>ART II – Role of the National and County Governments</p>	<p>7. In ensuring that the National Government fulfils Its obligations under section 6, the Committee shall</p> <p>(b) facilitate the realisation of local content through—</p> <p>(iii) the implementation of strategies that ensure that preference is given to locally owned, controlled and financed enterprises and to those that demonstrate commitment and capacity for maximising local value-addition, participation and capability development;</p> <p>(iv) the development and implementation of strategies for the development of local skills, business know-how, technology, financing, capital market development, and wealth capture and distribution; and</p> <p>(v) ensuring that all local content activities shall include participation of local persons at a quota of not less than thirty percent</p>	<p>Remove clause 7(b)(iii)</p> <p>Amend clause 7(b)(iv) to read as follows;</p> <p>“the development and of strategies for the development of local skills,”</p> <p>Amend clause 7(b)(v) to read as follows;</p> <p>“provision of guidelines to ensure local content activities shall include participation of local persons at a quota of not less than thirty percent,”</p>	<p>The implementation function is already vested in the role of counties. The national government, through its committee, should focus on establishing standards, norms, and guidelines, as well as providing capacity-building support. This will enable counties to effectively implement the strategies.</p>
<p>ART III – Establishment of the Local Content Development Committee</p>	<p>10. (1) The functions of the Committee shall be to—</p> <p>(a) oversee, coordinate and manage the development of local content in the country;</p> <p>(e) oversee, in consultation with the county governments, the implementation of local content policies and strategies by operators;</p>	<p>Amend clause 10(1)(a) to read as follows;</p> <p>“coordinate the development of local content in the country”</p> <p>Delete clause 10(1)(e)</p>	<p>According to Articles 174, 176, and 186 of the Kenyan Constitution, devolution promotes democratic, accountable governance and public participation, with county governments responsible for local services and resource management. Functions are allocated to the level of government best suited to perform them, ensuring effective,</p>

			responsive, and accountable local governance. Counties should therefore oversee the implementation of local content policies and strategies by operators
PART IV – Local Content Plans	<p>23. (2) The Committee shall, in reviewing and assessing the local content plan under subsection (1), carry out public participation and shall, for this purpose—</p> <p>(a) publicise the plan in at least one newspaper of wide circulation in the area with respect to which the extractive activity is to be undertaken and through such other media as the Committee may consider appropriate;</p> <p>(b) involve the relevant stakeholders in the extractive industry or persons that are likely to be affected by the decision to approve the application to engage in the extractive activity and afford such persons an opportunity to be heard; and</p> <p>(c) take into account any representations that may be made to the Committee prior to making its decision.</p>	<p>Introduce the following clause:</p> <p>“23(2)(d) obtain approval of the county governments”</p>	<p>The clause ensures that county governments are directly involved in decisions regarding local content plans, aligning with the constitutional mandate for devolution, local governance, and community participation. This promotes accountability, responsiveness, and ensures that local interests are adequately represented and protected.</p>
PART VI – Miscellaneous Provisions	<p>57(4)(a) For the purposes of Article 94(6) of the Constitution —</p> <p>(a) the authority of the county executive committee member to make Regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and</p>	<p>Amend to read</p> <p>“(4) For the purposes of Article 94(6) of the Constitution —</p> <p>(a) the authority of the county executive committee member to make Regulations shall include not only the implementation of the provisions of this Act but also the development of additional regulations to address local</p>	<p>The proposed amendment aligns with constitutional principles, including the promotion of devolution and local governance (Article 174), recognizing the distinctive yet interdependent nature of national and county governments (Article 6(2)). It facilitates the efficient discharge of county functions by allowing counties to develop additional</p>

needs and contexts, provided these regulations do not conflict with the Act's primary objectives;"

regulations and participate in the national regulatory process, as outlined in Article 186. Moreover, it upholds national values such as public participation and inclusiveness (Article 10) by actively involving county governments in the regulatory process and empowering them to address local needs effectively.

ANNEX 8: SUBMISSIONS BY EXTRACTIVE
INSIGHT CENTRE



EXTRACTIVE INSIGHT CENTRE

16th April 2024

The Clerk of The Senate

Parliament Buildings

P.O. Box 41842-00100 Nairobi, Kenya

Attention: Standing Committee on Energy

Dear *Hon. J. Nyengenyne*,

RE: Memorandum on The Local Content Bill, 2023 (Senate Bills No. 50 of 2023) for the Standing Committee on Energy

The Extractive Insight Centre (EIC), an Africa-focused think tank specializing in the extractive resources industries, respectfully submits this memorandum to the Standing Committee on Energy regarding The Local Content Bill, 2023..

We commend the intent of the Bill to maximize the benefits of Kenya's extractive industries for its citizens and economy. After careful analysis, we offer our recommendations to strengthen the legislation which are provided in the attached memorandum.

The Extractive Insight Centre believes a well-crafted Local Content Bill has the potential to significantly enhance Kenya's development trajectory. Addressing the concerns outlined above will create a more streamlined, effective and investor-friendly regulatory framework. This will maximize the long-term benefits of Kenya's extractive sector for Kenyan citizens and businesses.

We are available to provide further testimony should the Standing Committee on Energy deem it beneficial. We can be reached on our office line +254700519704 or directly on my personal cell phone: +254723229117

Sincerely,

Stephen William Mwakesi

Executive Director,

EXTRACTIVE INSIGHT CENTRE

Enclosures:

1. Memorandum on The Local Content Bill, 2023



EXTRACTIVE INSIGHT CENTRE

CLAUSE	ISSUE	RECOMMENDATION
<p>Interpretation</p> <p>"Cabinet Secretary" means the Cabinet Secretary responsible for matters related to the extractive industry;</p>	<p>Ambiguous Definition of "Cabinet Secretary"</p> <ul style="list-style-type: none">• Problem: The broad definition of 'Cabinet Secretary', referring to the minister responsible for the extractive industry, doesn't address the reality that Kenya often has separate Cabinet Secretaries for petroleum and mining.• Consequence: This ambiguity could lead to:<ul style="list-style-type: none">○ Conflict and confusion over which Cabinet Secretary has ultimate authority in certain instances.○ Delays in decision-making or approval processes where multiple ministries are involved.○ Inconsistent policy implementation across different sectors of the extractive industry.	<p>REVISE</p> <ul style="list-style-type: none">• Option 1: Designated Cabinet Secretary: The Bill should explicitly designate a single Cabinet Secretary as responsible for administering the Local Content Act, even if ministerial portfolios are divided. This ensures a clear point of authority.• Option 2: Formal Coordination Mechanism: If administration must remain split, the Bill needs to establish a mandatory inter-ministerial coordination committee with clearly defined roles and decision-making procedures when the law impacts multiple sectors.



EXTRACTIVE INSIGHT CENTRE

CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 11: Functions of the National Government and role of the Cabinet Secretary</p> <p>7. In ensuring that the National Government fulfils its obligations under section 6, the Committee shall—</p> <p>(a) facilitate the realisation of local content through—</p> <p>(v) ensuring that all local content activities shall include participation of local persons at a quota of not less than thirty percent;</p>	<p>1. Skillset Mismatch:</p> <ul style="list-style-type: none">• Specialized Skills: Many technical roles in mining require specialized education and experience that may not be readily available in the Kenyan workforce at a sufficient quantity to meet a 30% quota immediately. Forcing this could lead to underqualified individuals in critical positions.• Safety & Efficiency: Mining is a high-risk industry. Rushing to replace experienced personnel with less-qualified locals simply to meet a quota could compromise safety standards and operational efficiency, harming the entire project. <p>2. Sector-Specific Challenges</p> <ul style="list-style-type: none">• Capital Intensity: Mining is a capital-intensive sector with significant upfront investment requirements. Insisting on a substantial local content quota too early could scare away investors who see the provision as inflexible and a financial risk.	<p>REVISE Clause (a)(v)</p> <ul style="list-style-type: none">• Phased-in Approach: A more successful approach would be a gradual increase in the quota over time, tied to measurable advancements in local training programs and the growth of qualified Kenyan suppliers in the mining sector.• Incentives over Mandates: Focus on providing incentives and support to local businesses to make them more competitive and able to meet quality standards on their own, rather than relying on a forced quota.• Skills-Focused Training: Prioritize investment in mining-specific education and skills development programs in partnership with local educational institutions. This addresses the root cause of the supply gap in a sustainable way.



EXTRACTIVE INSIGHT CENTRE

	<ul style="list-style-type: none">• Global Supply Chains: Mining relies on complex global supply chains for specialized equipment and technical parts. A strict quota could disrupt those supply chains and lead to project delays and cost overruns.• Long-term Development: While boosting local content is important, it must be done sustainably. A sudden quota could backfire, harming the development of local businesses in the long run if those businesses are forced into roles they are not yet prepared for.	
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EXTRACTIVE INSIGHT CENTRE

CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 8: Duties of the County Governments.</p> <p>8. (1) Each county government shall, for the performance of its functions under section 6 of this Act —</p> <p>(d) monitor and put in place measures to facilitate the implementation of local content performance by all operators in the respective county in accordance with the provisions of this Act;</p> <p>(e) conduct regular audits for the purposes of monitoring the compliance with the provisions of this Act in the respective county;</p>	<ul style="list-style-type: none"> • Duplicated Oversight: If county governments are granted broad monitoring and audit powers for local content compliance, this risks overlapping significantly with the duties of the Local Content Development Committee, and possibly with other national regulatory bodies, like EPRA, with respect to the extractive industry. Confusion for operators on who has ultimate authority could lead to delays and contradictory expectations. • Conflicting Standards: Without careful coordination, there's a danger that counties could develop their own local content requirements that differ from national standards, creating a patchwork of regulations that complicate compliance for businesses operating in multiple counties. • Increased Opportunity for Corruption: Granting counties broad discretionary oversight power opens the door to rent-seeking behavior by local officials. Companies could face unnecessary audits and roadblocks unless they give in to informal demands. 	<p>Option 1: Limit County Role to Information Gathering</p> <ul style="list-style-type: none"> • Revision to Clause 8(1)(d): <p>Counties monitor and gather data on local content implementation within their jurisdiction, but this data is reported to and analyzed by the Local Content Development Committee instead of counties acting independently.</p> <p>The Committee gains access to valuable on-the-ground information and can use it for national-level oversight. Counties still play a role, but cannot unilaterally impose new regulations or interfere with operations.</p> <p>Option 2: Collaborative Partnership Model</p> <ul style="list-style-type: none"> • Establish a formal coordination mechanism:



EXTRACTIVE INSIGHT CENTRE

	<ul style="list-style-type: none">• Slowing Down Operations: Increased layers of bureaucracy, and the need to satisfy both national and county-specific requirements, could significantly increase project timelines and raise operational costs, deterring investment. <p>3. Counterproductive to Investment Attractiveness</p> <ul style="list-style-type: none">• Investor Confidence: Investors in the extractive sector seek predictable regulatory environments. The potential for county-level interference, especially if the perception is that this creates opportunities for corruption, would make Kenya less attractive compared to other destinations.• Contradicts National Focus: The Local Content Bill seems built on the premise of creating a consistent national framework. Devolving too much power to counties could undermine its core goals of standardization and efficiency.	<p>Amend the bill to mandate that the Committee creates a framework defining how it shares information with counties, sets common standards for local content reporting, and allows counties to raise red flags when they suspect non-compliance.</p> <ul style="list-style-type: none">• County Liaison Officers: Designate a specific officer within each relevant county government as the liaison for local content matters, receiving training provided by the Committee. <p>This empowers counties to be proactive partners, but prevents them from creating their own systems or becoming undue burdens on operators.</p> <p>Option 3: Capacity-Focused Approach</p> <ul style="list-style-type: none">• Remove audit rights: DELETE Clause8(1)(e) entirely. Counties are not equipped to conduct the same level of technical audits on local content as the Committee is.
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EXTRACTIVE INSIGHT CENTRE

		<ul style="list-style-type: none">• Invest in County Staff: The bill could establish a fund to support the training of county-level staff in understanding local content requirements and industry specifics.• Why it's better: This addresses the issue long-term. Counties will become knowledgeable about local content goals, enabling them to be constructive advisors to local businesses and communities without overstepping into the realm of formal oversight. <p>Option 4: Enhanced Public Participation and Transparency</p> <ul style="list-style-type: none">• Amend Clause 53: Expand Clause 53, which deals with public participation, to explicitly require the following:<ul style="list-style-type: none">◦ County-Led Consultations: Operators must conduct public hearings and consultations within the relevant county prior to submitting their local content plan to the Committee. County governments would
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EXTRACTIVE INSIGHT CENTRE

		<p>be responsible for facilitating and overseeing these consultations.</p> <ul style="list-style-type: none">○ Focus on Impact Assessment: These consultations must go beyond simply informing communities and include thorough assessment of potential positive and negative impacts of the extractive project specifically on that county.○ Documentation and Reporting: County governments would be required to produce detailed reports on the outcomes of the consultations and submit them to the Committee along with the operator's local content plan. <ul style="list-style-type: none">• Amend Clause 23: Modify Clause 23, which deals with Committee review of local content plans, to mandate the following:<ul style="list-style-type: none">○ Consideration of County Reports: The Committee must thoroughly review
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EXTRACTIVE INSIGHT CENTRE

		<p>county-submitted reports from public consultations, and may not approve a local content plan if it finds major unresolved concerns raised by the community.</p> <ul style="list-style-type: none">○ Dispute Resolution: The Committee may act as a mediator or facilitator to resolve disputes that arise from county-level public consultations.
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EXTRACTIVE INSIGHT CENTRE

CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 9: Establishment of the Local Content Development Committee. Functions of the Committee.</p> <p>9. There is established the Local Content Development Committee (LCDC)</p>	<p>Duplication of Duties and Regulatory Burden</p> <ul style="list-style-type: none"> • Redundancy with Existing Bodies: The Mineral Rights Board (MRB) as per the Mining Act and Energy and Petroleum Regulatory Authority (EPRA) already handle many responsibilities outlined for the LCDC, including reviewing license applications, monitoring compliance with relevant laws (Mining Act and Petroleum Act respectively), and promoting responsible mineral and petroleum development. Creating a new Committee duplicates these efforts, potentially leading to confusion and inefficiency. • Increased Costs for Industry: Companies will now face interacting with yet another regulatory body, with additional reporting requirements and potential delays as the LCDC establishes its processes. <p>Erosion of Established Systems</p>	<p>REVISE</p> <ul style="list-style-type: none"> • Strengthen Existing Bodies: Amend the Bill to explicitly empower the MRB and EPRA to consider local content requirements during their existing processes for reviewing licenses and monitoring compliance. • Coordination Committee: Establish a smaller, inter-ministerial committee comprised of representatives from relevant ministries (Mining, Energy, etc.) to coordinate local content strategies across different sectors, without duplicating the work of existing regulatory bodies. • Leverage Existing Expertise: Instead of creating a new Committee, the Bill could strengthen the existing roles of the MRB and EPRA, granting them additional resources and authority to handle local content



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	<ul style="list-style-type: none">• Weakening Existing Regulators: The LCDC's broad oversight powers could undermine the authority of the MRB and EPRA, creating uncertainty about which body is ultimately responsible for enforcing regulations and resolving disputes.• Disruption and Transition Costs: Shifting some oversight from established bodies to a new Committee would cause disruption in the industry. Businesses already familiar with existing regulations would need to adapt to a new framework, incurring transition costs and delays.	<p>considerations within their mandates.</p> <ul style="list-style-type: none">• Focus on Core Competencies: The MRB and EPRA have established expertise in overseeing technical aspects of mining and petroleum projects. Building on this experience might be more efficient than creating a new body with a broader, less technical focus.• Streamlined Regulatory Framework: A streamlined structure with clear lines of authority would benefit both industry and government. Companies would face a single point of contact for local content requirements, simplifying compliance.
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EXTRACTIVE INSIGHT CENTRE

CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 11: Assessment of local capabilities.</p> <p>11. The Committee shall —</p> <p>(a) within a period of six months from the date of its constitution, develop, and keep under regular review, a comprehensive register of all equipment and service categories required to effectively supply the needs of the extractive industry;</p> <p>(b) assess the capacity of the local industry to supply the goods and services identified under paragraph (a); and</p> <p>(c) adopt policies and measures aimed at progressively enhancing the capabilities of local enterprises to compete effectively on quality, price, quantity and reliability in the supply of goods and services required in the extractive industry.</p>	<ul style="list-style-type: none">• Unrealistic Timelines: Six months is a highly ambitious timeframe for these complex tasks, particularly in dynamic sectors like extractive industries. Thoroughly understanding equipment and service needs, let alone assessing gaps compared to local capacity, could easily take much longer.• Data & Information Gaps: Kenya may lack comprehensive, up-to-date data on both current extractive industry needs and domestic supply capacities. Gathering this data accurately is a prerequisite to meaningful analysis.• Cost and Expertise: This endeavour would likely be expensive, potentially requiring outside consultants to make up for the Committee's initial lack of industry-specific knowledge and data-gathering infrastructure. This is a burden on taxpayers, especially if rushed work leads to flawed decision-making.	<p>REVISE Clause 11</p> <ol style="list-style-type: none">1. Phased & Iterative Process<ul style="list-style-type: none">• Prioritize core functions first: The Committee's initial focus should be on establishing its operational procedures, building internal capacity, and outlining processes for reviewing and assessing local content plans.• Data collection as an ongoing task: Treat information gathering on industry needs and local capabilities as an ongoing task, integrated into the Committee's work, rather than a one-time deliverable.• Periodic Reviews: Instead of one massive upfront effort, mandate regular assessments (e.g., every 2-3 years) of the register, allowing the Committee to adapt to changing conditions.2. Collaboration and Stakeholder Input



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		<ul style="list-style-type: none">• Avoid Isolation: The Committee should not aim to do this alone. Involve industry associations, mining and petroleum companies, and relevant government agencies as information sources and partners throughout the process.• Leverage Existing Data: Explore whether any ministries, industry bodies, or even individual companies have existing data that can form a starting point, saving time and resources. <p>3. Mandate Flexibility and Agility</p> <ul style="list-style-type: none">• Amendments to Clause 11: Revise the bill to replace rigid timelines with language emphasizing a phased approach with regular review cycles. <p>Focus on the Process, Not Just the Deliverable: Emphasize the importance of establishing transparent and collaborative data collection and analysis mechanisms over a specific end product that might be quickly outdated.</p>
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CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 12: Membership of the Committee</p> <p>12. (1) The Committee shall consist of—</p> <p>(a) a chairperson appointed by the Cabinet Secretary in accordance with subsection (2);</p> <p>(b) the Principal Secretary responsible for matters relating to petroleum and natural gas or a representative designated in writing;</p> <p>(c) the Principal Secretary responsible for matters relating to finance or a representative designated in writing;</p> <p>(d) the Principal Secretary responsible for matters relating to industry and enterprise development or a representative designated in writing;</p> <p>(e) two persons nominated by the Council of Governors;</p> <p>(f) two persons nominated by players in the extractive industry in such manner as the Cabinet Secretary shall determine and</p>	<p>Composition of the committee: The absence of a Principal Secretary (PS) from the state department responsible for mining creates a gap in high-level representation from the very department most directly affected by the Committee's work. Including the PS fosters smoother collaboration between the Committee and the Ministry, and ensures relevant policy considerations are brought to the table.</p> <p>Cabinet Secretary Chairing the Committee The bill proposes the Cabinet Secretary to be the Chair of the LCDC.</p> <p>Challenges with this Structure</p> <ul style="list-style-type: none"> • Potential Conflict of Interest: The Cabinet Secretary plays a central policy-making role in government. Chairing the LCDC, a body tasked with advising the government on local content strategies, creates a potential conflict of interest. • Reduced Committee Independence: Having the Cabinet Secretary as Chair could be perceived as stifling independent and objective advice from the Committee. 	<p>REVISE</p> <ol style="list-style-type: none"> 1. Include a Relevant Permanent Secretary: Amend Clause 12(1) of the Bill to mandate the inclusion of the Permanent Secretary (PS) from the Ministry responsible for mining on the LCDC. 2. Mandate Industry Experience for Chairperson: Amend Clause 12(1) to require that the President appoints a Chairperson with at least 10 years of demonstrable experience in the extractive industries. 3. Streamline Operational Structure: Consider alternatives to establishing a dedicated Director position for the LCDC (Clause 19). <ul style="list-style-type: none"> • Options <ul style="list-style-type: none"> ◦ Ministry Official Assignment: Authorize the relevant Ministry, with the Public Service Commission's approval, to assign an existing qualified officer to



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<p>appointed by the Cabinet Secretary; and (g) the Director who shall be the secretary to the Committee.</p> <p>19. (1) The Cabinet Secretary shall designate an appropriate administrative unit within the Ministry responsible for matters relating to the petroleum industry to serve as the Secretariat of the Committee. (2) The Secretariat shall consist of — (a) the Director who shall be competitively recruited by the Public Service Commission and appointed by the Cabinet Secretary; and (b) such other public officers as the Cabinet Secretary shall, in consultation with the Committee, designate for the proper performance of the functions of the secretariat under this Act.</p>		<p>manage the Committee's day-to-day operations.</p> <ul style="list-style-type: none">○ Secondment: Draw a Director-level officer on secondment from EPRA or the Department of Mines.○ Hybrid Model: Appoint a senior Ministry official to oversee the Committee, supported by a dedicated (but non-Director level) staff person for administrative tasks.
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CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 20: Functions of the Secretariat.</p> <p>20. The functions of the Secretariat shall be to —</p> <p>(a) provide technical and administrative services to the Committee;</p> <p>(b) implement the decisions, strategies, programmes and policies of the Committee;</p> <p>(c) make recommendations to the Committee on the formulation and implementation of programmes for the achievement of the functions of the Committee;</p> <p>(d) on behalf of the Committee, establish and maintain relationships with international, national and local institutions involved in the extractive industry and other related activities;</p> <p>(e) collaborate with State agencies, financial institutions and other stakeholders in the implementation of policies, strategies and programmes developed pursuant to this Act;</p>	<p>Arguments Against an Overly Broad, Standalone Committee Mandate</p> <ol style="list-style-type: none"> 1. Redundancy and Bureaucracy: Many functions outlined for the Committee duplicate those already handled by bodies like EPRA and the Minerals Rights Board. Creating a new layer of oversight adds bureaucracy, increasing costs for operators and potentially leading to conflicting instructions and slowdowns. 2. Erosion of Existing Expertise: EPRA and MRB have established knowledge of their respective sectors. A new Committee would lack that depth initially, and would likely either duplicate efforts or rely excessively on those existing bodies anyway. This calls into question the value of this new body. 3. Increased Costs for Government: A broad Committee with a stand-alone secretariat adds to the Government wage bill and operational expenditure, at a time when efficiency is a concern for taxpayers. 	<p>REVISE</p> <ol style="list-style-type: none"> 1. Re-Allocation of Functions to Existing Bodies: <ul style="list-style-type: none"> Amend the bill to explicitly expand the mandate of EPRA and MRB to encompass the local content assessment and advisory roles that would have been the Committee's. These bodies could submit periodic reports on local content progress to a slimmed-down inter-ministerial coordination committee for cross-sector policy discussions. 2. Streamlined Committee Focused on Specific Gaps <ul style="list-style-type: none"> Analyze the specific local content development functions that are NOT being effectively handled at present. Consider a smaller Committee focused solely on those gaps, such as public



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<p>(f) train, disseminate information and provide linkages and networks with local and international institutions which engage in capacity building on local content development and application;</p> <p>(g) conduct studies, research and investigations in order to enhance the development of local content in the extractive industry in Kenya;</p> <p>(h) maintain a local content data base setting out information on —</p> <p>(i) projects, operations and programmes on extractive activities with respect to each county, including the goods and services required with respect to the activities and the timelines for their delivery;</p> <p>(ii) suppliers of goods and services relevant to the extractive industry in Kenya;</p> <p>(iii) human resource development programmes and initiatives of the operators and their connected entities, including work permits awarded and their related commitments;</p> <p>(iv) business development</p>		<p>outreach, data collection, or cross-sector policy coordination.</p>
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<p>programmes and initiatives; and (iv) the progress of activities by operators, State- owned agencies and connected entities in the adoption of local content; (j) make arrangements for periodical evaluation of the policies and programmes in relation to the objects and functions of the Committee; and (k) perform such other functions as may be assigned to it by the Committee.</p>		
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CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 21: Minimum local content</p> <p>21. (1) The Cabinet Secretary shall, in consultation with the Committee and by notice in the Gazette, set the minimum local content to be applied by an operator engaging in any extractive activity undertaken under this Act.</p>	<ul style="list-style-type: none">• Lack of Clarity: Leaving minimum local content quotas to regulations creates uncertainty for investors. They won't have a clear picture of compliance requirements upfront, making project planning and budgeting difficult.• Frequent Policy Shifts: Regulations are easier to amend than legislation. Investors need stability in the regulatory environment to justify long-term investments in the extractive sector.• Clear Expectations from the Start: Specifying minimum local content requirements directly in the bill sets a transparent benchmark from the outset. Investors understand their obligations clearly and can factor them into their business decisions.• Level Playing Field: A consistent, legislatively mandated minimum content level ensures fairness across all operators in the extractive sector.	<p>DELETE Clause 21</p> <p>Alternatively consider:</p> <ol style="list-style-type: none">1. Flexibility for Specifics: While the bill can prescribe a minimum threshold, it can delegate the determination of specific local content requirements (e.g., percentages for different goods or services) to regulations. This allows for some regulatory flexibility based on sector specifics and evolving market conditions.2. Review and Revision Clauses: The bill can include provisions for periodic review of the minimum local content thresholds. This allows for adjustments over time, but through a more deliberate legislative process, ensuring stability for most day-to-day operations.



CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 22: Local content plan.</p> <p>22. (1) A person shall, before applying for, or bidding for a licence, permit or interest and before engaging in any extractive activity, prepare and submit to the Committee a local content plan with respect to the extractive activity in the prescribed form.</p> <p>(2) An operator shall, for the purposes of subsection (1),—</p> <p>(a) submit a long-term local content plan corresponding to the work programme with respect to the entire project which shall be submitted together with the bid or application to engage in the extractive activity; and</p> <p>(b) once approval to carry out the extractive activity is granted, submit an annual local content plan with respect to each year of the programme in relation to the extractive activity.</p> <p>(3) An operator shall, in preparing a local content plan, set out the</p>	<p>Clause 22 of the Local Content Bill mandates applicants for extractive licenses or interests to submit a local content plan to the Committee before their application is even considered.</p> <p>Challenges with Pre-Application Plans:</p> <ul style="list-style-type: none"> • Delaying Investment: This requirement creates a significant upfront hurdle, potentially delaying investment decisions and slowing down extractive sector development. Investors may be discouraged by the additional time and resources needed to create a detailed plan without knowing if their license application will be successful. • Uncertainty and Inflexibility: Applicants may struggle to create a comprehensive plan without a clear understanding of the specific project or the geological realities of the proposed extraction site. Early-stage plans could be inaccurate or overly generic, hindering their effectiveness. • Increased Costs for Applicants: Preparing detailed local content plans requires investment in 	<p>1. DELETE Clause 22:</p> <p>Remove the pre-application local content plan requirement entirely.</p> <p>2. Harmonization with Existing Acts:</p> <ul style="list-style-type: none"> ○ Leverage existing local content provisions within the Mining Act and Petroleum Act. ○ Applicants would reference those established requirements as part of their standard application package. ○ This approach ensures local content considerations are integrated without creating additional hurdles. <p>3. Post-License Local Content Plans:</p> <ul style="list-style-type: none"> ○ Consider requiring a local content plan to be submitted after a license is granted.



<p>following information –</p> <p>(a) the procurement, the expected quality of main goods and services and utilization of locally produced goods and services available in the locality in which the extractive activity is to be undertaken, where such goods meet established standards in the extractive industry;</p> <p>(b) the qualification requirements and employment of local persons to be engaged in the extractive or related activities and the standards for the remuneration of such employees;</p> <p>(c) workforce development strategies in relation to locals including training plans and projections to address any skill gaps that may have been identified in relation to the local labour force;</p> <p>(d) strategies for the support of local participation in the activities of the operator; and</p> <p>(e) the exploration and production work programme and budget estimate with regard to the local content component of the project.</p>	<p>time, personnel, and potentially external consultants. This adds unnecessary cost to the application process, especially for smaller companies.</p> <p>Challenges with Annual Local Content Plans:</p> <ul style="list-style-type: none">• Dynamic Nature of Extractive Projects: Projects in the extractive sector undergo frequent changes due to factors like geological discoveries, market fluctuations, and technological advancements. An annual plan might quickly become outdated, creating unnecessary work for both operators and the Committee.• Administrative Burden: Submitting, reviewing, and potentially revising a local content plan every year creates a significant administrative burden for both companies and the Committee. This diverts resources that could be used for more productive activities.• Lack of Value-Add: Annual plans might be largely repetitive, especially for long-term projects with stable operations. They risk becoming a bureaucratic exercise rather than a tool for	<ul style="list-style-type: none">○ This allows companies to tailor their plans to the specific project and geological context.○ The Committee could then review and approve the plan during the initial licensing stages. <p>4. Local Content Reporting</p> <p>(a) Biennial or Longer Reporting: Amend the Bill to require local content plan submissions every two to three years, aligning better with longer-term project planning cycles.</p> <p>(b) Reporting Tied to Milestones: Instead of fixed annual dates, require local content plan updates to be submitted when the project reaches major milestones (e.g., commencement of production, significant technological change, expansion activities). This ensures reporting is relevant to actual project developments.</p>
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<p>(4) An operator shall set out, in the operator's local content plan, the strategies through which the operator shall</p> <p>—</p> <p>(a) give first consideration to quality goods produced and services delivered locally; and</p> <p>(b) give first consideration to qualified local persons with respect to employment by the operator.</p> <p>(5) An applicant shall, subject to the provisions of this Act and for the purposes of subsection (2), include in the local content plan, the following plans –</p> <p>(a) employment and skills development plan;</p> <p>(b) research and development plan;</p> <p>(c) technology transfer plan;</p> <p>(d) financial services plan;</p> <p>(e) succession plans for positions not held by Kenyans; and</p> <p>(f) such other plans as the Cabinet Secretary may prescribe.</p>	<p>meaningful strategic advancement of local content.</p>	<p>(c) Focus on Progress Reporting: Shift the emphasis from comprehensive annual plans to more concise annual progress reports. These would highlight achievements, challenges, and any necessary adjustments to the existing local content plan, without requiring full plan redevelopment each year.</p>
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EXTRACTIVE INSIGHT CENTRE

CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 23: Review of local content plan.</p> <p>23. (1) The Committee shall review and assess the local content plan submitted to it by an applicant under section 22 within a period of sixty days from the date of receipt of the plan.</p> <p>(2) The Committee shall, in reviewing and assessing the local content plan under subsection (1), carry out public participation and shall, for this purpose—</p> <p>(a) publicise the plan in at least one newspaper of wide circulation in the area with respect to which the extractive activity is to be undertaken and through such other media as the Committee may consider appropriate;</p> <p>(b) involve the relevant stakeholders in the extractive industry or persons that are likely to be affected by the decision to approve the application to engage in the extractive activity and afford such persons an opportunity to be</p>	<p>Clause 23 mandates public participation in reviewing local content plans submitted by applicants before a license is granted. This occurs within a 60-day timeframe.</p> <p>Concerns with Public Participation at this Stage:</p> <ul style="list-style-type: none">• Investor Apathy: Making detailed plans public before license approval could discourage investors. They may be hesitant to reveal commercially sensitive information or invest resources in plans that might be rejected.• Frivolous Objections: The 60-day window creates a risk of frivolous objections from third parties, potentially delaying or derailing projects for strategic or non-constructive reasons.• Limited Impact: Public participation might be less effective at this early stage when project details and local content opportunities are still under development.	<p>1. DELETE Clause 23:</p> <p>Remove the requirement for public participation before license issuance.</p> <p>2. Public Access to Approved Plans: Make approved local content plans publicly available for inspection at the Committee's offices or upon a written request, following the Freedom of Information Act (FOIA) guidelines.</p>



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<p>heard; and</p> <p>(c) take into account any representations that may be made to the Committee prior to making its decision.</p> <p>(3) The Committee shall, upon reviewing and assessing a local content plan, inform the applicant of its decision to approve or refuse the approval of the plan within a period of seven days from the date of its decision.</p> <p>(4) Where the Committee refuses to approve a local content plan, it shall furnish the applicant with a written statement of the reasons for the refusal which shall include recommendations to the application.</p> <p>(5) An applicant may, where applicable, within a period of thirty days from the date of notification of the decision by the Committee refusing to approve the local content plan and receipt of the written statement under subsection (4), –</p> <p>(a) revise the local content plan taking into account the</p>		
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<p>recommendations of the Committee; and (b) submit the revised local content plan to the Committee. (6) Where the Committee fails to notify the applicant of its approval or otherwise of the local content plan or revised local content plan, the local content plan shall be deemed to be approved upon the expiry of ninety days from the date of submission or re-submission of the local content plan, as the case may be.</p>		
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CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 24: Local content certification</p> <p>24. (1) The Cabinet Secretary shall, in consultation with the Committee, prescribe rules on local content certification and in so doing shall –</p> <p>(a) prescribe a methodology for determining the percentage of local content in goods and services acquired or delivered in Kenya;</p> <p>(b) the specifications to be applied in determining the achievement of the minimum local content levels and in-country spending for the provision of goods and services in the extractive industry value chain;</p> <p>(c) develop standards for the accreditation of independent companies to certify such levels of local content;</p> <p>(d) accredit independent companies as independent certifying agents under this Act; and</p> <p>(e) enforce compliance with the</p>	<ol style="list-style-type: none">1. Redundancy with the Committee: The purpose of the Local Content Development Committee is to review and approve local content plans. Establishing a parallel certification system duplicates efforts and creates potential conflicts over who has ultimate authority on approving local content compliance.2. Questionable Added Value: If the Committee is competent in assessing local content, it's unclear what additional value the certification process brings. Will these certifying agents have more specialized knowledge than the Committee itself?3. Bureaucracy and Cost: Creating a separate certification system with accredited agents introduces an additional layer of red tape and potential fees. This adds administrative and financial burdens for operators without a clear justification of the benefit.4. Potential for Corruption: Introducing certifying agents as additional gatekeepers creates potential new avenues for rent-seeking behaviour. This could add to project costs or	<ul style="list-style-type: none">• DELETE Clause 24: Remove the entire provision on local content certification and certifying agents.• Strengthen the Committee: Clearly establish the Local Content Development Committee as the sole authority for reviewing and approving local content plans. If necessary, amend the bill to ensure the Committee possesses the expertise to fulfil this role effectively.



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<p>provisions of this Act by accredited independent certifying agents.</p> <p>(2) An accredited independent certifying agency shall be responsible for measuring the local content found in goods and services acquired or contracted by an operator under this Act.</p> <p>(3) A certificate issued by an accredited independent certifying agency shall be proof of local content compliance by an operator, and shall be attached to the annual reports submitted to the Committee by an operator under this Act.</p> <p>(4) The Committee shall use the local content certificate to audit the fulfilment by an operator, of its obligations to local content development under this Act.</p>	<p>introduce unpredictable delays due to informal pressures.</p>	
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CLAUSE	ISSUE	RECOMMENDATION
Sections 25-29: Employment and Skill Development Plan	<ol style="list-style-type: none">1. Implementation Challenges: The bill heavily emphasizes local hiring and workforce goals, but may underestimate the current skills gap in Kenya's extractive sectors. How will the Committee address situations where qualified Kenyan workers are genuinely unavailable?2. Inflexibility: Could the strict emphasis on local hires backfire if it forces companies to fill positions with less-qualified individuals, harming productivity? Could it deter investors if they perceive an inability to source the specialized workforce needed for complex projects?3. Training Provisions: While skills development is mentioned, the bill could be strengthened by detailing how to build a robust pipeline. Does this involve partnerships with educational institutions? Funding for scholarships?	<p>REVISE the Clauses</p> <ol style="list-style-type: none">1. Phased-In Approach: Consider a more gradual increase in local hiring quotas over time, with targets set in realistic consultation with industry and training providers.2. Exemptions when Necessary: Include a process for allowing temporary exemptions when the Committee, in consultation with the operator, agrees that there truly are no qualified Kenyans available.3. Strengthen Skills Focus: Sections 25-26 could be expanded to provide more detail on:<ul style="list-style-type: none">o Collaboration with Training Institutions: Partnerships to tailor curriculum to industry needs.o Funding for Scholarships and Internships: Creating concrete financial support for Kenyan students. <p>Embedding in Other Acts: Since the Local Content Bill will apply across</p>



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		<p>sectors, incorporating similar workforce provisions into the Mining Act and Petroleum Act is sensible.</p>
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EXTRACTIVE INSIGHT CENTRE

CLAUSE	ISSUE	RECOMMENDATION
Sections 30-33: Transfer of Technology and Research Plan	<ol style="list-style-type: none">1. Mandated Technology Transfer: The language in Clause 30 seems to mandate technology transfer plans as part of any extractive project. This could raise concerns about:<ul style="list-style-type: none">o Intellectual Property: Will operators be hesitant to share proprietary technology, particularly if they feel IP rights won't be adequately protected in Kenya?o Feasibility: Is it realistic to expect technology transfer in every instance? Some projects may rely on highly specialized technologies not easily transferred.2. Focus on Top-Down Process: Sections 30 and 31 emphasize government-driven plans and guidelines. While strategic guidance is important, there might be a missed opportunity to incentivize companies to initiate innovative technology transfer programs.3. Lack of Clarity on Implementation: The sections are somewhat vague on the 'how' of	<p>REVISE the Clauses</p> <ol style="list-style-type: none">1. Balanced Approach: Shift the focus from mandated technology transfer plans to creating an enabling environment that facilitates and incentivizes technology transfer.2. Incentives over Mandates: The bill could include provisions for tax incentives or preferential treatment in procurement for companies demonstrating significant technology transfer efforts that go beyond basic compliance.3. Partnership Mindset: Encourage operators to collaborate with the Committee and local educational/research institutions to identify areas where technology transfer would have the maximum long-term impact for Kenya.4. Detail on Mechanisms: Include more detail on potential mechanisms for technology transfer, such as:<ul style="list-style-type: none">o Skills Development Grants: Subsidies for



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	<p>technology transfer. Will this involve training, joint ventures, equipment sharing, or other models?</p>	<p>training Kenyan workers on specialized equipment or software.</p> <ul style="list-style-type: none">○ Equipment Sharing: Facilitating access to high-tech equipment for Kenyan companies or academic institutions for training or research purposes.○ Joint Ventures: Promoting partnerships between foreign operators and Kenyan tech firms.
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CLAUSE	ISSUE	RECOMMENDATION
	<ul style="list-style-type: none">• Excessive Penalty: Non-renewal of license is an extremely harsh penalty for what could be minor delays or unintentional shortcomings in technology transfer implementation. This creates a disproportionate risk for investors.• Disincentive for Complex Projects: Technology transfer is often a complex and long-term process, especially for highly specialized technologies. The threat of license revocation could deter investment in ambitious projects with high potential for technology transfer but slower implementation timelines.• Counterproductive to Partnership: A punitive approach could damage the working relationship between the operator and the Committee, hindering the collaboration that is essential for effective technology transfer.	<p>DELETE Clause 34 in its entirety. This eliminates the excessive penalty and the disincentive it creates.</p> <p>Alternatives:</p> <ol style="list-style-type: none">1. Accountability without Excessive Punishment: Maintain appropriate monitoring and accountability mechanisms, but with more proportionate consequences for non-compliance:<ul style="list-style-type: none">o Graded Penalties: Introduce a system of tiered fines or warnings for minor or first-time non-compliance issues related to technology transfer. Reserve license revocation only for the most egregious cases of willful non-cooperation.o Remedial Action Plans: Instead of immediate punishment, require operators to submit a revised technology transfer plan addressing the identified



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		<p>shortcomings. This prioritizes finding solutions over punitive measures.</p>
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CLAUSE	ISSUE	RECOMMENDATION
<p>Sections 35-37: Research and Development Plan</p> <p>35. (1) An operator shall, before the commencement of its extractive activities, prepare and submit to the Committee, its research and development plan.</p> <p>(2) A research and development plan shall contain –</p> <p>(a) a five-year plan of the research initiatives to be undertaken by the operator in Kenya;</p> <p>(b) a plan on the expenditure to be incurred in implementing the research and development plan; and</p> <p>(c) request for proposals for research and development initiatives related to the activities of the operator.</p> <p>(3) An operator shall -</p> <p>(a) annually review and update the research and development plan submitted to the Committee under subsection (1); and</p> <p>(b) submit the updated plan to the Committee, annually.</p>	<p>General Issues:</p> <ol style="list-style-type: none"> Clarity and Specificity: The bill requires operators to prepare a research and development plan without specifying what constitutes acceptable research activities or the level of detail required in the plans. This could lead to inconsistencies in implementation and expectations. Regulatory Burden: The requirement for operators to submit annual updates and proposals may be viewed as a regulatory burden, particularly if the processes are not streamlined. This could deter potential investors who are concerned about operational inefficiencies and bureaucratic hurdles. Funding Allocation: The stipulation that operators set aside a percentage of gross revenue for R&D activities, with specific allocations for universities and in-house facilities, may not consider the actual needs or capacities of these 	<p>REVISE Clauses</p> <p>For Exploration-Stage Operators:</p> <ol style="list-style-type: none"> Flexibility in Early Stages: Introduce provisions that allow for flexibility in R&D obligations for exploration-stage operators. For example, defer R&D spending requirements until a revenue threshold is reached or allow for scaled contributions based on the stage of exploration and development. Tailored R&D Plans: Allow exploration-stage operators to submit more general R&D plans that focus on initial exploration outcomes and potential impacts, with provisions to detail these plans as projects become more defined. <p>For Established Producers:</p> <ol style="list-style-type: none"> Flexible Allocation of R&D Funds: Instead of mandating a strict 50/50 split, allow companies to allocate R&D funds based on where they can be most effectively used. This could involve a consultation process with the Committee



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<p>36. (1) The Committee shall, pursuant to the objectives of this Act, put in place measures and implement strategies in order to bridge the knowledge gap in relation to the extractive industry and promote research and development in the extractive industry.</p> <p>(2) The Committee shall, for the purpose of subsection (1), liaise with academic sector regulatory bodies in the formation and review of local training curricula and equipment of training facilities to be fit-for- purpose.</p> <p>37. (1) An operator shall set aside, annually and for the purpose of carrying out research and development activities in Kenya, such percentage of the gross revenue received by the operator as the Cabinet Secretary in consultation with the Committee may, by notice in the Gazette, prescribe.</p> <p>(2) The funds set aside under subsection (1) shall be applied as follows –</p>	<p>entities. This rigid allocation may not yield the most beneficial outcomes in terms of R&D advancements.</p> <p>4. Coordination with Academic Institutions: While the bill mandates collaboration with academic sector regulatory bodies, it does not outline mechanisms for effective partnership or ensure that the curricula and training provided align with industry needs.</p> <p>5. Financial Implications: The financial requirement imposed on operators (a percentage of gross revenue) could be significant, potentially affecting their profitability and competitiveness, especially if the prescribed percentage is high.</p> <p>Impact on Operators in the Exploration Stage</p> <p>Operators in the exploration phase of extractive activities often do not yet generate revenue and face significant financial and operational uncertainties. The provisions</p>	<p>to approve customized R&D funding plans that align with both industry needs and national development goals.</p> <p>2. Economic Conditions Consideration: Introduce mechanisms that adjust the percentage of gross revenue dedicated to R&D based on economic conditions or profitability metrics, providing relief during market downturns.</p> <p>3. Streamlined Regulatory Processes: Simplify and streamline the regulatory process for submitting and updating R&D plans. This could include establishing clear guidelines, expected timeframes for feedback, and possibly integrating a more robust digital submission system to reduce paperwork and expedite processing.</p>
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<p>(a) fifty percent shall be allocated to research and development programmes in Kenyan universities; and</p> <p>(b) fifty percent shall be applied to research and development activities within the facilities of the operator, established in Kenya.</p> <p>(3) The Cabinet Secretary for finance shall, in consultation with the Cabinet Secretary and for the purposes this section, establish a fund in accordance with the Public Finance and Management Act.</p>	<p>outlined in the bill could present several challenges for these operators:</p> <ul style="list-style-type: none">• Financial Burden: Operators are required to allocate a percentage of gross revenue annually to research and development. For exploration-stage companies, which may not have revenue, the definition of "gross revenue" needs clarification. This could create financial strain and make it difficult to secure financing or shareholder approval without clear returns on investment.• Planning Challenges: The requirement to submit a detailed five-year R&D plan can be problematic for exploration-stage operators who may not have sufficient data or certainty about their project's feasibility or future operations to form such plans. <p>Challenges for Established Producers</p> <p>For established operators in the oil, gas, or mining sectors, the bill also presents specific challenges:</p>	
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	<ol style="list-style-type: none">1. Cost Impact: The direct allocation of a fixed percentage of gross revenue to R&D can significantly impact the financial planning and profitability of these companies, especially in a fluctuating commodity market where margins can vary widely.2. Operational Rigidity: The rigid allocation of funds (50% to universities and 50% to in-house activities) may not align with the strategic priorities or the most effective use of resources for individual companies, which could lead to inefficient R&D spending.3. Regulatory Compliance: The annual review and updating of R&D plans, along with the bureaucratic processes involved in submission and approval, add to the operational burden and could detract from more core business activities.	
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CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 38: Financial Services Plan</p> <p>38. (1) An operator shall submit to the Committee, together with its local content plan under section 22, a financial services plan setting out –</p> <p>(a) the nature of the financial services required by the operator;</p> <p>(b) a forecast of the financial services required for the duration of the project; and</p> <p>(c) the expenditure plan relating to the use of financial services in relation to the project.</p> <p>(2) An operator shall, upon the commencement of its operations under this Act, submit to the Committee, a bi- annual plan setting out –</p> <p>(a) the financial services utilised in the preceding six months and the expenditure incurred by the operator in the procurement of these services;</p> <p>(b) a forecast of financial services required in the ensuing six months and the projected expenditure for</p>	<p>1. Requirement to Submit Financial Services Plans:</p> <ul style="list-style-type: none"> • Implications: Operators must provide detailed plans and forecasts of the financial services they intend to use, which includes expenditure related to these services. This requirement is intended to enhance transparency and promote the use of local financial services. • Challenges: The need to frequently update and submit detailed financial plans can be seen as cumbersome and may lead to increased administrative costs. Constant reporting every six months might deter investment by increasing the operational burden on companies. <p>2. Mandatory Use of Indigenous Kenyan Banks:</p> <ul style="list-style-type: none"> • Implications: This clause mandates that operators and their connected entities maintain bank accounts with indigenous Kenyan banks and conduct transactions through these banks. • Challenges: This requirement restricts the freedom of operators to choose 	<p>DELETE the Clause Mandating Use of Indigenous Kenyan Banks</p> <p>Rationale for Deletion:</p> <ol style="list-style-type: none"> 1. Investor Concerns: Investors generally prefer banking options that optimize financial service quality, costs, and global integration. Restricting them to local banks, particularly if these banks cannot offer competitive services, may make Kenya less attractive to foreign investors. 2. Operational Flexibility: Operators may have pre-established banking arrangements that are integrated into their global operations. Forcing a switch to local banks could disrupt these arrangements, potentially increasing operational risks and costs. 3. Market Competitiveness: By mandating the use of specific banks, the bill could inadvertently reduce the competitive drive among local banks to improve their services to meet international



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<p>the financial services; and the nature of financial services provided and the expenditure for the financial services made by the operator.</p> <p>(3) An operator and any connected entity shall open and maintain a bank account with an indigenous Kenyan bank and transact business through banks in Kenya.</p> <p>(4) The National Government shall, for the purpose of enhancing the local capabilities to participate in the extractive industry value chain, put in place measures, including financial incentives that encourage the use of local financial institutions in financing extractive operations in Kenya.</p> <p>(5) For the purpose of this section, "an indigenous Kenyan Bank" means a bank that has one hundred percent Kenyan or a majority Kenyan shareholding.</p>	<p>financial service providers based on their global or regional banking preferences, which might offer more competitive rates or services better suited to international operations. This can be seen as an imposition that limits operational flexibility and may affect financial efficiency.</p> <p>3. Government Support for Local Financial Institutions:</p> <ul style="list-style-type: none">• Implications: The government's commitment to provide incentives for using local financial institutions is intended to strengthen the domestic financial sector and increase its participation in the extractive industries.• Challenges: While supportive in nature, the success of such incentives largely depends on the competitiveness and capability of local banks to meet the complex financial needs of large-scale extractive operations.	<p>standards, as they would be guaranteed a certain market share.</p> <p>- Modify Rather Than Mandate: Instead of mandating the use of indigenous Kenyan banks, the bill could encourage their use through incentives that do not restrict the choice of financial service provider. This approach would promote local banks while still allowing operators to choose the best financial services for their needs.</p> <p>- Benchmarking and Standards: Encourage local banks to meet certain benchmarks and standards that make them competitive on a global scale. This could be achieved through government-supported training, exposure, and collaboration with international financial institutions.</p> <p>- Gradual Integration: If maintaining some level of mandatory local banking interaction is essential, consider a phased approach where requirements for local banking utilization increase gradually as local banks enhance their capability to service large-scale international clients.</p>
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CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 41: Procurement.</p> <p>41. (1) An operator shall maintain a bidding process for the acquisition of goods and services which shall provide a fair opportunity to local persons to participate in the provision of goods and services in relation to the extractive activities to be undertaken by the operator.</p> <p>(2) Any bid relating to extractive industry projects shall provide for the maximum utilization of goods and services available in Kenya throughout the extractive industry value chain.</p> <p>(3) An operator shall, in considering and evaluating a bid in relation to a project in the extractive industry, —</p> <p>(a) carry out a bidding process in a manner that ensures the equal treatment of local persons and that a fair opportunity is given to local companies to compete in the bidding process;</p> <p>(b) take into account the local</p>	<ol style="list-style-type: none"> 1. Operational Costs: While the intention is to develop local industries, the requirement to potentially accept bids that are up to 10% higher than the lowest bid could increase project costs. This might impact the overall financial viability of projects, especially in a competitive global market where cost efficiency is key. 2. Complexity in Bid Evaluation: The criteria for bid evaluation are broadened to include factors beyond cost, such as local content and the capacity of local companies. This could complicate the procurement process, requiring more detailed assessments and potentially leading to delays. 3. Potential for Reduced Competition: While intended to boost local business, the preferential treatment might discourage foreign competitors who may feel they have less chance of winning bids. This could reduce the number of competitive bids, potentially affecting the quality and innovation usually driven by a more open competitive process. 	<p>REVISE</p> <ol style="list-style-type: none"> 1. Clarify and Refine Bidding Guidelines: Provide clear, detailed guidelines on how bids should be evaluated, including the specifics of how local content should be weighed against other factors. This can help ensure that the process is transparent and fair to all parties. 2. Cap the Price Differential: Consider setting a cap on the acceptable price differential for local content to ensure it does not overly burden the projects financially. Adjusting the 10% differential based on market studies and economic impact assessments could help maintain balance between local development and cost efficiency. 3. Monitor and Evaluate the Impact: Introduce a provision requiring regular assessment of the impact of these bidding provisions on both local businesses and overall project costs. This could involve feedback from both local and international stakeholders to ensure the measures are



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<p>content; and (c) give preference to local persons where the price differential does not exceed ten percent of the bidding price quoted by a foreign entity. (4) The award of a tender shall not be based solely on the principle of the lowest bidder where a local company has the capacity to undertake the project and a local company shall not be disqualified solely on the basis that it is not the lowest financial bidder unless the value exceeds the lowest bid price by ten percent.</p>		<p>achieving their intended goals without unintended negative consequences.</p> <p>4. Incentivize Quality and Efficiency in Local Companies: Beyond giving preference in bidding, implement programs to help local companies improve their competitiveness in terms of quality, efficiency, and cost. This could include training programs, access to technology, and partnerships with established global entities.</p>
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CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 44: Contracting services from local companies.</p> <p>44. (1) In granting concessions and other agreements relating to ventures within the extractive industry, the National Government shall encourage the establishment of joint venture between international investors and local business enterprises.</p> <p>(2) The Committee shall, in consultation with the Cabinet Secretary, prescribe thresholds to be met by State entities in the procurement of components in the extractive industry value chain that shall be reserved exclusively for local sourcing.</p> <p>(3) A State entity shall not award a tender to an applicant for the carrying out of any extractive or related activity under this Act unless the applicant meets the local content input threshold that may be prescribed by the Cabinet</p>	<p>The provision in Clause 44(3) of the Local Content Bill, which mandates that at least thirty percent of contracting be reserved for locals in the extractive industry, is intended to boost local participation and economic benefits. However, this specific requirement could potentially limit foreign investment due to several factors.</p> <p>1. Potential for Increased Project Costs and Delays: Imposing a rigid local content threshold can lead to increased costs if local suppliers are more expensive or less efficient than their international counterparts. It can also lead to delays if suitable local partners are not available, affecting project timelines and profitability.</p> <p>2. Discouragement of Foreign Investment: High mandatory local content requirements might deter foreign investors who are concerned about the feasibility of finding local partners that</p>	<p>DELETE the sub-clause 3</p> <p>Alternative Options:</p> <ul style="list-style-type: none"> • Replace the fixed threshold with a progressive realization approach where the required percentage of local content increases gradually as local capacity builds. • Implement a tiered threshold system that takes into account the varying capabilities across different sectors of the extractive industry. • Encourage local enterprises by linking local content requirements to quality and performance benchmarks rather than a fixed percentage. • Ensure that local content policies are compatible with international trade laws to avoid potential disputes and sanctions.



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<p>Secretary which shall not be less than thirty percent.</p>	<p>meet their standards for cost, quality, and reliability.</p> <p>3. Lack of Local Capacity in Certain Sectors: In certain high-tech or specialized segments of the extractive industry, local capacity might not be sufficient to meet the demands of major projects. The fixed threshold could force investors to compromise on quality or efficiency.</p> <p>4. Promotion of Quality and Competitive Local Enterprises: A strict local content requirement might lead to complacency among local businesses, with guaranteed participation reducing the incentive to improve quality and competitiveness.</p> <p>5. Alignment with International Trade Agreements: Strict local content requirements may conflict with international trade agreements and the principles of fair competition.</p>	
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CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 45: Thresholds for Kenyan equity stake in operator.</p> <p>45. (1) Subject to the provisions of this Act, the Cabinet Secretary shall, in consultation with the Committee and from time to time, issue guidelines and contracting standards on the thresholds to be attained by each operator with respect to the percentage of local equity ownership of extractive industry companies.</p> <p>(2) The interest of a local Kenyan company arising in an agreement or licence with respect to an extractive activity shall be transferable to a non-indigenous Kenyan company in accordance with the provisions of the Companies Act.</p>	<ol style="list-style-type: none">Investor Uncertainty: The lack of predefined equity thresholds in the legislation creates uncertainty. Investors need predictable rules to properly assess project feasibility and risk. Frequent changes by the Cabinet Secretary could disrupt investment plans.Disincentive for Investment: Potential investors may be deterred if mandatory local ownership percentages are deemed too high, especially for projects requiring significant capital or specialized expertise.Potential for Forced Partnerships: This provision could pressure foreign operators into partnerships with Kenyan entities they wouldn't otherwise choose, potentially hindering operational efficiency or raising project costs.Limited Impact: Mandating equity ownership doesn't guarantee local capacity building or genuine technology transfer. There's a risk of token partnerships where local entities have minimal control or benefit.	<p>DELETE Clause 45: Other provisions in the Bill (skills development, procurement focus) are stronger tools to maximize Kenyan benefits from the extractive sector.</p> <p>Alternative Measures</p> <ol style="list-style-type: none">Market-Driven Approach: Encourage joint ventures and local equity participation through incentives and facilitation, rather than mandates. Examples:<ul style="list-style-type: none">Tax breaks for companies with a significant percentage of Kenyan ownershipMatching programs connecting foreign investors with qualified Kenyan partnersStrengthen regulations around the transfer of equity to ensure that such transfers do not undermine the objectives of local content policies. This could include conditions that such transfers only



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		<p>occur after certain milestones have been achieved in local capacity building or after a defined period.</p>
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CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 46 Financial incentives.</p> <p>46. The Cabinet Secretary responsible for matters relating to finance may, in consultation with the Committee</p> <p>—</p> <p>(a) implement tax incentives for the promotion of capacity building and training in various aspects of the extractive industry;</p> <p>(b) adopt supportive and non-distorting capabilities of local enterprises to meet the objectives of this Act; and</p> <p>(c) allow tax deductibility for certain categories of training expenditure, including research and development expenditure, where the training is for the benefit of Kenyan nationals.</p>	<p>1. Lack of Specificity:</p> <ul style="list-style-type: none">○ The language is broad, leaving too much discretion with the Cabinet Secretary to determine which incentives qualify. To ensure effectiveness and transparency, consider amendments that outline what specific tax incentives may be used (e.g., tax exemptions, reductions, credits).○ The Bill could list priority areas for incentivizing training based on industry needs (e.g., technical skills, safety, environmental sustainability) <p>2. "Supportive and non-distorting" is Vague: This phrase aims to prevent incentives from unfairly advantaging specific companies. However, it would be helpful to define this further; perhaps with a requirement of incentives being accessible to any qualifying company.</p> <p>3. Narrow Focus on Deductibility: While allowing tax deductions for specific training is a positive step, there is an opportunity to consider additional incentives:</p>	<p>AMEND Clause 46</p> <ul style="list-style-type: none">• Add Specificity: Amend the bill to provide more detail on the types of tax incentives that can be used and which categories of training might qualify.• Expand Scope of Incentives: Consider a broader array of fiscal tools beyond deductions.• Clearly Define "Non-Distorting": Ensure the language prevents unfair market manipulations.



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- **Matching Grants:** Government could match a percentage of company spending on qualified training initiatives.
- **Tax Credits for Hiring Trainees:** Incentivize companies to provide on-the-job training.



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CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 47: Fund for Training and Development.</p> <p>47. (1) There is established a fund to be known as the Local Content Training and Development Fund.</p> <p>(2) An operator shall annually remit a non-tax- deductible training levy consisting of such percentage of its net revenues as the Cabinet Secretary may, in consultation with the Committee, prescribe to the Fund in support of the objectives of this Act.</p> <p>(3) The Cabinet Secretary shall prescribe in regulations under the Act the manner in which the Fund shall be operated and applied.</p>	<p>Non-Deductibility Disincentive: The Local Content Bill might discourage robust contributions from operators if they cannot deduct those costs from their taxes. This could limit the fund's impact.</p>	<ol style="list-style-type: none">1. Amend Clause 47: Make contributions to the Local Content Training and Development Fund tax-deductible. This aligns the approach with the implied provision of section 52 of the Petroleum Act and creates a stronger incentive for operator participation.2. Consider Consolidated Fund: If the overarching goal is effective training across the extractive sector, explore merging these separate funds into a single well-managed, consolidated fund. This would:<ul style="list-style-type: none">o Streamline administration and reduce duplication.o Allow for targeted training investment based on the most pressing needs across the whole sector.3. Governance and Transparency: Both Acts leave details about fund operation to future regulations. The success of these training initiatives depends on robust regulations that ensure:<ul style="list-style-type: none">o Clear eligibility criteria for accessing funds



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		<ul style="list-style-type: none">○ Transparent accounting and reporting○ Oversight by a multi-stakeholder body to promote accountability
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EXTRACTIVE INSIGHT CENTRE

CLAUSE	ISSUE	RECOMMENDATION
<p>48. (1) An operator shall prepare and submit to the Committee an annual work plan of the programmes and budget with respect to an extractive activity by the operator.</p> <p>(2) An operator shall, in preparing an annual programme and budget, set out –</p> <p>(a) an estimate of the local content component of the extractive activity; and</p> <p>(b) the activities that are to be undertaken in relation to the extractive project.</p> <p>(3) The Committee shall, upon receipt of the annual work plan under subsection (1), -</p> <p>(a) determine the specific projects which shall be subject to procurement in accordance with this Act; and</p> <p>(b) publish in at least two newspapers of wide circulation, in its website and such other media as the Committee shall consider appropriate, the list of the projects and details relating to the specific</p>	<ul style="list-style-type: none"> • Potential Redundancy: Operators likely already submit extensive work plans to other regulatory bodies (EPRA, Mining Department). Requiring a separate plan for the Committee risks creating unnecessary duplication. • Administrative Burden: Preparing a separate work plan specifically focused on local content adds administrative work for operators and the Committee, potentially diverting resources from core activities. • Focus on Intent, Not Details: The Committee's primary role is to promote and oversee local content development, not to micromanage operations covered by other regulatory bodies' mandates. 	<p>DELETE Clause 48</p> <p>Alternatively:</p> <ul style="list-style-type: none"> • Concise Local Content Extract: Require operators to submit a concise annual extract of their existing work plan, highlighting elements directly relevant to local content, such as: <ul style="list-style-type: none"> ○ Estimated spending on local goods and services ○ Current and projected Kenyan employment ○ Training and skills development initiatives • Leverage Existing Data: Explore ways to streamline data sharing between the Committee and relevant regulators for local content tracking purposes, avoiding duplication of reporting requirements.



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projects.
(4) All tenders in the extractive industry shall only be advertised, evaluated and awarded in Kenya.
(5) An operator who intends to advertise a tender in the extractive industry outside Kenya shall apply for, and obtain the approval of the Cabinet Secretary prior to such advert.



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CLAUSE	ISSUE	RECOMMENDATION
<p>49. (1) An operator shall maintain the records relating to its operations in such proper form as to facilitate the determination of the local content expenditure incurred by the operator with respect to its operations under this Act.</p> <p>(2) The records maintained by an operator under subsection (1) shall include supporting documentation certifying the cost of local goods, labour and local services procured by the operator and shall be subject to audit by the Committee or such other agent appointed by the Committee for that purpose.</p> <p>(3) An operator shall, for the purpose of subsection (2), submit to the Committee, an annual statement of local content which shall include information regarding the—</p> <p>(a) payments made to local licensees who supply local goods and local services to the operator;</p> <p>(b) payments to local suppliers who supply local goods;</p>	<ul style="list-style-type: none">• Extensive Documentation: The requirement to maintain detailed records on all aspects of local content expenditure could be excessive for smaller operators or projects.• Audit Scope: Auditing every operator annually might be an inefficient use of the Committee's resources.	<p>DELETE Clause 49</p> <p>Alternatively</p> <ul style="list-style-type: none">• Risk-Based Audits: Implement a risk-based audit approach where the Committee selects a sample of operators for in-depth auditing each year, rather than auditing everyone extensively. Focus audits on areas or projects where local content compliance is of particular concern.• Targeted Data: Refine the required data to focus on the most essential metrics for tracking local content progress, minimizing administrative burdens for operators.• Technology Leverage: Consider a secure online platform for data submission and reporting to streamline the process and enhance the Committee's analysis capabilities.



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<p>(c) payments to local licensees and local suppliers for providing a service in the supply of non-local goods;</p> <p>(d) payments made to non-local licensees and suppliers who supply local and non-local goods;</p> <p>(e) payments of salaries, profits, dividends on shares and other tangibles paid to persons who are Kenyan nationals; and</p> <p>(f) list of all contracts awarded during the period under consideration and services or equipment contracted.</p> <p>(4) For the purpose of determining the level of local content in respect of an operation under this Act, the Committee or accredited independent certifying agency under section 21 shall—</p> <p>(a) take into account all costs incurred as direct materials, direct sub-contracts, indirect materials, indirect subcontracts, construction management and other costs; and</p> <p>(b) not include any taxes or other statutory payments to government including payments made under</p>		
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contract or concession agreements.		
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CLAUSE	ISSUE	RECOMMENDATION
<p>50. (1) The Committee shall monitor and evaluate compliance by every person under this Act of the obligations imposed on such person under this Act.</p> <p>(2) The Committee shall prepare and submit to the Cabinet Secretary, a report on its activities under subsection (1) and shall, for this purpose, set out information on—</p> <p>(a) each licensed extractive operation;</p> <p>(b) the extent to which State entities mandated to implement specific obligations have so acted;</p> <p>(c) objectives that are yet to be attained by an operator or State agency under this Act and the reasons for such observation;</p> <p>(d) strategies for corrective measures specifying the authority to implement the objectives that are yet to be attained; and</p> <p>(e) recommend best practices for greater and faster attainment of the objectives of the Act.</p>	<ul style="list-style-type: none">• Reporting Overload: The extensive reporting requirements on individual operations, State agencies, and overall performance could create an excessive workload for both operators and the Committee.• Data Use: It's unclear how the Committee will meaningfully utilize such a vast amount of data to drive actionable insights and improvements in local content development	<p>DELETE Clause 50</p> <ul style="list-style-type: none">• Prioritized Metrics: Work with stakeholders to identify a core set of key performance indicators for local content, focusing reporting on those metrics.• Qualitative Assessment: Supplement quantitative data with qualitative analysis of challenges and best practices, providing a more comprehensive picture to the Cabinet Secretary and Senate.• Public-Facing Dashboard: Develop a simplified public dashboard with key local content indicators across the extractive sector, promoting transparency and accountability.



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(3) The Committee shall evaluate the performance of the National Government against the objectives of this Act, and shall prepare and submit to the Cabinet Secretary and to the Senate, an annual performance report.



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CLAUSE	ISSUE	RECOMMENDATION
<p>Clause 51: Reporting by a connected entity.</p> <p>51. (1) An operator shall ensure that its partner, contractor, subcontractor or any other connected entity is contractually bound to report local content information to the operator and, if requested, to the Committee.</p> <p>(2) An operator or connected entity shall permit an agent designated by the Committee to access the records of the operator or connected entity for the purposes of assessment and verification of the local content information reported by an operator or connected entity under this Act.</p>	<p>1. Excessively Broad Scope:</p> <ul style="list-style-type: none">• The definition of "connected entity" could be vast and vague. Forcing contractual obligations onto this wide network creates complex legal entanglements beyond the operator's immediate control.• Unrestricted access to records of all connected entities raises potential privacy, confidentiality, and commercial sensitivity concerns. <p>2. Potential Overreach:</p> <ul style="list-style-type: none">• Directly involving the Committee in supply chain contracts risks overreach, blurring the lines between the Committee's oversight role and an operator's commercial dealings.• It could complicate negotiations between operators and their partners, particularly when international entities are involved.	<p>DELETE Clause 51:</p> <p>Removing this provision streamlines compliance and avoids potential legal and contractual disputes.</p> <p>Alternatives:</p> <ul style="list-style-type: none">• Strengthened Operator Responsibility: Amend other sections of the bill to clearly hold operators accountable for accurate and complete local content reporting, including data sourced from their supply chain.• Risk-Based Audits: Empower the Committee to conduct focused audits of specific operators and, when justified by evidence, request relevant supporting documentation from specific contractors or subcontractors.• Confidentiality Agreements: If direct Committee access to certain records is deemed necessary in some cases, establish clear protocols and confidentiality



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	<p>3. Duplication and Burden:</p> <ul style="list-style-type: none">• The operator should be responsible for collecting and consolidating local content data from its supply chain. The Committee can verify this information through targeted audits, without needing direct access to the records of every entity.	<p>agreements to protect commercially sensitive information.</p>
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ANNEX 9: SUBMISSIONS BY BUNGE YOUTH
DIALOGUE

BUNGE YOUTH DIALOGUE

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MEMORANDUM ON THE LOCAL CONTENT BILL 2023

Article	Clause	Current Provision in the Local Content Bill 2023	Proposed Recommendations	Rationale/ justification for recommendation
Preliminary	2	Cabinet Secretary” means the Cabinet Secretary responsible for matters related to the extractive industry	Cabinet Secretary in charge of “Local Content” for reporting, development, and implementation is the Cabinet secretary for energy (oil, gas and other petroleum resources)	The Bill describes the extractive industry as the oil, gas, and mining sectors. The Bill aims to focus on petroleum resources, oil, gas, and hydrocarbon substances. Therefore, clarity is needed in defining the extractive industry according to the Bill and distinguishing between the Cabinet Secretary of Energy and the Cabinet Secretary for Petroleum, rather than labeling both as the Cabinet Secretary for the "extractive industry."
		Not provided	Meaningful public participation of women, youth, and person with disability (PWD), indigenous groups” Meaningful public participation means public participation that goes beyond counting youth, women and PWD to include women’s, Youth, PWD, indigenous groups ability to exercise voice, engage in leadership, and influence decision-making	Meaningful public participation ensures that public consultations are carried out in counties and communities impacted by extractive industries so that strategic gender interests and the policy imperative of realizing the rights of men, women, boys and girls including PWD drives decision-making. Consultations are also designed to ensure youth, PWD, women’s safety, availability and

				<p>agency. This is as enshrined in the Constitution of Kenya Article 10 (2) and Article 118.</p> <p>Adequate benefit-sharing arrangements are reached through community consultations free, prior, informed consent that prioritize the leadership of local residents and host communities including indigenous groups.</p>
	3(9)	<p>Extractive industry” means the oil, gas and mining sectors in Kenya where the Local Content Development Committee is to make recommendations and advise the Cabinet Secretary on the formulation of policy and strategies for the development and implementation of local content;</p>	<p>“Local content” means the added value brought to the Kenyan economy from extractive industry through systematic development of national capacity and capabilities and investment in developing and procuring locally available workforce, services, and supplies, for the sharing of accruing benefits.</p> <p>“Extractive industry” can be defined as processes that involve different activities lead to the extraction of raw materials from the earth (such as oil, metals, mineral and aggregates), processing and utilization by consumers. Therefore, the Extractive Industry cannot be limited to only petroleum and gasses.</p>	<p>United Nations Conference on Trade and Development(UNCTAd). https://unctad.org/system/files/official-document/suc2012d1_en.pdf</p>
ROLE OF THE NATIONAL AND COUNTY GOVERNMENT	2_8(1)	<p>Each county government shall, for the performance of its functions under section 6 of this Act —</p> <p>(a) assist local contractors and companies within the respective counties to develop their capabilities and capacities to further the</p>	<p>The County Government should allocate resources and establish training centers/ units on local content (oil, gas and petroleum resources).</p> <p>The County Government (ie. the directorates gender, youth affairs, culture and environment</p>	<p>The bill should describe how county governments will implement the act if passed at the county level. This will give a transparent structure to guide county governments in implementing policies at the national government. There is a need for</p>

ENTS		<p>attainment of the goal of developing local content in the extractive industry within the respective county;</p> <p>(b) implement the cross-cutting policies formulated by the National Government with respect to the implementation of local content;</p> <p>(c) implement strategies that enable local participation in the various activities along the extractive value chain in the respective county;</p> <p>(d) monitor and put in place measures to facilitate the implementation of local content performance by all operators in the respective county in accordance with the provisions of this Act;</p> <p>(e) conduct regular audits for the purposes of monitoring the compliance with the provisions of this Act in the respective county;</p> <p>(f) set targets, in collaboration with the Committee, for the achievement of local content and participation in relation to specific projects, operations and operators and support these targets with appropriate contract terms; and</p> <p>(g) perform such other functions necessary for the implementation of the objectives of this Act.</p>	<p>should work towards supporting the establishment/ operationalizing enterprises or companies as local contractors along the local content value chain by women, indigenous groups, youth PWD</p> <p>County Government to establish local content management committees at the county level to reduce lengthy bureaucratic procedures and enhance clear transparency of projects and operations and monitoring and evaluation of the same.</p>	<p>additional departments and budgetary allocation for assisting local contractors.</p> <p>The local development committees ought to be at the county level rather than just at the national level since implementation of the local content act will definitely take place in counties.</p>
†	PART III 12(1) (e)& (f)	<p>e) two persons nominated by the Council of Governors;</p> <p>(f) two persons nominated by players in the extractive industry in such manner as the Cabinet Secretary shall determine and appointed by the Cabinet Secretary</p>	<p>National and county governments to ensure mainstreaming representation of the women, PWD, indigenous communities and youth and that they benefit as part of host communities and also as local contractors. Add more slots to cater for Youth, women, indigenous community and Persons with Disabilities in the committee. Part (e) and (f) to include the names of male and female</p>	<p>This will ensure inclusion and catering of the representation of women,youth and persons with disabilities</p>

	PART 18(1)&2	<p>18. (1) The Committee may establish such sub committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.</p> <p>(2) The Committee may co-opt any person to sit on any sub-committee established under subsection (1), whose knowledge and skills are found necessary for the performance of the functions of the Committee but such person shall have no right to vote at the meeting</p>	<p>Limit the number of sub-committee members to attend a sub-committee to nine (9)</p> <p>Committee and subcommittee members should be gender representative [male and female] (indigenous communities, PWD, youth) nominations in committee appointments</p>	<p>This measure aims to regulate the composition of the committee, as an undefined number could potentially create an open-ended scenario, allowing for unrestricted participation and potentially causing delays in decision-making within the technical working group.</p>
	PART 50(3)	<p>(3) The Committee shall evaluate the performance of the National Government against the objectives of this Act and shall prepare and submit to the Cabinet Secretary and to the Senate, an annual performance report.</p>	<p>The national committee together with the proposed county committees should prepare annual performance reports to the Cabinet Secretary incharge of the Energy Ministry and the respective senators respectively.</p>	<p>A monitoring, evaluation, and reporting system should be developed in order to outline and fully account for the value of the operators to the local community and areas. This annual performance report will give a benefit analysis to inform whether the operation is viable and give accountability to how resources are exploited at the same time limiting corruption and embezzlement loopholes.</p>
PUBLIC PRIVATE PARTNERSHIPS	48	<p>There are potential fiscal risks associated with the Public Private Partnerships(PPP) projects including possible breaching of contract obligations, unfunded additional obligations and those stemming from movements in inflation and exchange rate. To mitigate these risks, the Government will reduce implementation bureaucracy, strengthen PPP institutions, improve governance, promote the framework for balancing risks with affordability and value for money while guaranteeing rapid service</p>	<p>Enhanced Local Content Integration: We recommend incorporating explicit provisions within PPP contracts to promote and enforce local content requirements. This would entail setting minimum thresholds for the utilization of locally sourced materials, labor and services in PPP projects, thereby fostering domestic economic development, job creation, and skill enhancement.</p>	<p>Integrating local content provisions into PPP contracts would contribute to the development of domestic industries and stimulate economic growth by creating opportunities for local businesses to participate in large-scale infrastructure projects. This would lead to increased employment, income generation, and wealth distribution within local communities.</p>

		delivery through cutting down execution timelines and promoting local contents for greater national value capture in PPPS.		
49		As part of de-risking public investments in respect to capital mobilization for infrastructure development, the Government will continue to provide Government Support Measures (GSMs) to private investors in PPP projects in the form of Letters of Support (LOSs), Partial Risk Guarantees and Indemnity	Incentive Mechanisms for Local Participation: Introduce incentive mechanisms, such as tax breaks or preferential treatment in procurement processes, to incentivize private investors to prioritize local participation in PPP projects. This could encourage the formation of partnerships with local businesses, the transfer of technology and expertise and the development of local supply chains.	By prioritizing local participation, PPP projects can facilitate the transfer of skills, knowledge and technology from international investors to local stakeholders. This would promote the development of a skilled workforce and enhance the long-term competitiveness of domestic industries in both the local and global markets.
			Capacity Building Initiatives: Implement capacity building initiatives aimed at enhancing the capabilities of local businesses to participate effectively in PPP projects. This may involve providing training programs, technical assistance and access to financing to enable local enterprises to meet the requirements and standards demanded by PPP contracts.	Promoting local content in PPP projects aligns with the government's commitment to promoting social inclusion and reducing inequalities. By providing opportunities for local businesses, particularly those owned by marginalized groups, youth, women and people with disability to engage in economic activities, PPPs can contribute to poverty reduction and inclusive growth.
MISCELLANEOUS PROVISIONS		Not provided	Provide for a mechanism for county committees to do online publishing of their reports informed by gender statistics Provide for dissemination of published county committee reports to the county residents and the host communities. Social Impact Assessment: Conduct comprehensive social impact assessments (SIAs) as part of the project planning process to identify and mitigate potential adverse effects on women, indigenous	The discovery and exploitation of natural resources in a particular area has always led to the expectation that the local communities and country in which the resources are found would develop economically and socially and that the benefits of such resource exploitation would trickle down to the communities benefit women, youth, indigenous communities and PWDs.

			communities, and youth. SIA should consider gender-specific impacts, cultural sensitivities and inter- generational dynamics to ensure that PPP projects contribute positively to social inclusion and equity.	
Miscellaneous		<p>This Bill therefore seeks to provide a framework to ensure that local content is entrenched in every aspect of the extractive industry value chain through—</p> <p>(a) involvement of local communities in the extractive industry value chain and hence, the enhancement of the income received by such locals following their involvement in the extractive processes;</p> <p>(b) ensuring that land owners and owners of resources receive the revenue due to them;</p> <p>(c) targeting income streams to local communities, local enterprises and financial institutions.</p>	<p>Include the Global principles indicated in the Extractive Industries Transparency Initiative Standard Expropriation and involuntary resettlement should be avoided; women, youth, indigenous communities and PWD's land and territory rights, and rights to access communal lands and natural resources should be respected and secured; and women's, youth's, and PWD's land usage identified and included in valuation assessments regardless of whether these groups hold formal land titles.</p> <p>Land-for-land exchange should be prioritized and compensation aims to improve or, at a minimum, restore livelihoods and food security.</p> <p>Compensation programs should not exclusively focus on heads of households.</p> <p>Compensation should then be informed by compulsory gender impact assessment as part of environmental social impact assessment to inform gender responsive indicators that will guide local content design, implementation, monitoring and evaluation for optimum national participation in the oil, gas and petroleum extraction activities.</p>	<p>The global standard for the good governance of oil, gas and mineral resources; https://eiti.org/sites/default/files/2023-06/2023%20EITI%20Standard.pdf</p> <p>This is as provided in the Feminist Natural Resource Governance for a just Transition: 18 Policy Imperatives https://pwp.org/wp-content/uploads/2022/03/2022-Feminist-Natural-Resource-Governance-Agenda.pdf</p>
		No benefit/ revenue sharing provisions within the local content Bill	Allocate a certain percentage of revenue to counties and the affected communities to fully exploit the benefits of local content at the county level. The revenue allocated should go towards addressing the gender and social impact	The Senate Bill (No.6) of natural resources proposes the benefit sharing ratio as 60% towards national government and 40% towards county government [24% towards affected communities and 16% towards the

			assessment report conducted during the commencement of the project. The benefit and revenue sharing should include "the need for affirmative action in respect to disadvantaged areas and groups"	county]. Criteria for equitable sharing of revenue as under Article 203 (1) of the Constitution
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Submitted by:

No.	Name	ID Number	Organization	Sign
1	Elijah Wangari	32371603	Bunge Youth Dialogue- Nyeri County	EKW
2	Esther Nyonje	32709481	Husisha Civil Society Organization	ENA
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Please reach out to Esther Nyonje; Tel: 0791641970 email: estheraknyonje@gmail.com

**ANNEX 10: COMMITTEE STAGE
AMENDMENTS**

13th June, 2024

The Clerk of the Senate
Parliament Buildings
NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE LOCAL CONTENT
(AMENDMENT) BILL, 2024 (SENATE BILLS NO. 50 OF 2023)**

NOTICE is given that Sen. Wahome Wamatinga, Chairperson to the Standing Committee on Energy, intends to move the following amendments to the Local Content (Amendment) Bill, 2024 (Senate Bill No. 50 of 2023), at the Committee Stage —

CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) by deleting the definition of the term “Cabinet Secretary” and substituting therefor the following definition—
“Cabinet Secretary means either the Cabinet Secretary responsible for matters relating to petroleum or the Cabinet Secretary responsible for matters relating to mining as the case may be”

CLAUSE 7

THAT clause 7 of the Bill be amended in paragraph (b)—

- (a) by deleting subparagraph (iii).
- (b) by deleting the words “and implementation” in subparagraph (iv) appearing immediately after the words “the development”
- (c) by deleting subparagraph (v) and substituting therefor the following subparagraph—
“(v) provision of guidelines to ensure local content activities shall include the participation of local persons at a quota of not less than thirty percent”

CLAUSE 10

THAT clause 10 of the Bill be amended—

- (a) in paragraph (b) by inserting the word “relevant” immediately after the words “advise the”

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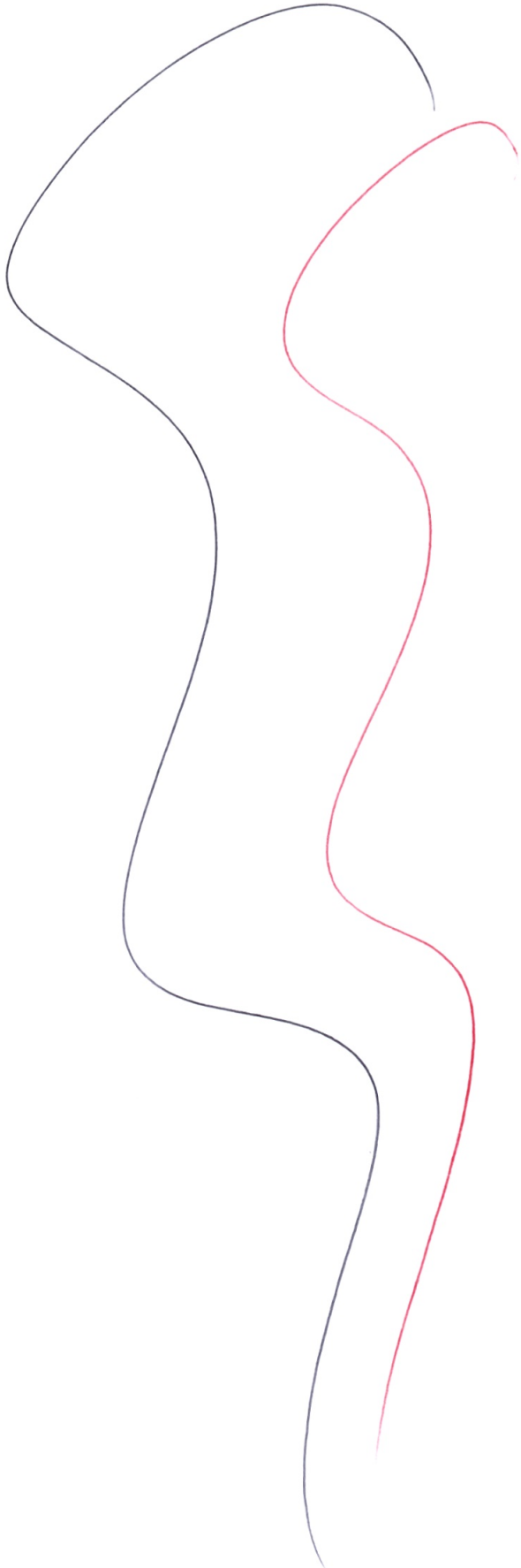
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- (b) in paragraph (c) by inserting the word “relevant” immediately after the words “recommendations to the”

CLAUSE 11

THAT clause 11 of the Bill be amended in paragraph (a) by deleting the word “six” appearing immediately after the words “period of” and substituting therefor the word “twelve”

CLAUSE 12

THAT clause 12 of the Bill be amended—

- (a) by deleting paragraph (a) and substituting therefor the following paragraph—
- (a) a chairperson competitively recruited by the Public Service Commission and appointed by the President by notice in the Gazette.
- (b) by inserting after paragraph (b) the following paragraph—
- (ba) the Principal Secretary responsible for matters relating to mining or a representative designated in writing;
- (c) by deleting paragraph (f) and substituting therefor the following paragraphs—
- (f) one person nominated by players in the oil and gas industry in such a manner as the Cabinet Secretary responsible for matters related to oil and gas shall determine;
- (fa) one person nominated by players in the mining industry in such a manner as the Cabinet Secretary responsible for matters related to mining shall determine;
- (d) by deleting subclause (2) and substituting therefor the following subclause—
- (2) The persons nominated under subclause (1)(f) shall be appointed by the relevant Cabinet Secretary by notice in the Gazette.
- (e) by deleting subclause (3) and substituting therefor the following subclause—
- (3) There shall be paid to the members of the Committee such allowances as the Cabinet Secretaries responsible for matters related to petroleum, oil and mining may, in consultation with the Salaries and Remuneration Commission, determine.

CLAUSE 16

THAT clause 16 of the Bill be amended in subclause (1)—

- (a) by inserting the word “relevant” in paragraph (e) immediately after the words “addressed to the”
- (b) by inserting the word “relevant” in paragraph (f) immediately after the words “office by the”

CLAUSE 19

THAT clause 19 of the Bill be amended—

- (a) by deleting subclause (1) and substituting therefor the following subclause—
 - (1) The Cabinet Secretaries responsible for matters related to the extractive industry shall designate an appropriate administrative unit that includes representation from each of their respective Ministries to serve as the Secretariat of the Committee.
- (b) by deleting subclause (2) and substituting therefor the following subclause—
 - (2) the Secretariat shall consist of—
 - (a) a Director, who shall be appointed by the Cabinet Secretaries from among the public officers designated under subsection (2)(b) and approved by the Committee; and
 - (b) such other public officers from each relevant Ministry as the Cabinet Secretaries shall, in consultation with the Committee, designate for the proper performance of the functions of the Secretariat under this Act.
- (c) by deleting subclause (3) and substituting therefor the following subclause—
 - (3) The Director and persons designated under subsection (2)(b) shall possess such knowledge and experience in matters relating to the extractive industry as the Cabinet Secretaries shall, in consultation with the Committee, determine.

CLAUSE 20A

THAT the Bill be amended by inserting the following clauses immediately after clause 20—

20A General fund

- (1) There shall be a general fund of the Committee which shall vest in the Committee.
- (2) There shall be paid into the general fund—

- (a) such monies or assets as may accrue to or vest in the Committee in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) mandatory annual contributions from the ministries responsible for matters mining and petroleum,
- (c) all monies from any other source provided for or donated or lent to the Committee.

20B Financial year

The financial year of the Committee shall be the period of twelve months ending on the thirtieth June in each year.

20C Annual estimates

- (1) At least three months before the commencement of each financial year, the Committee shall cause to be prepared estimates of the revenue and expenditure of the Committee for that year.
- (2) The Committee shall approve the annual estimates before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary's approval, the Authority shall not increase the annual estimates without the consent of the Cabinet Secretary.

20D Accounts and audit

- (1) The Committee shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Committee.
- (2) Within a period of three months from the end of each financial year, the Committee shall submit to the Auditor-General the accounts of the Committee together with—
 - (a) a statement of the income and expenditure of the Committee during that year; and
 - (b) a statement of the assets and liabilities of the Committee on the last day of that year.
- (3) The annual accounts of the Committee shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Financial Management Act (Cap. 412A).

CLAUSE 21

THAT clause 21 of the Bill be amended in subclause (1) by inserting the word “relevant” immediately before the words “Cabinet Secretary”

CLAUSE 22

THAT clause 22 of the Bill be amended in subclause (5) by inserting the word “relevant” in paragraph (f) immediately after the words “plans as the”.

CLAUSE 24

THAT clause 24 of the Bill be amended by deleting subclause (1) and substituting therefor the following subclause—

- (1) The relevant Cabinet Secretaries shall jointly, in consultation with the Committee, prescribe rules on local content certification and in doing shall—

CLAUSE 28

THAT clause 28 of the Bill be amended in subclause (2) by inserting the word “relevant” in paragraph (c) immediately before the words “Cabinet Secretary”.

CLAUSE 30

THAT clause 30 of the Bill be amended—

- (a) in subclause (1) by inserting the word “relevant” immediately before the words “Cabinet Secretary”.
- (b) In subclause (2) by inserting the word “relevant” immediately before the words “Cabinet Secretary”.

CLAUSE 31

THAT clause 31 of the Bill be amended by inserting the word “relevant” immediately before the words “Cabinet Secretary” appearing at the beginning of the clause.

CLAUSE 37

THAT clause 37 of the Bill be amended—

- (a) in subclause (1) by inserting the word “relevant” immediately before the words “Cabinet Secretary”.
- (b) in subclause (3) by inserting the words “relevant” immediately after the words “in consultation with the”

CLAUSE 43

THAT clause 43 of the Bill be amended in subclause (2) by inserting the word “relevant” immediately before the words “Cabinet Secretary”.

CLAUSE 44

THAT clause 44 of the Bill be amended—

- (a) in subclause (2) by inserting the word “relevant” immediately before the words “Cabinet Secretary”.
- (b) in subclause (3) by inserting the word “relevant” immediately before the words “Cabinet Secretary”.

CLAUSE 45

THAT clause 45 of the Bill be amended in subclause (1) by inserting the word “relevant” immediately before the words “Cabinet Secretary”.

CLAUSE 47

THAT clause 47 of the Bill be amended—

- (a) in subclause (2)—
 - (i) by deleting the words “non-tax-deductible” appearing immediately after the words “remit a” and substituting therefor the following words “tax deductible”.
 - (ii) by inserting the word “relevant” immediately before the words “Cabinet Secretary”.
- (b) by deleting subclause (3) and substituting therefor the following subclause—
 - (3) The relevant Cabinet Secretaries shall jointly, in consultation with the Committee, prescribe in regulations under the Act the manner in which the Fund shall be operated and applied.

CLAUSE 48

THAT clause 48 of the Bill be amended in subclause (5) by inserting the word “relevant” immediately before the words “Cabinet Secretary”.

CLAUSE 50

THAT clause 50 of the Bill be amended—

- (a) in subclause (2) by inserting the word “relevant” immediately before the word “Cabinet Secretary”.
- (b) In subclause (3) by inserting the word “relevant” immediately before the word “Cabinet Secretary”.

CLAUSE 52

THAT clause 52 of the Bill be amended in clause (1) by inserting the word “relevant” immediately before the words “Cabinet Secretary”.

CLAUSE 53

THAT clause 53 of the Bill be amended in clause (1) by inserting the word “relevant” immediately before the words “Cabinet Secretary”.

CLAUSE 56

THAT clause 56 of the Bill be amended by inserting the word “relevant” immediately before the words “Cabinet Secretary”.

CLAUSE 57

THAT clause 57 of the Bill be amended—

- (a) by deleting subclause (1) and substituting therefor the following subclause—
 - (a) The relevant Cabinet Secretaries shall jointly, in consultation with the Committee, make regulations generally for the better carrying out of the provisions of this Act.
- (b) in subclause (2) by deleting the word “Secretary” and substituting therefor the word “Secretaries”.

CONSEQUENTIAL AMENDMENTS

AMENDMENT OF CAP. 306

THAT section 46, 47, 48 and 50 of the Mining Act is repealed.

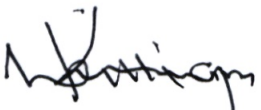
AMENDMENT OF CAP. 308

THAT Part VI of the Petroleum Act repealed.

AMENDMENT OF CAP. 314

THAT section 206 and 207 of the Energy Act is repealed.

Dated 13th June, 2024.


for Wahome Wamatinga,
Chairperson,
Standing Committee on Energy.