

REPUBLIC OF KENYA

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PARLIAMENT

THE SENATE

TWELVETH PARLIAMENT

STANDING COMMITTEE ON ENERGY

A REPORT ON A PUBLIC HEARING ON THE LOCAL CONTENT BILL
(SENATE BILLS NO 10 OF 2018)

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

JULY, 2018

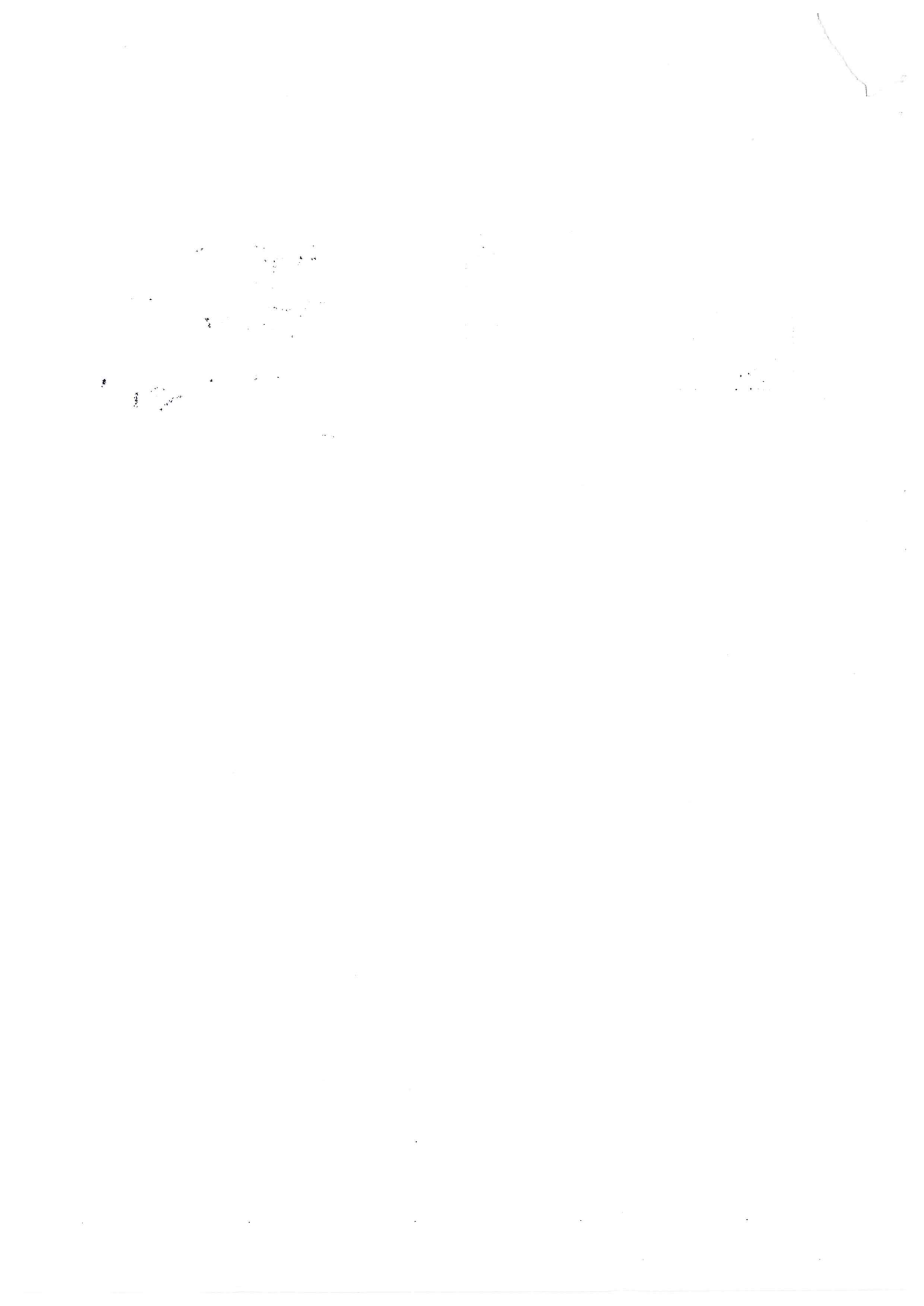


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1.1 PREFACE

Mr. Speaker Sir,

On behalf of the Senate Committee on Energy and pursuant to provisions of Standing Order 137 (1) of the Senate Standing Orders, it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Local Content Bill (Senate Bills No. 10 of 2018).

The Bill was committed to the Committee on Thursday, 10th May, 2018 and it is on the basis of this that the Committee makes this report pursuant to Standing Order 127.

1.1 Establishment of the Committee

The Senate Standing Committee on Energy is established pursuant to standing order 212 (3) of the Senate Standing Orders. The Committee is mandated *to consider all matters relating to fossil fuels exploration, development, production, maintenance and regulation of energy.*

In the execution of its mandate, the Committee oversees the Ministry of Mining and Petroleum and the Ministry of Energy.

1.2 Membership of the Committee

The Committee is comprised of the following member-

- | | |
|-------------------------------|-------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | -Vice Chairperson |
| 3. Sen. Aaron Cheruiyot | -Member |
| 4. Sen. Mithika Linturi | -Member |
| 5. Sen. Susan Kihika | -Member |
| 6. Sen. (Prof.) Imana Malachy | -Member |
| 7. Sen. Ledama Olekina | -Member |
| 8. Sen. Mwaruma Johnes | -Member |
| 9. Sen. Mercy Chebeni | -Member |

1.3 Consideration of the Local Content Bill, 2018

Mr. Speaker Sir,

The Local Content Bill, 2018 underwent first reading on 10th May, 2018 and thereafter committed to the Standing Committee on Energy as provided for in the Standing order 134(1).

Pursuant to Article 118(b) and Standing Order 134(5), which require public participation and involvement in the legislative and other business of Parliament and its Committees, a notification was placed in the mainstream print media on 15th July, 2018 informing the public that the Committee was considering the Local Content Bill, 2018 and inviting them to submit any representation they may have on the Bill.

Mr. Speaker Sir,

The Committee received views from the public and interest stakeholders in a public hearing held on 21st June, 2017. Moreover, the Committee held consultative meetings with the Ministry of Mining and Petroleum to consider pertinent issues that the Bill was seeking to address. Additionally the Committee received written memorandum from various stakeholders as is herein outlined.

These views were taken into consideration and have been considered in arriving at the Committee amendments proposed.

1.4 Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate, for the support extended to it in the processing of this Bill. Similarly, the Committee extends gratitude to the institutions/organisations that made both oral and written submissions.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 137 (1), to lay on table the Report of the Standing Committee on Energy, on the Local Content Bill (Senate Bills No. 10 of 2018).


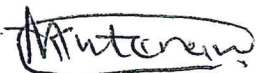

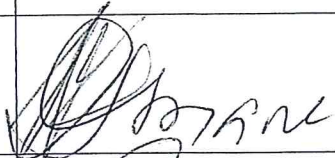
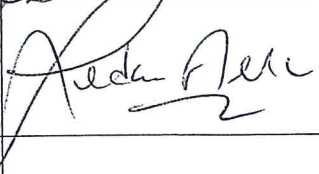
Signed.....

Date..... 26th JULY, 2018

**SEN. EPHRAIM MAINA,
CHAIRPERSON
STANDING COMMITTEE ON ENERGY.**

1.5 Adoption of the Report

We the members of the Senate Committee on Energy have pursuant to Standing Order 199 adopted this Report on the Local Content Bill (Senate Bills No. 10 of 2018) and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today Thursday 26th July, 2018:-

No.	NAME	DESIGNATION	SIGNATURE
1.	Sen. Ephraim Maina	Chairperson	
2.	Sen. Mary Seneta	Vice Chairperson	
3.	Sen. Aaron Cheruiyot	Member	
4.	Sen. Mithika Linturi	Member	
5.	Sen. Susan Kihika	Member	
6.	Sen. (Prof.) Imana Malachy	Member	
7.	Sen. Ledama Olekina	Member	
8.	Sen. Mwaruma Johnes	Member	
9.	Sen. Mercy Chebeni	Member	

2.1 INTRODUCTION

The Local Content Bill, 2018 (Senate Bill No. 10 of 2018) was read a first time in the Senate on 10th May, 2018 and Committed to the Standing Committee on Energy, pursuant to Standing Order 134(1) of the Senate Standing Orders.

2.1 Background of the Bill

Article 69(1) of the Constitution 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 of a number of natural resources, particularly oil, in Kenya has led to the realization of the existing gap in the framework not only for the management in the utilization of the resource but also in ensuring that the benefits find their way to the local communities in the form of income, capacity building and research and development.

The development of the extractive industry in Kenya has often brought with it disruptive effects particularly with regard to the communities living around the area in which the resource is explored. In particular, the issues of concern which have arisen out of extractive activities include –

- (a) land acquisition by non-locals where resources are discovered and subsequent displacement of such locals;
- (b) low levels of education and capacity to engage or participate in extractive activities;
- (c) lack of employment of the locals or involvement in the processes connected with the extractive activities;
- (d) lack of public participation; and,

- (e) the fact that benefits arising out of these extractive activities do not trickle down to the local communities or benefit the country at large.

These concerns have been intensified by the fact that Kenya does not have in place a legal framework that would ensure the realization of local content in the extractive industry value chain.

In order for the local communities, particularly in areas where the resources are extracted, to benefit from the extraction of resources, there needs to be in place a strong policy and legal framework on local content in the extractive industry value chain. The framework would be expected to facilitate the development of local economies by ensuring the procurement of goods and services by operators that are produced locally, in order to stimulate local industrial development, capacity building and to increase the local capability of local enterprises to meet international standards in the supply of goods and services.

With regard to the extractive industry, local content is expected to occur at the exploration and appraisal stage, the development stage and at the production stage. Having in place a local content law would ensure that attention is directed to one singular objective of developing local content.

2.2 Objects of the Local Content Bill, 2018 (Senate Bill No. 10 of 2018)

This Bill seeks to provide for a framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil and other mineral resources.

In particular, it seeks to ensure that local content is actualized through –

- (a) involvement of local communities in the various processes of the extractive industry value chain and hence, the development and enhancement of income through training and capacity building, transfer of technology and employment of such locals;
- (b) ensuring that land owners and owners of resources receive the revenue due to them; and,
- (c) targeting income streams to local communities, local enterprises and financial institutions.

2.3 Overview of the Bill

The Local Content Bill seeks to provide a legal framework for the development and adoption of local content 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.

Part I of the Bill seeks to apply the legislation to all commercial activities related to the exploration, development and exploitation of natural resources in the extractive industry in Kenya. These resources have been defined to mean oil, gas and mining sectors in Kenya. It also sets out the principal objects of the Act and the principles under Article 66 and 66 of the Constitution which are to guide persons and entities that are involved in the extractive industry.

Part II of the Bill sets out the role of the National Governments in ensuring that the objectives of the Bill are realized. In particular, it calls for the identification, by the National Government of sectors along the extractive value chain in which local content opportunities exist and the establishment of mechanisms to enhance the attainment of local content as set out in the Bill. It also calls for the collaboration between the National Government and the County Governments in matters relating to the implementation of the Act.

Part III of the Bill sets out the governance framework in relation to the extractive industry. It provides for the establishment of a Local Content Development Committee whose main role is to ensure the realization of local content through the recommendation and implementation of measures for the development, implementation, monitoring and evaluation of local content and the development of local capacity to take part in the extractive industry processes. This Part sets out the composition of the Committee comprising principally of the principal secretaries in the ministries responsible for matters relating to petroleum, finance, industry and enterprise development and immigration, the Solicitor-General, the chairperson to the Council of County Governors and three other persons representing various players in the extractive industry who shall be appointed by the Cabinet Secretary. The Committee is expected to conduct its affairs through the Secretariat headed by a Director who shall be competitively recruited by the Public Service Commission and appointed by the Cabinet Secretary.

Part IV of the Bill provides a framework for the preparation of local content plans by an operator involved in the extractive industry. The operator is required to set out in these plans, the strategies to be adopted by the operator in ensuring that it attains local content

in the extractive processes that it is involved in. This Part also requires an operator to prepare and submit to the Committee, an employment and skill development plan, a research and development plan, a technology transfer plan and a financial services plan all setting out the manner in which the operator will ensure the uptake of local goods and services and ensure the transfer of know-how and technology to local communities and enterprises in the area in which the extractive industry is to be carried out.

In particular, this Part it imposes an obligation on all operators to give first consideration for the employment of local persons over foreigners, carry out education and training of locals in the various stages of the extractive industry and progressively minimize the employment of foreign staff. For this purpose, it imposes an obligation on the operator to prepare a succession plan for any position not held by a local person.

Part V of the Bill imposes an obligation on an operator to establish a bidding process that promotes the acquisition of goods and services in a manner that would give a fair opportunity to local persons to participate in the supply processes. It also imposes an obligation on the Cabinet Secretary to set a threshold on the minimum Kenyan equity in an extractive industry company, the number of nationals that are to be hired in an extractive industry company and, for this purpose, proposes to impose an obligation on the National Government to carry out corresponding reform measures to ensure that this objective is realized. It also imposes an obligation on the Cabinet Secretary, on the advice of the Committee, to put in place tax incentives, including exemptions aimed at facilitating the realization of local content.

Part VI imposes an obligation on an operator to submit its annual work plan which sets out the estimate of the local content component of the extractive activities undertaken by the operator during the period under consideration and an annual statement of the expenditure incurred in that process. It imposes an obligation on the Committee to make recommendations for the implementation of support measures to promote the realization of local content. This Part also provides for a framework for the conduct of public participate and sets out penalties for the breach of the provisions of the Act.

Part VII sets out transitional provisions with respect to existing contracts and agreements entered into by an operator prior to the commencement of the Act.

3.1 PUBLIC PARTICIPATION / STAKEHOLDER CONSULTATIONS ON THE LOCAL CONTENT BILL, 2018

Pursuant to Article 118 of the Constitution and Standing Order No. 134 (5), the Senate Standing Committee on Energy, held a public hearing on Local Content Bill, (Senate Bill No. 10 of 2018) and met with various stakeholders to discuss the Bill.

The Committee received submissions from the following stakeholders alongside the general public -

1. The Ministry of Petroleum and Mining
2. Kenya Oil and Gas Association
3. Easter Africa Extractive Consulting Ltd
4. Kenya Chamber of Mines
5. George Mati Mucee
6. Energy Solution Africa Limited
7. Strathmore University
8. Base Titanium
9. Mr. Tony Paul

The submissions received by the Committee on Energy are summarized as below:

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
1.	Eastern Extractive Consulting Limited Africa Consulting	The words “other petroleum resources” be substituted with “minerals” for the Bill to substantively provide for the extractive industry and rationalize this inconsistency.	In the introduction section also known as the preamble, the Bill restricts/limits itself to gas, oil and other petroleum resources. However, Section 2 of the Bill assigns the meaning of 'extractive industry' as oil, gas and mining sectors in Kenya.		Rejected
	Geothermal Association of Kenya	The Bill should incorporate the value chain of geothermal energy.	The Geothermal sector, like the oil, gas and mining sectors attract foreign corporates to operate in the country. The industry players propose that the Bill covers the geothermal sector.		
2.	Kenya Chamber of Mines	Definition of “extractive industry” should be retained as is to exclude mineral resources.	This is correct since the extractive industry refers to mineral resources and petroleum resources. Section 3 of the Local Content Bill states that “This Act shall apply to		Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
			<p>all commercial activities related to the exploration, extraction, development and exploitation of oil, gas and other petroleum resources in the extractive industry in Kenya.</p> <p>This is very clearly guided and excludes the mineral resources.</p> <p>Then, if the mineral resources are excluded, which Act provides for their administration? It the Mining Act 2016</p> <p>Section 2 of the Mining Act 2016 states “This Act shall apply to the minerals specified in the First Schedule”.</p> <p>The First Schedule in the Mining Act 2016 provides comprehensive listings of the mineral resources on which the Act applies. It should be</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
	<p data-bbox="491 1615 555 1816">Turkana County Government</p> <p data-bbox="1066 1585 1129 1816">Kenya Oil and Gas Association</p>	<p data-bbox="895 936 970 1503">The following amendments are proposed for inclusion</p> <p data-bbox="1034 936 1289 1503">“host community” means the community or communities living in the sub-county which is, or sub-counties which are the source of the extractive resource or resources being the subject of the extractive activities of an operator; and</p> <p data-bbox="1353 936 1385 1503">“host county” means the county which is,</p>	<p data-bbox="316 436 703 907">noted that the listings deliberately exclude oil, gas and other petroleum resources as was stipulated under Section 3 of the Mining Act when it states that ‘Save to the extent provided for in this Act, this Act shall not apply to matters relating to petroleum and hydrocarbon gases.</p> <p data-bbox="767 436 975 907">It would then be right to state that the Mining Act does not envisage a situation where it deal with oil, hydrocarbon gases (gas) and other petroleum resources.</p> <p data-bbox="1082 436 1385 907">It is essential to include the definitions of these terms because their use is proposed hereinafter for purpose of giving priority to persons from host counties and host communities to benefit from the local content plans and local</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		<p>or counties which are the source of the extractive resource or resources being the subject of the extractive activities of an operator.</p>	<p>content development strategies.</p>	
	<p>Energy Solutions Africa Limited</p>	<p>In the definition of the term “company” there should be clarity with respect to the use of the word “effectively” in the definition.</p>		
	<p>Turkana Natural Resources Governance Hub</p>	<p>The following words should be defined –</p> <ul style="list-style-type: none"> (a) company (b) capacity building (c) financial services (d) indigenous skills (e) research and development (f) technology transfer 	<p>These terms have been used in the Bill and should be defined to avoid ambiguity.</p>	
		<p>The term “local company” be re-defined</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	COMMITTEE RESOLUTION
	<p>George Mati Mucee</p> <p>Eastern Africa Extractive Consulting Limited</p> <p>Geothermal Association of Kenya</p> <p>Ministry of Petroleum</p>	<p>to be deemed to be one that is effectively owned and controlled by Kenyans if it has not less than 51% equity shares by Kenyans”.</p> <p>Local content should be defined as the sum of the inputs of local goods and services, including employment, provided in oil and gas operations.</p> <p>Locals should be classified into three categories: national locals, county locals and community locals. National locals should be defined as the citizens or residents of the country. County locals should be defined as the residents or citizens of the county and community locals should be defined as the residents of the area around the extractive.</p> <p>It would be necessary to determine who is</p>	<p>There is need to clearly and explicitly define a local company.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	COMMITTEE RESOLUTION
		<p>a local and what local means. Local person should be defined to the specific man or woman historically residing in the area where such a project is taking place.</p> <p>Substitute 50% with an irreducible minimum percentage of 20% to be reviewed progressively.</p> <p>The definition of the word “extractive sector” should include the value chain of the geothermal energy sector in Kenya.</p> <p>Include the definition of the term “joint venture company”.</p>	<p>It would be important for a bigger percentage of the community around the project to benefit from the projects through employment. Hence,</p> <p>Labour and services used in the manufacture of local goods must be at least 50% of the cost of the finished product. This higher requirement may not be practical to our developing economy.</p> <p>By definition, the term extractive covers the extraction of natural resources from the subsurface for commercial use. The development of geothermal resources, under the definition falls within the bracket of extractives.</p> <p>This term has been used in clause 25(1)(a) and it would be important</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
3.	Turkana County Government	Clause 3 should be amended to apply to all natural resources in the extractive industry.	to define it as an entity established in Kenya.		Adopted
	Acacia Exploration Kenya Limited	The clause should be reviewed to ensure that the Bill only applies to the oil, gas and petroleum sectors. A provision may be inserted as follows – Where a Statute or Statutes prescribe the details of local content in a particular natural resource sector, the provisions of	It is a constitutional imperative that all resources should be utilized for the benefit of the people of Kenya, pursuant to Article 69(1)(h). Therefore, the Local Content Bill, once passed, should secure the rights of citizens to benefit not only in oil, gas and other petroleum resources, but across all extractive industries in Kenya.		Rejected
			The term extractive industry is defined in the Bill as oil, gas and mining sectors. Clause 3 can be interpreted to extend the application of the Bill to other sectors in the extractive industry including the mining sector. There already exist legislation (regulations) that regulate local		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE FOR AMENDMENT	COMMITTEE RESOLUTION
		<p>that Statute or Statutes shall apply in respect of that sector. Or</p> <p>Wherever “extractive industry” is mentioned without specific mention of restriction to oil, gas and petroleum within the extractive industry, such restriction may be included.</p>	<p>content in the mining sector and hence, these provisions would be a duplication of the existing legislation.</p>	
	George Mati Mucee	<p>The application of the Bill should extend to all sectors of the Kenyan economy that in effect guides specific sectors as the case may be.</p>	<p>The very specific nature of the Bill may bring about a situation where each sector seeks to come up with its own law on local content which would be a duplication of laws and would confuse people. It would be more appropriate to have a local content law that sets the framework to guide all sectors with one board and secretariat that is comprised of stakeholders from key industries. Whereas the sectors may be diverse, the approach should basically be the same in that it should result in the</p>	Adopted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
				empowerment of Kenyans to compete fairly with others regardless of the sector.	
	Eastern Africa Extractive Consulting Limited	Replace "other petroleum resources" with "minerals". Amend the section to read ".....all commercial activities in and related to the exploration....." to ensure all activities are included.	The use of "other petroleum resources" is limiting in view of the fact that the extractive industry has been The use of "all commercial activities related to the exploration" locks out core activities during exploration.		Adopted
	Geothermal association of Kenya	The application of the Bill should be extended to include the geothermal sector.	To align it with the proposed amendment for inclusion of the geothermal value chain in the Bill.		-
4.	Kenya Chamber of Mines	The following words to be inserted before the extractive to eliminate the possible ambiguous situation; "oil, gas and other petroleum resources of" to read as follows: Section 4(a) The objects and purposes of	Section 4(a) of the Local Content Bill states: The objects and purposes of this Act are to— (a) promote the maximization		Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		<p>this Act are to—</p> <p>(a) promote the maximization of value-addition and the creation of employment opportunities in the oil, gas and other petroleum resources of the extractive industry value chain through the use of local expertise, goods, services, businesses and financing and their retention in the country;</p>	<p>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;</p> <p>The section fails to qualify the resources within the extractive industry impacted by Section 4(a) since the extractive industry is interpreted to include mineral resources listed in the First Schedule in the Mining Act 2018.</p> <p>This hence brings about ambiguity, which should be eliminated from this Bill.</p>	
	<p>Eastern Africa Extractive Consulting Limited</p>	<p>Paragraph (d) Amend the paragraph to read “sustainable local labour force.....”</p>	<p>The use of the words “sustainable labour force” is open to foreign labour force which is not an objective or purpose for which an</p>	<p>Adopted</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
5.	Turkana County Government	Sub-clause (2) This should be amended to refer to subsection (1).	Act of Parliament will be established		
	Eastern Africa Extractive Consulting Limited	Sub-clause (2) Amend the subsection to make reference to subsection (2)	Makes reference to subsection (2) instead of subsection (1)		Adopted
6.	Eastern Africa Extractive Consulting Limited	Paragraph (b)(i) Replace the word “locals” with “local persons” because the meaning of local person has been provided for Paragraph (b)(ii) Assign the tasks if identifying the in-country programmes to the Committee so as to have this subsection read as follows- “...in-country programmes identified by the Committee...” A similar duty tantamount to self assessment by the operator should be	Makes reference to locals yet the meaning of locals hasn’t been provided for Reference is made to in-country programmes yet no entity or individual has been tasked to come up with such programmes The duty to Measure and report the performance of operators in the extractive industry with respect		Adopted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
		bestowed on the operators	to local value addition is bestowed upon the Committee		
	Ministry of Petroleum	Paragraph (b)(iv) Replace the word “wealth capture” with the word “wealth creation”.	The objective is to ensure wealth creation and not wealth capture. Hence, the provision should be amended to reflect this.		Adopted
7.	Turkana County Government	The clause should be renumbered to read as clause 8 and not sub-clause (1). The following function should be inserted immediately after paragraph (f) as follows – (g) in cooperation with the Secretariat of the Committee, identify, register and keep a database of, and share with the Committee, the database of the locally available goods and services in the County for local content consideration	To correct the numbering. The county government is well placed to identify goods and services obtaining within its jurisdiction. It is essential to give this role to county governments to ensure that qualified and merited individuals and entities are considered.		Adopted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR RESOLUTION
8.	Energy Solutions Africa Limited	The Bill should be in sync with the Petroleum Bill and local content policy.	<p>The Executive is in the process of preparing a policy on local content that is overarching. The policy with create an institution to administer local content that is similar to the proposed local content development committee.</p> <p>The Petroleum Bill also requires plans to be submitted to the Upstream Petroleum Regulatory Authority, the Mining Act requires the plan to be submitted to the Cabinet Secretary while the Bill requires a local content plan to be submitted to the local content committee.</p>	Rejected
9.	Turkana County Government	The Local Content Committee proposed to be established under the Bill should be retained and at an appropriate time, the functions proposed to be conferred on the Authority with respect to proposed to be established under the Petroleum Bill	<p>There are plans to create another entity for the management of local content in the petroleum industry, namely, the Upstream Petroleum Regulatory Authority (herein "Authority") created under clause</p>	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		<p>should be withdrawn.</p>	<p>14 of the Petroleum (Exploration, Development and Production) Bill, 2017 (herein "Petroleum Bill") which is currently pending before the National Assembly.</p> <p>One of the functions of the Authority under Clause 78(1) Petroleum Bill is to "...supervise, co-ordinate, and manage the development of local content." This local content is specific to the petroleum industry. We thus have two Bills that seek to establish two separate entities to manage local content. The difference is that the one under the Local Content Bill will manage the local content in the entire extractive industry, while the entity under the Petroleum Bill will have authority over the local content in petroleum industry only.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
			<p>It makes sense to have a one-stop shop for management of local content across the entire extractive industry, instead of have specialized local content authorities for each subsector of the extractive industry. Have one entity for all promotes the ideal of the prudent use of public finance espoused in Article 201(d) and principle of good governance under Article 10(2)(c) of the Constitution.</p>		
10. Clause 11	Energy Solutions Africa Limited	Impose a requirement on the local content development committee to establish a database which will set out the available opportunities and qualified and certified local suppliers and ensure that this information is accessible to the public.		This will be in line with Article 35 of the Constitution.	Adopted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
11. Clause 12(1)	Turkana County Government	Amend paragraph (e) to provide for the nomination of seven persons by the Council of Governors, four of whom should be representative of host counties.	The Council of Governors comprises all the forty-seven counties. Being an umbrella body representing the interests of forty-seven counties, it amounts to inadequate representation for the Council to have only two representatives in the Committee. Extractive industries operate in counties. Therefore, county governments need influential presence in critical decision-making organs such as this Committee.	Governors	Rejected
	George Mati Mucee	The Committee should include representatives from the Immigration, labour and other relevant departments in Government.	The composition of the Committee should not be restricted to persons who are in the extraction industry as there are other critical stakeholders whose inclusion in the Committee would be important if the Committee is to effectively carry out its functions.	The Committee	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
	Eastern Africa Extractive Consulting Limited	Provide for the Permanent Secretary responsible for matters relating to education or a representative designated in writing	Committee lacks representation from the Ministry of Education yet such ministry is key in building educational capacity in the extractive industry		Adopted
	Geothermal Association of Kenya	The membership of the Committee should include the Principal Secretary responsible for matters relating to geothermal energy or a representative designated in writing. The persons to be nominated should be categorised into two: one person nominated from the deep well drilling sectors (geothermal, oil and gas); and the other nominee to be drawn from the mining sector.	This will be in line with the proposed amendment to include the geothermal sector in the Bill and further, ensure that the sector is represented on the Committee. This will ensure that all relevant sectors are represented in the Committee.		Rejected
	Ministry of Petroleum	Include representatives from the Ministry of Education and the Ministry of Industrialisation.	These are critical in ensuring that the objectives of local content are met.		Adopted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
12. Clause 19	Turkana County Government	<p>Sub-clause (1) The word “petroleum” should be replaced by “extractive” so as to read as follows –</p> <p>The Cabinet Secretary shall designate an appropriate administrative unit within the Ministry responsible for matters relating to the extractive industry to serve as the Secretariat of the Committee.</p>	The Committee’s mandate is not limited to petroleum industry. It covers the entire extractive industry. Therefore, it’s secretariat should not be placed under a unit confined to petroleum matters only.		Rejected
	Geothermal Association of Kenya	One of the members to serve in the secretariat designated by the Cabinet Secretary should be drawn from the Ministry responsible for matters relating to geothermal energy.	This will ensure that the geothermal sector is adequately represented.		Rejected
13. Clause 21	Turkana County Government	<p>Sub-clause (1) The provision should be amended to vest the power to set the minimum local content to be applied by operators under the Act in the Committee.</p>	The Committee is well represented, taking care of various constituencies of interests, and therefore it is expected that their product in the minimum local content will be inclusive.		Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR RESOLUTION	COMMITTEE RESOLUTION
14.	Kenya Oil and Gas Association	<p>Sub-clause (1) The term “person” should be replaced with the term “applicant”.</p> <p>Sub-clause (2) The term “operator” should be replaced with the term “person”.</p>	<p>The proposed amendment seeks to give clarity so as to distinguish between long term local content plans required to be submitted by an applicant and annual local content plans required to be submitted by an Operator.</p> <p>Without this clarity, there is confusion as to what exactly is being approved before an approval to carry out an extractive activity is granted given that an Operator (as referred to in section 22(2) is already licensed to carry out operations as per the interpretation in section 2.</p> <p>Additionally, given licensing requirements under the Petroleum Act (Also under the proposed Petroleum Bill), to require an Operator to be subject to an additional approval process under</p>	<p>Adopted</p> <p>Rejected</p> <p>Adopted</p> <p>Rejected</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
		<p>Sub-clause (2)(b) The sub-clause be delinked from sub-clause (2), renumbered as sub-clause (3) and amended to read as follows –</p> <p>“An operator shall, 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>Sub-clause (3)(b) The words “standards for the remuneration” be replaced with the words “minimum wages applicable for such employees”.</p>	<p>this section introduces unpredictability for the investor.</p> <p>The approval of the long term local content plan submitted by an applicant to the Committee under this section needs to be aligned with approval/bidding processes for a licence under the Petroleum Act (Section 8 as read with 9(1)(h)) Also under the proposed Petroleum Bill (Section 44(1) as read with 46(1)(g))</p> <p>Clarity is needed on what is meant by “standards of remuneration”.</p> <p>In the alternative, this sub-section may be reworded to require an Operator to indicate the minimum wages applicable for employees</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		<p>Sub-clause (5) The clause be amended to insert the words “long term” immediately after the words include in the to read as follows –</p> <p>“An applicant shall subject to the provisions of this Act and for the purposes of subsection (2), include in the long term local content plan, the following plans.”</p>	<p>engaged in its activities. Ideally, government should advise on standards.</p> <p>The approval of the long term local content plan submitted by an applicant to the Committee under this section needs to be aligned with approval/bidding processes for a licence under the Petroleum Act (Section 8 as read with 9(1)(h)) Also under the proposed Petroleum Bill (Section 44(1) as read with 46(1)(g))</p>	<p>Rejected</p>
	<p>Ministry of Petroleum</p>	<p>Sub-clause (1) Review to provide for the submission of field development plans.</p> <p>Sub-clause (3)(c) It would be important to specify in the Bill</p>	<p>The appropriate plans that should be submitted at the inception stages are field development plans. Local content plans ought to be submitted after discovery of the resource.</p>	<p>Rejected</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		<p>who conducts the skill gaps assessment. This should be carried out by the Committee.</p> <p>Sub-clause (5) The provision should be drafted in a manner that would be facilitative to the operator.</p>	<p>This will ensure clarity with respect to the obligation to carry out a skills gap assessment.</p>	
15.	Kenya Oil and Gas Association	<p>Sub-clause (1), (3), (5) and (6) Sub-clause (1) be amended to make reference to the submission of a long term local content plan</p>	<p>Proposed amendment seeks to give clarity so as to identify the plan that is required to be reviewed in the manner provided under section 23. This is also consistent with the process envisioned under section 23(2)(b).</p> <p>Alignment: The approval of the long term local content plan submitted by an applicant to the Committee under this section needs to be aligned with approval/bidding processes for a licence under the Petroleum Act</p>	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
16. Clause 24	Eastern Extractive Consulting Limited	<p>Sub-clauses (1)(d), (2), (3) and (4) Amend these clauses to assign the role of local content certification to a department at the Secretariat.</p> <p>Further provide for regulations that will govern the certification</p>	<p>(Section 8 as read with 9(1)(h)). Also under the proposed Petroleum Bill (Section 44(1) as read with 46(1)(g))</p> <p>The provision for independent certifying agents are unnecessary layers of administration and may inadvertently create an environment for corruption</p>		Adopted
17. Clause 25	Kenya Oil and Gas Association	<p>Sub-clause (1)(b) Insert the following proviso immediately after paragraph (b) –</p> <p>Provided that said technology transfer strategies conform to applicable intellectual property rights and are based on mutually agreed terms of transfer with the owner of the referenced technology.</p>	<p>There is an imposition of obligations of technology transfer strategies on the Operator.</p> <p>For an upstream oil and gas operations, the Operator is not the holder/ owner of the technology used as it usually sub-contracts to local/international companies for the required services. It is therefore onerous to require the Operator to prepare and implement</p>		Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE FOR AMENDMENT	COMMITTEE RESOLUTION
18.	Turkana County Government	<p>Sub-clause (2)(b) The term “local community” be replaced with the term “host community”. This term should replace the term “local community” where used in other parts and provisions of the Bill. Thus, the provision should read as follows –</p> <p>(2) An employment and skill development plan submitted under subsection (1) shall include—</p>	<p>strategies for technology transfer that it does not own or hold any rights and has no capacity to control the transfer.</p> <p>To oblige a Service Provider to transfer its technology without clear guidelines on intellectual property rights, poses the risk of being saddled with old/obsolete technology that will not benefit of the country.</p> <p>Although the provision uses the term local community, the Bill does not provide definition of this term. The change is proposed so that the term is aligned to the proposed definition of host community.</p> <p>This will also help to avoid the temptation to try to give the term “local community” a definition that is closer to the definition of</p>	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR RESOLUTION
19.	Kenya Oil and Gas Association	<p>(a) ...</p> <p>(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;</p>	<p>the term “local person” in terms of geographical scope. It is noteworthy that in the Bill, “local person” is a person or entity whose principal place of business is Kenya.</p>	
		<p>Sub-clause (1)(a) The obligation to supply training locally should be imposed on the Ministry responsible for the particular and not the operator, in consultation with the Committee.</p>	<p>Unreasonable Burden: This provision places an unreasonable and undue burden on operators by making them totally responsible for the training of all affected Kenyans.</p> <p>Existing Training Fund: Given that under the various PSCs, the Operator is already paying an annual training levy to the Ministry of Petroleum & Mining sometimes more than Ksh 30</p>	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE FOR AMENDMENT	FOR COMMITTEE RESOLUTION
			<p>Million per block, the onus of training as envisioned in this section, should then be passed on to the Ministry and not left to the Operator. Accordingly, this obligation is best placed to be performed by the Ministry responsible for the sector under reference.</p> <p>State Responsibility: The responsibility of the State to organize and administrate training of local persons and public officers is also consistent with the constitutional and legal framework on education and training. (Article 55 (a), Industrial Training Act etc.</p>	
		<p>Sub-clause (3) The term “operator” should be replaced with the term “Ministry”</p>	<p>Onerous Burden: The definition of Public Officer as defined under Article 260 of the Constitution is very wide and presupposes that the Operator should train every Public</p>	-

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT FOR	COMMITTEE RESOLUTION
			<p>Officer who expresses interests in upstream operations.</p> <p>Existing Training Fund: Given that under the various PSCs, the Operator is already paying a training levy to the Ministry of Petroleum & Mining sometimes more than Ksh 30 Million annually per licence, the onus of training as envisioned in this section, should then be passed on to the Ministry and not left to the Operator.</p> <p>KEPTAP: There exist under the World Bank funded Kenya Petroleum Training Assistance Programme (KEPTAP), resources to train public officials. Accordingly training of public officers should be under MoPM / KEPTAP.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE FOR AMENDMENT	COMMITTEE RESOLUTION
			<p>State Responsibility: The responsibility of the State to organize and administrate training of local persons and public officers is also consistent with the constitutional and legal framework on education and training. (Article 55 (a), Fourth Schedule, Part 1 (32)) and Industrial Training Act).</p>	
	Ministry of Petroleum	<p>Sub-clause (1) The provision should be drafted in a manner that is facilitative for the operator.</p>	<p>Given that operators work with sub-contractors, the most appropriate approach to take would be to impose an obligation on the operators to facilitate the local training and implementation of the capacity building strategies.</p> <p>An obligation should also be imposed on the Committee to take part in the capacity building and training of local persons in order to enhance their employability and ability to render services required</p>	Adopted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT FOR COMMITTEE RESOLUTION
			<p>with respect to the operations.</p> <p>The Committee should be forward thinking and pre-empt gaps that exist and training needs and put in place measures to address them in advance.</p> <p>There is also a need to ensure that our training institutions are adequately equipped to handle and address any training needs that may have been identified and offer the relevant trainings.</p>
20. Clause 28	Kenya Oil and Gas Association	<p>Sub-clause (2)(a) The local personnel maintained by the operator should not solely be determined by the Committee but should be based on the operator's scope of business and as agreed between the Committee and the operator.</p> <p>In addition, the local personnel to be</p>	<p>Consensus: The Bill to be amended to provide for consensus with the Operator and for recruitment requirements to be based on operations of the project.</p> <p>Scope of Operations: For the avoidance of doubt and to act responsibly with respect to</p> <p>Rejected</p>

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT FOR	COMMITTEE RESOLUTION
		maintained should be persons who have the requisite expertise and qualifications.	<p>stakeholder expectations, it is important to state that the recruitment of local personnel is subject to qualification and scope of Operator's operations.</p> <p>Safety: Qualifications and expertise are important in the oil and gas industry to ensure safety of the operations and efficiency.</p>	
21. Clause 29	Kenya Oil and Gas Association	<p>Sub-clause (2) The Bill to be amended to remove restrictive approach towards succession planning.</p>	<p>Nationalization: It would be best to simply share a plan on how to nationalise the positions held by expatriates as compared to restricting it as proposed.</p> <p>Challenges: Considering the normal attrition within any organization, it would be a challenge to give specific names of persons earmarked to replace expatriates as some of these positions; external recruitment</p>	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
			may have to be done to replace the expatriate. Furthermore, some jobs are undertaken on a short-term basis and it is therefore difficult to come up with a succession plan for such jobs.	
22. Clause 30	Kenya Oil and Gas Association	Sub-clause (1)(a) and (b) The formulation and publicizing of the proposed strategic plan on the transfer of technology should be done in collaboration with the owner of the technology.	Ownership; Transfer of technology in the absence of mutually agreed terms with the owner of the technology will amount to expropriation of intellectual property rights and therefore, the owners of technology need to be consulted.	Rejected
23. Clauses 32(1), 33(1) and 34	Kenya Oil and Gas Association	The Bill to be amended to replace the word "operator" with "owner of technology".	For the upstream oil and gas sector, the Operator is not the holder/ owner of the technology used as it usually sub-contracts to local/international companies for the required services. It is therefore onerous, if not infeasible to require the Operator to prepare	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
			and implement strategies for technology transfer that it does not own or hold any rights and has no capacity to influence/control the transfer/ assignment/ deployment of the technology under reference.		
			Further, section 34 as worded requires an Operator to submit an annual report prior to commencement of its activities. It is impractical to expect the Operator to report on activities it has not started.		
24. Clause 35	Kenya Oil and Gas Association	<p>Sub-clause (1) The section should be amended so as to be applicable to operators that are involved in research and development. It should read as follows –</p> <p>Where an operator is involved in research and development, it shall prepare and submit to the Committee, its research and</p>	<p>Definition Required: Research and Development (R&D) with reference to the petroleum sector needs to be defined. Does it refer to technological research and development etc.?</p> <p>Service Companies and R&D: Generally, most of oil and gas</p>		Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
		development plan.	Operators worldwide are not involved in Research and Development, given their reliance on service companies which offer the specialised services to the Operator and which are more likely to be involved in research and development. Funding: For the oil and gas sector, it is envisioned under the Energy Bill (sec 55), that an agency would be established to carry out research and development in the sector and shall attract private sector funding. Further, the Operator is already required under the Petroleum Training Fund Regulations 2006 to contribute to the training fund for Kenyans in the upstream sector.		
25. Clause 37	Eastern Africa Extractive Consulting	Sub-clause (1) A statutory formula to inform the		The percentage for the funds set aside for research and	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
	Limited	percentage to be used be prescribed. This clause should be a clause in the model Production Sharing Contracts in the proposed Petroleum Bill, 2017.	development is not statutory stated nor is it a fixed percentage. This leaves room for discretion to the Cabinet Secretary and gives room for the Operator to manoeuvre out of it.		
	Ministry of Petroleum	We should be clear as to the nature of research that is it to be carried out by an operator and the use to which the monies set aside by an operator to conduct research will be put to.		-	
26. Clause 38	Ministry of Petroleum	Sub-clause (1) The entire clause needs to be reviewed given the fact operators cannot be tied to local financial institutions.	Financial services plans: we should be more prescriptive. We also need to know what kind of financial services that are being referred to.	Adopted	
	Kenya Oil and Gas Association	Sub-clause (5) The definition of "indigenous Kenyan Bank" should be amended to provide as follows – For the purpose of this section, "an indigenous Kenyan Bank means a bank	Indigenous Banks & Shareholding: This definition limits the Operator's ability to open and maintain a bank account with banks in Kenya, cognisant of the changing shareholding within the Banking Sector including local	Rejected	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		that has been duly licensed by the Central Bank of Kenya to carry out banking activities in Kenya.”	banks that have had to allow for foreign investment to improve the service delivery/ensure compliance with CBK thresholds.	
	Eastern Africa Extractive Consulting Limited	Sub-clause (3) as read with clause 45(2) Provide for the definition of an indigenous Kenyan bank and a non-indigenous Kenyan company	The is no definition of an indigenous Kenyan bank and a non-indigenous Kenyan Company respectively	Rejected
27. Clause 39	Kenya Oil and Gas Association	Sub-clause (2)(b) Deletion of the word “remuneration” from the provision.	Constitutional Right to Privacy: Publication of employee remuneration as envisioned in this section shall be an infringement of Article 31 of the Constitution and section 6 of the Access to information Act (limitation of right to access) Privity of Contract: Additionally, the principles of “privity of contract” come into play with regard to disclosure of employee’s salaries, unless consent is obtained from them.	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
28. Clause 40(1)	Kenya Oil and Gas Association	<p>Sub-clause (1) The provision should be amended to ensure that an operator complies with the provisions of the Act while taking into account the findings on the level of local content as set out under clause 11 as follows –</p> <p>The Committee shall within thirty days after receipt of the local content performance report under section 3941, assess and review the report, to ensure compliance with the provisions of this Act taking into consideration the findings made level of local content in the Country as assessed under section 11 of the Act.</p>	For avoidance of doubt and for purposes of predictability, it is important that the assessment is measured against the qualified services and goods assessed to have been available in –country.	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	COMMITTEE RESOLUTION
		<p>Sub-clause (2) Amend the clause to allow for the submission of a reasonable notice of not less than forty eight hours by the Committee to an operator for access to facilities and documentation that may be required for the conduct of an assessment and verification of the local content performance report.</p> <p>A further clause should be inserted as sub-clause (3) to allow for the observance of confidentiality in the access of documentation as follows –</p> <p>(3) The Committee and any employee or designated agent of the Committee having had access pursuant to sub-paragraph (2) above shall observe strict confidentiality in respect of all information obtained and not disclose such information to any person except with the explicit prior written approval of the relevant contractor, sub-contractor,</p>	<p>The Bill should be amended to specify that access should be during normal working hours and after issuance of a 48 hours' notice to the operator so as to ensure efficiency.</p> <p>There is need to provide for the confidentiality of information acquired during investigations carried out under this section.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
		licensee., or other entity.			
29. Clause 41	Kenya Oil and Association	Sub-clause (3)(c) An additional condition should be imposed that preference to a local person over a foreign entity in the evaluation of bids for the procurement of goods and services should be given if “the goods and services meet the relevant extractive industry standards with regard to quality, quantity and timelines”.	The provision imposes a strict requirement on operators to acquire goods which are locally produced whether or not they meet the quality required by the industry. The Bill should be amended in order to ensure that the quality of goods is considered.		Rejected
	Turkana County Government	A proviso should be included for first preference to be given to local persons from the host county or counties where the resource is found and where the operator is carrying out the extractive activities.	It is necessary to empower the surrounding communities.		Rejected
	Kenya Oil and Association	Sub-clause (4) An additional condition should be imposed that preference to a local person over a foreign entity in the evaluation of	The provision imposes a strict requirement on operators to acquire goods which are locally produced whether or not they meet		Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE FOR AMENDMENT	COMMITTEE RESOLUTION
		bids for the procurement of goods and services should be given and a tender awarded if “the goods and services meet the relevant extractive industry standards with regard to quality, quantity and timelines”.	the quality required by the industry. NOTE: (This provision to offer contracts to indigenous Kenyan companies even if they do not have the lowest bid is an unfair obligation on the operator and likely to increase project costs up to 10%.)	
30. Clause 43	Kenya Oil and Association	Sub-clause (2) Impose a requirement for the Cabinet Secretary to take into account the findings made under clause 11 in authorising the importation of the required goods and services where not available locally.	For avoidance of doubt and for purposes of predictability as well as guiding the Cabinet Secretary decision, it is important that the conditions and approvals are well informed by the baseline survey.	Rejected
31. Clause 44	Kenya Oil and Association	Sub-clause (3) Subject the provision to existing laws, unless exempted by the Committee.	State entities are guided by existing law e.g. Public Procurement and Disposal Act hence cognizance needs to be taken to avoid nullification of the process envisaged under this	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
			various PSCs, the Operator is already paying a training levy to the Ministry of Petroleum & Mining of up to Ksh 30 Million annually, the imposition of an additional levy is onerous.		
	Turkana County Government	Outline general guiding principles on the areas and scope of the application of the Fund. From these principles, the Cabinet Secretary can then create regulations to implement them.	The original provision establishing the Fund leaves a broad discretion to the Cabinet Secretary to define the areas and scope of application of the Fund. There is a risk that the discretion left to the Cabinet Secretary may be improperly used. Therefore clear boundaries must be set by the general body of principles on the utilization of the Fund.		Rejected
33.	Kenya Oil and Association	Sub-clause (4) The clause be amended to allow for the advertising of tenders in Kenya and where necessary, internationally.	The current wording of the provision is too restrictive. Operators should be allowed to advertise locally at first instance		Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
			and internationally where necessary without the need for approval (i.e.) red-tape as is the case currently. The baseline survey/findings under section 11 should also inform and guide the need for the operator to advertise internationally without prior approval.		
34. Clause 49	Eastern Africa Extractive Consulting Limited	Sub-clause (5) Proposed deletion			
		Sub-clause (3)(e) A similar section should be provided to enable the Committee assess how much is paid to foreigners as against the locals	Only applies to expenditure incurred in terms of payments made to the locals		Rejected
35. Clause 50	Eastern Africa Extractive Consulting Limited	Sub-clause (2) The Committee's report to the Cabinet Secretary should be submitted annually	Makes reference to a report by the Committee to be submitted to the Cabinet Secretary but does not stipulate the frequency for submission of such report.		Adopted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
36.	Kenya Oil and Association	<p>Sub-clause (2) Impose a requirement for a forty eight hour notice prior to access to conduct an assessment and verification of the local content information reported by an operator.</p> <p>Insertion of new sub-clause (3) as follows –</p> <p>(3) The Committee and any employee or designated agent of the Committee having had access pursuant to sub-paragraph (2) above shall observe strict confidentiality in respect of all information obtained and not disclose such information to any person except with the explicit prior written approval of the relevant contractor, sub-contractor, licensee., or other entity.</p>	<p>The Bill should be amended to specify that access should be during normal working hours and after issuance of a 48 hours' notice to the operator to ensure efficiency.</p> <p>Requiring the Operator to permit an agent to access records should be subject to any other written law i.e. the right to privacy under Article 31 of the Constitution and the limitation of the right to access to information under section 6 of the Access to information Act.</p>	Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE FOR AMENDMENT	COMMITTEE RESOLUTION
37.	Turkana Government County	Sub-clause (1) and (3) Enhance the fine proposed to ten million shillings from two million shillings.	<p>A maximum fine of two million Kenya shillings set out under sub-clause (1) is not deterrent enough, especially where operators whose worth may be too enormous to feel a penalty of up to two million shillings. A maximum fine of ten million shillings is likely to have a deterrent.</p> <p>It is not fair to subject a local to a higher fine of three million for acting as a front for a foreign entity (see clause 54(2) while subjecting operators, which are mainly foreign entities to a significantly lower penalty.</p> <p>Considering the economic scale of operators, a fine of up to a maximum of three million shillings proposed under sub-clause (3) may not be felt by, or serve as a deterrent to them. A fine</p>	Adopted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
			of up to ten million Kenya shillings is likely to serve as a deterrent.		
	Eastern Africa Extractive Consulting Limited	The stated maximum penalties be converted into minimum penalties. Clarify whether a breach of any other provision of the Bill constitutes an offence other than those stated in section 54	The offences created under this section attract a maximum penalty and no minimum penalty. This is open to abuse because an offender can actually be found guilty but no penalty is metted on them.		Adopted
38.	Kenya Oil and Association and Eastern Africa Extractive Consulting Limited	Sub-clauses (3)(a) and (4)(a) Delete reference to neglected children and county executive committee member as having the power to make regulations.	To correct an error in the Bill.		Adopted
39.	Geothermal Association of Kenya	Extend the application of the transitional provision to arrangements, agreements, contracts or memoranda of understanding in the geothermal sector.	This is to align it with the proposal for the inclusion of the geothermal sector in the Bill.		Rejected
40.	Kenya Oil and Association	Insert a new transitional provision as follows- An Operator or a connected entity having	Transitional period is needed for purposes of compliance. If the period is too short, the Operators will be prone to fail and be		Rejected

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
		obligations under this Act, shall comply with this Act within twenty-four (24) months after the commencement of this Act.	exposed to hefty fines and/or custodial sentences if the transition period is too long, it will likely raise anxiety or discouragement to the stakeholders and the local suppliers/citizens. Accordingly, Industry proposes a reasonable transition period of 24 months.		
	Turkana County Government	Insert a new transitional provision to include all other extractive industry agreements.	This is in line with the proposal and local content covers the entire extractive industry.		Rejected
General submissions	Energy Solutions Africa Limited	Exclude the mining industry from the ambit of the Bill. The bill should put more provisions specifically on strategies to address local ownership. This includes joint ventures and local equity participation. This is in order to make Kenyans not only supplier to the industry but also owners. Local ownership has just been identified but the Bill has not provided the strategies to			Noted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		<p>realize it as it has done for other measures such as training, research and development , local sourcing of goods and local employment.</p> <p>The bill has devolved the local content bill by bringing in active participation of county governments but it is not clear how county government will implement the bill for locals within the county. It needs to be clear if it intends that locals within the county will get more preference.</p> <p>The local content bill will have conflicts with the Mining Act 2016 and the Petroleum Bill. Senate should consider these to ensure that there is no conflict. This is due to the fact that the Act's focus keeps referring to the extractive industry to include mining.</p> <p>There should be consideration given as to what exactly is meant by transfer of technology. It should be clear which technology is to be transferred so as to</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
		<p>avoid over burdening of the investors and intellectual property right claims arising in the future.</p> <p>The country should be clear what area of skills development should be properly developed. This will lead to establishment of centers of excellence that will guide in development of capacity required for the identified skills. Therefore we propose that the bill includes the establishment of centers of excellence. This can also call for regional integration through collaboration in these centers for excellence.</p> <p>The level of employment to be developed is very important. The country should not only aim at achieving employment but there should be levels indicated. This is to ensure there are locals participating right from managerial level. This will ensure that the country not only gets to understand the operations of the industry</p>			

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
		but also the business. Not only should there be transfer of technology but there should also be provision that encourages innovation. This will enhance creativity in the industry and encourage development.			
33	General comment	George Mati Mucee There is in place a Kenyanization policy at the Department of Immigration which is required to ensure that only jobs that require skills not readily available in Kenya are held by expatriates with a view to localizing the jobs over time, through the Department of Immigration Services. The Kenyanization function still therefore exists and is considered for all permit applications in line with the localisation policy. The Bill should task the relevant ministries to work with technical schools, universities and companies setting up in the sector to develop a curriculum to train			Noted
				In terms of human capital, the Bill seems to focus on the role to be played by the government ministries in charge of education and energy. The Government is	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		<p>Kenyans to make them ready for the market when the projects start running.</p> <p>It would be necessary to determine how to ensure implementation and compliance with the provisions of the Bill. Issues that have hampered implementation include political interference and corruption which make it difficult for implementers to</p>	<p>well aware that Kenya is on its path to being an oil producer yet there are no properly trained professional in this field.</p> <p>To require that only companies that will be involved in the sector should train and avail skills required is tantamount to the Government absconding its duties. Whereas the operators in the industry will be required to offer tailored skills to their employees to enable them perform, the overall responsibility of training citizens in readiness for the industry should lie with the relevant ministries and universities following a curriculum jointly developed by key stakeholders.</p>	

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
Clauses 9 to 20	Eastern Africa Extractive Consulting Limited	<p>implement legislation. It would therefore be important to ensure that the relevant stakeholders are consulted to get buy-in including Government agencies such as Immigration, KRA, the Police and Labour who are critical players and whose cooperation would be necessary for the implementation of the law.</p>		
		<p>Rearrangement of clauses as follows –</p> <ol style="list-style-type: none"> 1. Establishment of the Legal Content Development Committee, 2. Membership of the Committee, 2. Term of office 3. Qualification for appointment, 4. Disqualification from membership, 5. Functions of the Committee, 6. Assessment of local capabilities, 7. Conduct of the affairs of Committee, 8. Sub-committees of the Committee, 9. Vacation of office of member, 10. Secretariat, 		Noted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		11. Functions of the Secretariat		
General submission	Eastern Africa Extractive Consulting Limited	<p>There is need to safe guard other sectors of the Kenyan economy even as we venture into oil exportation to avoid as a nation from being a victim of what in economics is known as the dutch disease. The Dutch disease as defined in Wikipedia is the relationship between the increase in economic development of a specific sector (for example natural resources) and a decline in other sectors (like the manufacturing and agricultural sectors). The putative mechanism is that as revenues increase in the growing sector (or inflows of foreign aid), the given nation's currency becomes stronger (appreciates) compared to currencies of other nations (manifest in an exchange rate). This results in the nation's other exports becoming more expensive for other countries to buy, and imports becoming cheaper, making those sectors less competitive.</p>		Noted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
General submission	Turkana Natural Resources Governance Hub	<p>Local content policy objectives Local content bill should have the following objective:</p> <p>(a) To maximize the benefits of oil and gas wealth generation on a comprehensive local content platform by:</p> <p>(i) Maximizing the use of expertise, goods and services, job creation for people, businesses and financing in the oil and gas industry value chain and</p> <p>(ii) Retention of the benefit within country</p> <p>(b) To develop local capability in the oil and gas value chain through education, skills and expertise development, transfer of technology and know-how and an active research and development.</p>		Noted

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		<p>(c) To target some agreed level of local content and local participation in all aspects of oil and gas industry value chain.</p> <p>(d) To increase capabilities and international competitiveness of domestic business and industrial sectors.</p> <p>(e) To create/enhance supportive capabilities and/or industries that can sustain economic development.</p> <p>(f) The county and community should be given opportunity to invest in mid-stream or down-stream activities, including providing transport trucks, buying shares into the pipeline, providing oil tankers etc</p> <p>Knowledge and transfer There should be knowledge transfer from</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		<p>(a) Foreign to local county and local community participants to ensure that county locals and community locals are given the opportunity to participate fully at all levels, in all roles and disciplines required for the conduct of the sector's business and operations, so as to build and enhance capacity in people, companies, government or other services, utilities, institutions, infrastructure or facilities to support the oil and gas sector;</p> <p>(b) oil to other sectors by using revenue from oil to increase productivity of other sectors, to produce goods and services that meet international standards, to reduce imports, and to generate export opportunities.</p> <p>To ensure that benefits are shared equitably 70% of all levels of employments and business opportunities (including more lucrative and long-term</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		<p>contracts) should go to county local and community local while 30% should go to national local.</p> <p>Achievement of local contents should be measured by considering income received by locals, revenues accrued by owners of land and resources, income streams to local shareholders and creditors, and number of county locals and community locals employed into senior and other positions in the company.</p> <p>Local Capacity Building shall be measured in a variety of ways, including number of people trained, number of people certified, number of firms certified, level and value of technology introduced, infrastructure built, capital introduced into local economy.</p> <p>The county government, national government an investor shall improve skills development by identifying demand,</p>		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
		<p>current capability and gaps; developing and implementing strategies for growth, and involving various stakeholders in improving or expanding training, including –</p> <ul style="list-style-type: none"> (a) the industry skills (b) business skills and (c) experience base via: <ul style="list-style-type: none"> (i) education (ii) on the job training (iii) mentoring, coaching and (iv) research <p>The county government, national government and investor shall improve supplier development by –</p> <ul style="list-style-type: none"> (a) Enhancing existing capacities by improving existing supplier capabilities through LC &Cd best practices <ul style="list-style-type: none"> (i) Supplier selection (ii) Long-term contracts 			

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR COMMITTEE RESOLUTION
		<ul style="list-style-type: none"> (iii) Contract/KPI management (iv) Supplier skill <p>(b) Investing un new assets/capabilities</p> <p>(c) Creating regional/global centre of excellence</p> <p>Government and investor priorities should be investment in –</p> <ul style="list-style-type: none"> (a) people by developing <ul style="list-style-type: none"> (i) High valued-added skills, including (ii) Technical (iii) General management (iv) Design engineering (v) Project management (vi) Seismic processing (vii) Human resource development (b) Technology, business know-how, diversification by developing skills in - <ul style="list-style-type: none"> (i) Fabrication (ii) Seismic processing & data (iii) Management 		

CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	RATIONALE AMENDMENT	FOR	COMMITTEE RESOLUTION
		(iv) Operations & maintenance (v) Maritime services (vi) Business support services <ul style="list-style-type: none"> • Accounting • HR Services • IT support • Consulting • Financing • logistics 			
General Submission	Ministry of Petroleum	The Bill places onerous obligations on the operator yet we do not know if what is in existence is commercially viable. It would therefore be important to determine what the strategic objectives are in enacting the Bill			Noted

4.1 COMMITTEE AMENDMENTS

Following extensive consultations and discussions, the Committee proposes the following amendments to the Bill-

CLAUSE 3

THAT clause 3 of the Bill be amended by inserting the words “and minerals” immediately after the words “other petroleum resources”.

CLAUSE 4

THAT clause of the Bill be amended –

- (a) by deleting the words “and their retention in the country” appearing at the end of paragraph (a);
- (b) in paragraph (d) by inserting the word “local” immediately after the words “capable and sustainable”; and
- (c) in paragraph (f) by deleting the word “content” appearing immediately after the words “through local” and substituting therefore the word “capacity”.

CLAUSE 6

THAT clause 6 of the Bill be amended in sub-clause (2) by deleting the expression “(2)” and substituting therefor the expression “(1)”.

CLAUSE 7

THAT clause 7 of the Bill be amended –

- (a) in paragraph (b) by –
 - (i) deleting sub-paragraph (i) and substituting the following new paragraph –
 - (i) managing, in collaboration with the relevant State entity, the pace and scheduling of extractive industry programmes in order to enable local

persons to take advantage of the opportunities along the extractive value chain;

- (ii) inserting the words “identified by the Committee” immediately after the words “in-country programmes” in sub-paragraph (ii)
- (iii) deleting the word “capture” appearing immediately after the words “development and wealth” in paragraph (iv) and substituting therefor the word “creation”.

(b) in paragraph (d) by inserting the words “developed by the respective Ministries” immediately after the words “across all policy frameworks”.

CLAUSE 8

THAT clause 8 of the Bill be amended –

(a) by inserting the following new paragraph immediately after paragraph (f) –

(fa) collaborate with the Committee in the identification of goods and services that are available within the respective county and keep a data base of such goods and services;

CLAUSE 10

THAT clause 10 of the Bill be amended in sub-clause (2) by inserting the words “the relevant Ministries and the relevant stakeholders” immediately after the words “the county governments”.

CLAUSE 11

THAT clause 11 of the Bill be amended by –

(a) renumbering the existing provision as sub clause (1);

(b) inserting the following new sub-clause immediately after the new sub-clause (1) –

(2) The Committee shall avail for inspection by members of the public, the register kept by it under subsection (1).

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (1) by–

(a) inserting the following new paragraph immediately after paragraph (d) –

(da) the Principal Secretary responsible for matters relating to education or a representative designated in writing;

(b) in paragraph (e) by inserting the words “from persons residing in a county in which extractive activities are being undertaken”.

CLAUSE 19

THAT clause 19 of the Bill be amended in sub-clause (1) by deleting the words “Ministry responsible for matters relating to the petroleum industry” appearing immediately after the words “unit within the” and substituting therefor the words “respective Ministry”.

CLAUSE 22

THAT clause 22 of the Bill be amended –

(a) in sub-clause (2) by deleting the word “operator” appearing at the beginning of the sub-clause and substituting therefor the word “applicant”;

(b) in sub-clause (3) by–

(i) deleting the word “operator” appearing at the beginning of the introductory clause and substituting therefor the word “applicant”;

(ii) deleting paragraph (c) and substituting therefor the following new paragraph –

(c) workforce development strategies in relation to locals including training plans and projections to address any competency gaps that may have been identified by the Committee and the operator in relation to the local labour force;

(c) by deleting the introductory clause in sub-clause (4) and substituting therefor the following new introductory clause –

An applicant shall set out in the applicant’s local content plan, the strategies through which the applicant shall –

CLAUSE 26

THAT clause 26 of the Bill be amended –

(a) in sub-clause (2) by -

- (i) deleting the word “operator” appearing at the beginning of the sub-clause and substituting therefor the word “applicant”;
- (ii) deleting the word “skills” appearing immediately after the words “specification of the” in paragraph (a)(i) and substituting therefor the word “competencies”;

(b) in sub-clause (3) by deleting the word “operator” appearing at the beginning of the introductory clause and substituting therefor the word “applicant”.

CLAUSE 27

THAT clause 27 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

(4a) The Committee shall –

- (a) in consultation with the relevant Ministries, operators and stakeholders, identify existing gaps in competencies and skills in the local workforce;
- (b) develop a common competency system and development plan within the respective sectors and for the various disciplines required in the extractive industry;
- (c) maintain a database of the skills and competencies available locally; and

- (d) collaborate with the relevant Ministries in building the capacity of local training institutions to administer the trainings necessary to develop the skills and competencies identified under paragraph (a).

CLAUSE 38

THAT clause 38 of the Bill be amended by –

- (a) deleting sub-clause (3); and
- (b) deleting sub-clause (5).

CLAUSE 42

THAT clause 42 of the Bill be amended by deleting the words “grant of a licence” appearing immediately after the words “company in the”.

CLAUSE 50

THAT clause 50 of the Bill be amended in sub-clause (2) by deleting the word “a” appearing immediately after the words “the Cabinet Secretary” and substituting therefor the words “an annual”.

CLAUSE 54

THAT clause 54 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “not more than two million shillings or to imprisonment for at term of not more than three years” appearing immediately after the words “a fine of” and substituting therefor the words “at least ten million shillings or to imprisonment for a term of at least three years”;
- (b) in sub-clause (2) by deleting the words “not more than three million shillings or to imprisonment for at term of not more than five years” appearing immediately after the words “a fine of” and substituting therefor the words “at least five million shillings or to imprisonment for a term of at least five years”;
- (c) in sub-clause (3) by deleting the words “not more than three million shillings or to imprisonment for at term of not more than five years” appearing immediately after

the words “a fine of” and substituting therefor the words “at least ten million shillings or to imprisonment for a term of at least five years”;

- (d) in sub-clause (5) by deleting the words “not exceeding eight hundred thousand shillings or to imprisonment for at term not exceeding twelve months” appearing immediately after the words “liable to a fine” and substituting therefor the words “of at least five million shillings or to imprisonment for a term of at least three years”.

CLAUSE 57

THAT clause 57 of the Bill be amended –

- (a) in sub-clause (3) by deleting the words “neglected children” appearing immediately after the words “in relation to” in paragraph (a) and substituting therefor the words “the extractive industry”;
- (b) in sub-clause (4) by deleting the words “county executive committee member” appearing immediately after the words “authority of the” in paragraph (a) and substituting therefor the words “Cabinet Secretary”.

5.1 COMMITTEE GENERAL OBSERVATIONS

In its consideration of the Bill, the Committee made the following observations-

1. The success of any Local Content legislation is measured by the in-country value accruing to all citizens during the life of the project and after it winding done;
2. There is discrepancy in the provisions for local content provisions for different natural resources, moreover, local content requirements do not extend to large infrastructure projects;
3. There is a need to access the nations capacity to participate actively in the various natural resources extraction value chains;
4. In- country value cannot be measured in the form of employment, consideration must be given to the caliber of employment, the improved capacity and enterprise development;
5. Continuous, monitoring and evaluation will be critical to ensuring compliance with the local content requirements; and
6. Whereas the target is to achieve maximum participation in the extractives value chain of local employees and companies, the achievement of this goal will be gradual.

6.1 COMMITTEE RECOMMENDATIONS AND CONSLUSIONS

6.1 Recommendations

The Committee hereby makes the following general recommendations-

1. Value accruing from local content should be measured as against benefits the whole country and not be localized to specific counties of communities;
2. There is a need to harmonize the various provision on Local content through an overarching national Local Content Policy;
3. The government should embark on an assessment of the nation's capacity to actively participate in the extractives value chain by developing and maintaining a register of the in-country capabilities;
4. Local content should contribute not only to employment but also to the development of local enterprises; and
5. The Government should empower the Local Content Development Committee to continuously monitor, evaluate and advise on the development of local content in Kenya

6.2 Conclusion

The value of Local Content on the African continent cannot be gain said. Across the content there are numerous examples or resource exploitation whose impact did not affect the lives of the local communities. The objective here then is to learn from our mistakes. This is the rationale behind the Local Content Bill, 2018

While the Bill is primarily focused at ensuring local communities and Kenyans at large reap their due rewards from the extraction of their own resources, it also carefully recognizes the role of multinational firms. It fosters stakeholder collaboration, the goal we seek to achieve cannot be reached without collaboration between public, private, civil society and community stakeholders. The Bill provides an opportunity for Kenya to develop new and dynamic comparative advantages around the extractives industry. This is directed at developing globally competitive supplementary industries across the value chain of the various extractive sectors. This will go a long way in ensuring that Kenya

continues to benefit from natural resources long after we have run out of our own to exploit.

7.1 APPENDICES

7.1 Minutes

7.2 Advertisement

7.3 Memoranda received

7.4 List of participants at Public hearing

MINUTES

MINUTES OF THE 9TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON THURSDAY, 14TH JUNE, 2018 IN THE SENATE CHAMBER, FIRST FLOOR, COUNTY HALL BUILDINGS FROM 11:00 A.M.

PRESENT

- | | |
|------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Senata | - Vice Chairperson |
| 3. Sen. Mercy Chebeni | -Member |
| 4. Sen. Mwaruma Johnes | - Member |
| 5. Sen. Susan Kihika | -Member |
| 6. Sen. Ledama Olekina | -Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------|---------|
| 1. Sen. Mithika Linturi | -Member |
| 2. Sen. Aaron Cheruiyot | -Member |
| 3. Sen. (Prof.) Imana Malachy | -Member |

IN ATTENDANCE

Secretariat

- | | |
|--------------------------|------------------|
| 1.Ms. Gloria Wawira | -Committee Clerk |
| 2.Ms. Eliabeth Muhia | -Legal Counsel |
| 3.Mr. Wellington Namenge | -Researcher |
| 4.Ms. Lucianne Limo | -MRO |
| 5.Ms. Sarah Rukwaro | -SAA |

MIN. NO.054/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 11.20 a.m. and it started with a word of prayer. He then called for a round if introductions.

MIN. NO.055 /2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Susan Kihika and seconded by Sen. Johnes Mwaruma as follows-

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. Consideration of the Local Content Bill, (Senate Bill No. 10 of 2018)
4. Meeting with Sen. Gideon Moi, sponsor of the Local Content Bill, 2018
5. House Keeping-
 - a) Confirmation of Minutes
 - Confirmation of Minutes of the 7th sitting of 13th June, 2018

- Confirmation of Minutes of the 6th sitting of 6th June, 2018
 - Confirmation of Minutes of the 4th sitting of 14th March, 2018
- b) Legislative proposal- The proposed Energy (Amendment) Bill, 2018
6. Any Other Business;
 7. Date of the Next meeting; and
 8. Adjournment.

MIN. NO.056/2018: CONSIDERATION OF THE LOCAL CONTENT BILL, 2018

The Legal Counsel took the Committee through a clause by clause consideration of the Bill highlighting the salient features of the Bill.

MIN. NO.057/2018: MEETING WITH THE SPONSOR OF THE LOCAL CONTENT BILL, 2018- SEN. GIDEON MOI

Sen. Gideon Moi informed the members that the Bill had been inspired by the need to ensure that Kenyans get maximum value from the exploitation of their natural resources. He explained that more often than not, mineral resources are discovered in far flung areas where there is little development and that although the resources are exploited the narrative across African nations is that the value emanating from these minerals does not trickle down to the citizens of the Republic.

He explained that the Bill had been passed in the Senate in the 11th Parliament but had failed to pass in the National Assembly due to adjournment sine die for the election in 2017. He urged the Committee to expedite the Bill especially in light of the early oil project in Turkana County.

MIN. NO 058/2018 : HOUSEKEEPING

This agenda item was deferred to the next meeting.

MIN. NO 059/2018 : DATE OF THE NEXT MEETING

The next meeting would be on notice

MIN. NO 059/2018 : ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at thirty minutes after twelve o'clock.

AKiteran

SEN EPHRAIM MAINA

CHAIRPERSON

DATE: 1st August 2018

MINUTES OF THE 11TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON THURSDAY, 21ST JUNE, 2018 IN THE MINI CHAMBER, FIRST FLOOR, COUNTY HALL BUILDINGS FROM 10:00 A.M.

PRESENT

- | | |
|-------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Senata | - Vice Chairperson |
| 3. Sen. Mithika Linturi | -Member |
| 4. Sen. Ledama Olekina | -Member |
| 5. Sen. Aaron Cheruiyot | -Member |
| 6. Sen. (Prof.) Imana Malachy | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|----------|
| 1. Sen. Susan Kihika | -Member |
| 2. Sen. Mwaruma Johnies | - Member |
| 3. Sen. Mercy Chebeni | -Member |

IN ATTENDANCE

Secretariat

- | | |
|---------------------------|------------------|
| 1. Ms. Gloria Wawira | -Committee Clerk |
| 2. Ms. Elizabeth Muhia | -Legal Counsel |
| 3. Mr. Wellington Namenge | -Researcher |
| 4. Ms. Lucianne Limo | -MRO |
| 5. Ms. Sarah Rukwaro | -SAA |

MIN. NO.065/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 10.20 a.m. and started with a word of prayer. He then called for a round of introductions.

MIN. NO.066/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Ledama Olekina and seconded by Sen. Aaron Cheruiyot as follows-

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. Public Hearing on the Local Content Bill, 2018;
4. House Keeping-
 - a) Confirmation of Minutes
 - Confirmation of Minutes of the 7th sitting of 13th June, 2018

- Confirmation of Minutes of the 6th sitting of 6th June, 2018
 - Confirmation of Minutes of the 4th sitting of 14th March, 2018
 - b) Legislative proposal- The proposed Energy (Amendment) Bill, 2018;
 - c) Invitation to follow up meeting with ERC and Treasury on the imposition of VAT on Petroleum products;
5. Any Other Business;
 6. Date of the Next meeting; and
 7. Adjournment

MIN. NO.067/2018: PUBLIC HEARING ON THE LOCAL CONTENT BILL, 2018

The Chairperson began by welcoming the stakeholders to the hearing, he thanked them for taking the time to attend the public hearing. He emphasized the importance of the views of the 'mwananchi' in the law making process and stated that the Committee was happy to receive the views.

The Committee then received views for the following stakeholders-

1. Kenya Oil and Gas Association
2. Easter Africa Extractive Consulting Ltd
3. Kenya Chamber of Mines
4. George Mati Mucee
5. Energy Solution Africa Limited
6. Strathmore University
7. Base Titanium
8. Kipya Africa Ltd
9. Geothermal Association of Kenya

During the deliberations, the following issues were highlighted-

1. the need for an overarching and guiding legislation on Local Content application across the oil and gas industry and other sectors.
2. the scope of the Bill, contradicting views coming from stakeholder in the mining sector who propose that the local content regime under the Mining Act, 2015 is sufficient and those who advocate for one overarching legislation on local content.
3. concerns over the administration of the Bill and the bodies created thereunder.
4. the definition and scope of local- whether representing Kenyans in general or resident of Turkana County or persons of Turkana ethnicity.
5. the cost of implementing the requirements of the Bill on the oil and gas companies and its implication on cost oil.

MIN. NO 068/2018 : HOUSEKEEPING

This agenda item was deferred to the next meeting.

MIN. NO 069/2018 : DATE OF THE NEXT MEETING

The next meeting would be on notice

MIN. NO 070/2018 : ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at thirty minutes after twelve o'clock.

M. Uteran

SEN EPHRAIM MAINA

CHAIRPERSON

DATE: 1st August 2018

MINUTES OF THE 13TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON WEDNESDAY, 4TH JULY, 2018 IN THE CPA ROOM, FROM 11:00 A.M.

PRESENT

- | | |
|--------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. (Prof.) Imana Malachy | -Member |
| 4. Sen. Susan Kihika | -Member |
| 5. Sen. Mwaruma Johnes | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|---------|
| 1. Sen. Mercy Chebeni | -Member |
| 2. Sen. Mithika Linturi | -Member |
| 3. Sen. Ledama Olekina | -Member |
| 4. Sen. Aaron Cheruiyot | -Member |

IN ATTENDANCE

Secretariat

- | | |
|--------------------------|--------------------------|
| 1.Mr. Joseph Mwangi | -Committee Clerk |
| 2.Ms. Elizabeth Muhia | -Legal Counsel |
| 3.Mr. Wellington Namenge | -Researcher |
| 4.Ms. Lucianne Limo | -MRO |
| 5.Ms. Sarah Rukwaro | -SAA |
| 6.Mr. Nixon Kibet | -Audio Recording Officer |

MIN. NO.078/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 11.22 a.m. and started with a word of prayer. He then called for a round of introductions.

MIN. NO.079/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Mary Seneta and seconded by Sen. Susan Kihika as follows-

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. Meeting with the Ministry of Petroleum on the Local Content Bill, 2018;
4. Housekeeping- Consideration of draft work schedule for July, 2018;
5. Any Other Business;
6. Date of the Next meeting; and
7. Adjournment.

MIN. NO.080/2018: MEETING WITH THE MINISTRY OF PETROLEUM ON THE LOCAL CONTENT BILL, 2018;

The Chairperson invited the Principal Secretary Petroleum and Mining to make his submissions on the Local Content Bill, 2018.

During the deliberations, the following issues were highlighted-

1. The Bill places onerous obligations on the operator and it would be important to determine what the strategic objectives are in enacting the Bill
2. The local content plans should be submitted at the point at which oil is discovered. At the point of application of a licence, it is the field development plans that should be submitted for the purpose of prospecting oil.
3. We need to be clear as to who carries out the skills gap analysis and this role should be carried out by the Committee mentioned in the Bill.
4. The committee should include representatives from the Ministry of Education, National Treasury and the Ministry of industrialization, given the fact these two sectors are critical if we are to develop and retain skills in the extractive industry
5. We should work towards ensuring 100% local content gradually
6. It would be important to define what a joint venture company is
7. On training, transfer of technology, a facilitative role and not an obligation should be conferred on the operator.
8. We should be clear as to the nature of research that is it to be carried out by an operator and the use to which the monies set aside by an operator to conduct research will be put to.
9. Financial services plans: we should be more prescriptive. We also need to know what kind of financial services that are being referred to. Perhaps the entire clause needs to be reviewed given the fact operators cannot be tied to local financial institutions.

MIN. NO 081/2018: HOUSEKEEPING- CONSIDERATION OF DRAFT WORK SCHEDULE FOR JULY, 2018;

This agenda item was deferred to the next meeting.

MIN. NO 082/2018 : ANY OTHER BUSINESS

The Chairperson appreciated the Principal Secretary for attending the meeting and for the commissioning of the Oil Pipeline from Mombasa to Nairobi that had been undertaken the previous week.

MIN. NO 083/2018 : DATE OF THE NEXT MEETING

The next meeting would be called by notice

MIN. NO 084/2018 : ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at thirty seven minutes after twelve o'clock.

M. Maina

SEN EPHRAIM MAINA

CHAIRPERSON

DATE:

26TH JULY, 2018

MINUTES OF THE 14TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON WEDNESDAY, 11TH JULY, 2018 IN THE CPA ROOM, FROM 11:00 A.M.

PRESENT

- | | |
|--------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Senata | - Vice Chairperson |
| 3. Sen. (Prof.) Imana Malachy | -Member |
| 4. Sen. Mwaruma Johnes | - Member |
| 5. Sen. Ledama Olekina | -Member |
| 6. Sen. Mercy Chebeni | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|---------|
| 1. Sen. Mithika Linturi | -Member |
| 2. Sen. Aaron Cheruiyot | -Member |
| 3. Sen. Susan Kihika | -Member |

IN ATTENDANCE

Secretariat

- | | |
|--------------------------|--------------------------|
| 1.Mr. Joseph Mwangi | -Committee Clerk |
| 2.Ms. Elizabeth Muhia | -Legal Counsel |
| 3.Mr. Wellington Namenge | -Researcher |
| 4.Ms. Sarah Rukwaro | -SAA |
| 5.Mr. Collins Mahamba | -Audio Recording Officer |

MIN. NO.085/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 11.15 a.m. and started with a word of prayer.

MIN. NO.086/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Ledama Olekina and seconded by Sen. Mercy Chebeni as follows-

1. Preliminaries;
2. Adoption of the Agenda;
3. **Consideration of submissions on the Local Content Bill, 2018;**
4. **Pre-publication scrutiny the Energy (Amendment) Bill, 2018;**
5. **Housekeeping- Consideration of draft work schedule for July, 2018;**
6. Any Other Business;
7. Date of the Next meeting; and
8. Adjournment.

MIN. NO.087/2018: CONSIDERATION OF SUBMISSIONS ON THE LOCAL CONTENT BILL, 2018;

The Chairperson invited the secretariat to go through the submissions made on the Local Content Bill, 2018.

During the deliberations, the following issues were highlighted-

1. On the Preamble, another terminology was to be given in place of “other petroleum resources”
2. Clarification was sought on who the Geothermal Association of Kenya were.
3. The need to seek the Ministry of Energy’s views on Clause 3 where a proposal was given to extend the application of the Bill to include the geothermal sector.
4. Clause 12(1) There was need to determine the criteria of nominating the seven persons by the council of governors and the relevant principal secretaries ought to be included in the team; the Ministries of Education, Industrialization and Treasury.
5. Members resolved that there was need to visit Turkana county to engage in public participation with the locals whose views had not been heard as they did not attend the public hearing.
6. The need to have one Bill that deals with all extractives was also debated on.
- 7.

MIN. NO 088/2018 :PRE-PUBLICATION SCRUTINY THE ENERGY (AMENDMENT) BILL, 2018;

This agenda item was deferred to the next meeting.

MIN. NO 089/2018 : HOUSEKEEPING- CONSIDERATION OF DRAFT WORK SCHEDULE FOR JULY, 2018;

This agenda item was deferred to the next meeting.

MIN. NO 090/2018 : ANY OTHER BUSINESS

1. There was need for the secretariat to send briefs for the meeting early enough for Members to familiarize themselves with ahead of the meeting.
2. The issue of Members missing meetings was discussed with a view for the Committee to follow the Senate Standing Orders on a Member who misses four consecutive meetings.
3. There was need for the Committee to schedule a retreat where they would work on the Local Content Bill, 2018.

MIN. NO 091/2018: DATE OF THE NEXT MEETING

The next meeting would be called by notice.

MIN. NO 092/2018 : ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at forty minutes after one o'clock.

Attested

SEN EPHRAIM MAINA

CHAIRPERSON

DATE: 1st - AUGUST 2018

MINUTES OF THE 15TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON WEDNESDAY, 18TH JULY, 2018 IN THE CPA ROOM, FROM 11:00 A.M.

PRESENT

- | | |
|--------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. Mithika Linturi | -Member |
| 4. Sen. (Prof.) Imana Malachy | -Member |
| 5. Sen. Mwaruma Johnes | - Member |
| 6. Sen. Mercy Chebeni | -Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------|---------|
| 1. Sen. Ledama Olekina | -Member |
| 2. Sen. Aaron Cheruiyot. | -Member |
| 3. Sen. Susan Kihika | -Member |

IN ATTENDANCE

Secretariat

- | | |
|--------------------------|--------------------------|
| 1.Ms. Gloria Wawira | -Committee Clerk |
| 2.Ms. Elizabeth Muhia | -Legal Counsel |
| 3.Mr. Wellington Namenge | -Researcher |
| 4.Ms. Sarah Rukwaro | -SAA |
| 5.Mr. Collins Mahamba | -Audio Recording Officer |

MIN. NO.093/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 11.15 a.m. and started with a word of prayer.

MIN. NO.094/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Mary Seneta and seconded by Sen. Mercy Chebeni as follows-

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. The Local Content Bill, 2018;
 - Consideration of submissions from the public
 - Consideration of Draft amendments
4. Pre-publication scrutiny the Energy (Amendment) Bill, 2018;
5. The Energy Bill (National Assembly Bill No. 50 of 2017)
 - First reading & committal to Energy Committee

- Public hearing & stakeholder meetings
6. The Petroleum (Exploration Development & Production) Bill (National Assembly Bill No. 48 of 2017)
 - First reading & committal to Energy Committee
 - Public hearing & stakeholder meetings
 7. Any Other Business;
 8. Date of the Next meeting; and
 9. Adjournment

MIN. NO.095/2018 : CONSIDERATION OF SUBMISSIONS ON THE LOCAL CONTENT BILL, 2018

The Committee concluded its consideration of submissions on the Local Content Bill, 2018.

It resolved to consider the amendments at the net meeting.

MIN. NO.096/2018 : PRE-PUBLICATION SCRUTINY THE ENERGY (AMENDMENT) BILL, 2018

The Committee was taken through the draft Energy (Amendment) Bill, 2018. The objective of the Bill is to require that County Government use renewable energy in the form of solar for street lighting.

The Committee resolved to conclude consideration of the legislative proposal at the next Committee meeting after hearing from the sponsor of the Bill, Sen. Aaron Cheruiyot.

MIN. NO.097/2018 : THE ENERGY BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2017)

The Committee was notified that the Energy Bill (National Assembly Bills No. 50 of 2017) was read a first time on the floor of the senate on 4th July, 2018 and that the committee had 30 days to report to the senate.

The Committee deferred the setting of dates for public hearing and retreats on the Bill to the next meeting.

MIN. NO.098/2018 : THE PETROLEUM (EXPLORATION DEVELOPMENT & PRODUCTION) BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2017)

The Committee was notified that the Petroleum (Exploration, Development and Production) Bill (National Assembly Bills No. 48 of 2017) was read a first time on the floor of the senate on 10th July, 2018 and that the committee had 30 days to report to the senate.

The Committee deferred the setting of dates for public hearing and retreats on the Bill to the next meeting.

MIN. NO 099/2018 : DATE OF THE NEXT MEETING

The next meeting would be on Wednesday, 25th July, 2018.

MIN. NO 100/2018: ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at twenty minutes after one o'clock.

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SEN EPHRAIM MAINA

CHAIRPERSON

DATE: 1st August 2018

MINUTES OF THE 16TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON THURSDAY, 26TH JULY, 2018 IN THE COMMITTEE ROOM 4, FROM 10:00 A.M.

PRESENT

- | | |
|--------------------------------|---------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Senata | - Vice Chairperson |
| 3. Sen. (Prof.) Imana Malachy | -Member |
| 4. Sen. Ledama Olekina | -Member (Chairing) |
| 5. Sen. Aaron Cheruiyot | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|----------|
| 1. Sen. Mwaruma Johnes | - Member |
| 2. Sen. Mercy Chebeni | -Member |
| 3. Sen. Mithika Linturi | -Member |
| 4. Sen. Susan Kihika | -Member |

IN ATTENDANCE

Secretariat

- | | |
|--------------------------|------------------|
| 1.Ms. Gloria Wawira | -Committee Clerk |
| 2.Ms. Elizabeth Muhia | -Legal Counsel |
| 3.Mr. Wellington Namenge | -Researcher |

MIN. NO 101/2018

: PRELIMINARIES

Once quorum was constituted, the member's present in accordance with to standing order 196 of the Senate Standing Orders choose Sen. Ledaam Olekina to chair the meeting awaiting the arrival of the Chairperson. The meeting was called to order at 10.20 a.m. and started with a word of prayer.

MIN. NO.102/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Aaron Cheruiyot and seconded by Sen. (Prof.) Imana Malchy as follows-

AGENDA

1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. Pre-publication scrutiny the Energy (Amendment) Bill, 2018;
4. The Local Content Bill, 2018;
 - Consideration of Draft amendments

5. The Energy Bill (National Assembly Bill No. 50 of 2017)

- Timelines for Committee Stage
- Public hearing & stakeholder meetings

6. The Petroleum (Exploration Development & Production) Bill (National Assembly Bill No. 48 of 2017)

- Timelines for Committee Stage
- Public hearing & stakeholder meetings

7. Any Other Business;

8. Date of the Next meeting; and

9. Adjournment.

MIN. NO.103/2018

: PRE-PUBLICATION SCRUTINY THE ENERGY (AMENDMENT) BILL, 2018

The sponsor of the Bill, Sn. Aaron Cheruiyot explained to the Committee that the object of the Bill was to require counties to use solar electricity for street lighting in a bid to curd escalating cost of electricity borne by counties following the National street lighting initiative.

The members raised concerns about the initial cost of solar installations; they were also concerned that the amendment of the Bill was to the Energy Act, 2006 which would soon be repealed if the Energy Bill, 2017 was passed.

The Committee resolved that the secretariat would advise the sponsor on if the Bill could be included as part of the Energy Bill, 2017 and the Committee would then resolve a way forward on the Bill.

MIN. NO.104/2018

: CONSIDERATION OF DRAFT AMENDMENTS, LOCAL CONTENT BILL, 2018;

The Committee considered the draft amendment and approved the following Amendments-
CLAUSE 3

THAT clause 3 of the Bill be amended by inserting the words “and minerals” immediately after the words “other petroleum resources”.

CLAUSE 4

THAT clause of the Bill be amended –

- (a) by deleting the words “and their retention in the country” appearing at the end of paragraph (a);
- (b) in paragraph (d) by inserting the word “local” immediately after the words “capable and sustainable”; and

(c) in paragraph (f) by deleting the word “content” appearing immediately after the words “through local” and substituting therefore the word “capacity”.

CLAUSE 6

THAT clause 6 of the Bill be amended in sub-clause (2) by deleting the expression “(2)” and substituting therefor the expression “(1)”.

CLAUSE 7

THAT clause 7 of the Bill be amended –

(a) in paragraph (b) by –

- (i) deleting sub-paragraph (i) and substituting the following new paragraph –
- (i) managing, in collaboration with the relevant State entity, the pace and scheduling of extractive industry programmes in order to enable local persons to take advantage of the opportunities along the extractive value chain;
- (ii) inserting the words “identified by the Committee” immediately after the words “in-country programmes” in sub-paragraph (ii)
- (iii) deleting the word “capture” appearing immediately after the words “development and wealth” in paragraph (iv) and substituting therefor the word “creation”.

(b) in paragraph (d) by inserting the words “developed by the respective Ministries” immediately after the words “across all policy frameworks”.

CLAUSE 8

THAT clause 8 of the Bill be amended –

(a) by inserting the following new paragraph immediately after paragraph (f) –

- (fa) collaborate with the Committee in the identification of goods and services that are available within the respective county and keep a data base of such goods and services;

CLAUSE 10

THAT clause 10 of the Bill be amended in sub-clause (2) by inserting the words “the relevant Ministries and the relevant stakeholders” immediately after the words “the county governments”.

CLAUSE 11

THAT clause 11 of the Bill be amended by –

- (a) renumbering the existing provision as sub clause (1);
 - (b) inserting the following new sub-clause immediately after the new sub-clause (1) –
- (2) The Committee shall avail for inspection by members of the public, the register kept by it under subsection (1).

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (1) by–

- (a) inserting the following new paragraph immediately after paragraph (d) –
- (da) the Principal Secretary responsible for matters relating to education or a representative designated in writing;
- (b) in paragraph (e) by inserting the words “from persons residing in a county in which extractive activities are being undertaken”.

CLAUSE 19

THAT clause 19 of the Bill be amended in sub-clause (1) by deleting the words “Ministry responsible for matters relating to the petroleum industry” appearing immediately after the words “unit within the” and substituting therefor the words “respective Ministry”.

CLAUSE 22

THAT clause 22 of the Bill be amended –

- (a) in sub-clause (2) by deleting the word “operator” appearing at the beginning of the sub-clause and substituting therefor the word “applicant”;
- (b) in sub-clause (3) by–
 - (i) deleting the word “operator” appearing at the beginning of the introductory clause and substituting therefor the word “applicant”;
 - (ii) deleting paragraph (c) and substituting therefor the following new paragraph –
- (c) workforce development strategies in relation to locals including training plans and projections to address any competency gaps that may

have been identified by the Committee and the operator in relation to the local labour force;

- (c) by deleting the introductory clause in sub-clause (4) and substituting therefor the following new introductory clause –

An applicant shall set out in the applicant's local content plan, the strategies through which the applicant shall –

CLAUSE 26

THAT clause 26 of the Bill be amended –

- (a) in sub-clause (2) by –

- (i) deleting the word “operator” appearing at the beginning of the sub-clause and substituting therefor the word “applicant”;
- (ii) deleting the word “skills” appearing immediately after the words “specification of the” in paragraph (a)(i) and substituting therefor the word “competencies”;

- (b) in sub-clause (3) by deleting the word “operator” appearing at the beginning of the introductory clause and substituting therefor the word “applicant”.

CLAUSE 27

THAT clause 27 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

- (4a) The Committee shall –

- (a) in consultation with the relevant Ministries, operators and stakeholders, identify existing gaps in competencies and skills in the local workforce;
- (b) develop a common competency system and development plan within the respective sectors and for the various disciplines required in the extractive industry;
- (c) maintain a database of the skills and competencies available locally; and
- (d) collaborate with the relevant Ministries in building the capacity of local training institutions to administer the trainings necessary to develop the skills and competencies identified under paragraph (a).

CLAUSE 38

THAT clause 38 of the Bill be amended by –

- (a) deleting sub-clause (3); and
- (b) deleting sub-clause (5).

CLAUSE 42

THAT clause 42 of the Bill be amended by deleting the words “grant of a licence” appearing immediately after the words “company in the”.

CLAUSE 50

THAT clause 50 of the Bill be amended in sub-clause (2) by deleting the word “a” appearing immediately after the words “the Cabinet Secretary” and substituting therefor the words “an annual”.

CLAUSE 54

THAT clause 54 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “not more than two million shillings or to imprisonment for at term of not more than three years” appearing immediately after the words “a fine of” and substituting therefor the words “at least ten million shillings or to imprisonment for a term of at least three years”;
- (b) in sub-clause (2) by deleting the words “not more than three million shillings or to imprisonment for at term of not more than five years” appearing immediately after the words “a fine of” and substituting therefor the words “at least five million shillings or to imprisonment for a term of at least five years”;
- (c) in sub-clause (3) by deleting the words “not more than three million shillings or to imprisonment for at term of not more than five years” appearing immediately after the words “a fine of” and substituting therefor the words “at least ten million shillings or to imprisonment for a term of at least five years”;
- (d) in sub-clause (5) by deleting the words “not exceeding eight hundred thousand shillings or to imprisonment for at term not exceeding twelve months” appearing immediately after the words “liable to a fine” and substituting therefor the words “of at least five million shillings or to imprisonment for a term of at least three years”.

CLAUSE 57

THAT clause 57 of the Bill be amended –

in sub-clause (3) by deleting the words “neglected children” appearing immediately after the words “in relation to” in paragraph (a) and substituting therefor the words “the extractive industry”;

) in sub-clause (4) by deleting the words “county executive committee member” appearing immediately after the words “authority of the” in paragraph (a) and substituting therefor the words “Cabinet Secretary”.

MIN. NO.105/2018

: THE ENERGY BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2017)

The Committee resolved to hold a retreat with the Ministry of Energy to consider the Bill clause by clause from 9th -13th August, 2018 in Mombasa County.

MIN. NO.106/2018

: THE PETROLEUM (EXPLORATION DEVELOPMENT & PRODUCTION) BILL (NATIONAL ASSEMBLY BILL NO. 48 OF 2017)

The Committee resolved to hold a retreat with the Ministry of Mining & Petroleum to consider the Bill clause by clause from 9th -13th August, 2018 in Mombasa County.

MIN. NO.107/2018

: ANY OTHER BUSINESS

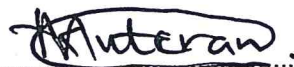
There was no other business.

MIN. NO 108/2018: DATE OF THE NEXT MEETING

The next meeting would be on notice.

MIN. NO 109/2018: ADJOURNMENT

There being no other business, the Chairman adjourned the meeting at 12.00 p.m.



SEN EPHRAIM MAINA

CHAIRPERSON

DATE: 1st August 2018

MINUTES OF THE 17TH SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON THURSDAY, 26TH JULY, 2018 IN THE SENATORS' LOUNGE, FROM 2:00 P.M.

PRESENT

- | | |
|--------------------------------|--------------------|
| 1. Sen. (Eng.) Ephraim Maina | -Chairperson |
| 2. Sen. Mary Seneta | - Vice Chairperson |
| 3. Sen. (Prof.) Imana Malachy | -Member |
| 4. Sen. Ledama Olekina | -Member |
| 5. Sen. Aaron Cheruiyot | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|----------|
| 1. Sen. Mwaruma Johnes | - Member |
| 2. Sen. Mercy Chebeni | -Member |
| 3. Sen. Mithika Linturi | -Member |
| 4. Sen. Susan Kihika | -Member |

IN ATTENDANCE

Secretariat

- | | |
|---------------------|------------------|
| 1.Ms. Gloria Wawira | -Committee Clerk |
|---------------------|------------------|

MIN. NO.110/2018

: PRELIMINARIES

The Chairperson called the meeting to order at 2.00 p.m. and started with a word of prayer.

MIN. NO.111/2018

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented having been proposed by Sen. Mary Seneta and seconded by Sen. Ledama Olekina as follows-

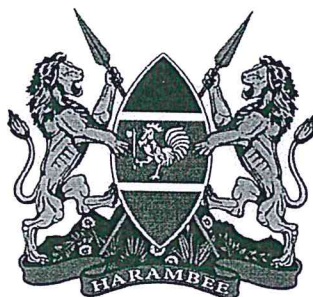
1. Preliminaries;
 - a) Prayer
 - b) Introductions
2. Adoption of the Agenda;
3. **The Local Content Bill, 2018;**
 - Consideration & Adoption of Report
4. Any Other Business;
5. Date of the Next meeting; and
6. Adjournment

MIN. NO.112/2018

: CONSIDERATION OF THE REPORT ON THE LOCAL CONTENT BILL, 2018

ADVERTISEMENT

REPUBLIC OF KENYA



ELEVENTH PARLIAMENT THE SENATE

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

The Local Content Bill (Senate Bills No. 10 of 2018)

The Local Content Bill (Senate Bills No. 10 of 2018) was read a First Time in the Senate on Thursday, 10th May, 2018 and was thereafter committed to the Senate Standing Committee on Energy for consideration.

Pursuant to the provisions of Article 118(1) (b) of the Constitution and standing order 134 of the Standing Orders of the Senate, the Senate Standing Committee on Energy now invites interested members of the public and stakeholders to submit their views on the Bill. The views may be submitted through submission of written memoranda in the following manner-

Public Hearing for the Bill shall be held on **Thursday, 21st June, 2018 from 10:00 a.m. to 1:00 p.m. at the County Hall Mini Chamber, First Floor, County Hall Building, Nairobi;**

or
Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary, Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate/ Secretary, Parliamentary Service Commission, First Floor, Main Parliament Buildings, Nairobi** or emailed to **cSenate@parliament.go.ke**, to be received on or before **Wednesday, 20th June, 2018 at 5.00 p.m.**

The Bill may be found on the Parliament website at **<http://www.parliament.go.ke/senate>**.

**CLERK OF THE SENATE/ SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.**

MEMORANDA

June 20, 2018

MEMORANDUM ON THE LOCAL CONTENT BILL 2018
SUBMITTED TO THE SENATE STANDING COMMITTEE ON ENERGY

SUBMITTED BY KENYA OIL AND GAS ASSOCIATION (KOGA)



1

ITEM	REFERENCE	ISSUE REQUIRING REVIEW	AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
1.	2	Clarity on definition of "company".	<i>The industry currently has no proposal and will refer to the Senate Energy Committee to advise</i>	Clarity needed on the meaning of the term "effectively" as used in the definition.
2.	2	Definition of "capacity building".	<i>The industry currently has no proposal and will refer to the Senate Energy Committee to advise</i>	The term has been used in section 25 of the Bill and to avoid any ambiguity we propose that this term be defined.
3.	2	Definition of "financial services".	<i>The industry currently has no proposal and will refer to the Senate Energy Committee to advise.</i>	The term has been used in section 38 of the Bill and to avoid any ambiguity we propose that this term be defined.
4.	2	Definition of "indigenous skills".	<i>The industry currently has no proposal and will refer to the Senate Energy Committee to advise.</i>	The term has been used in section 4 of the Bill and to avoid any ambiguity we propose that this term be defined.
5.	2	Definition of "research and development".	<i>The industry currently has no proposal and will refer to the Senate Energy Committee to advise.</i>	The term has been used in section 35 of the Bill and to avoid ambiguity we propose that this term be defined.
6.	2	Definition of "technology transfer".	<i>The industry currently has no proposal and will refer to the Senate Energy Committee to advise.</i>	The term has been used in section 30 of the Bill and to avoid ambiguity we propose that this term be defined.
7.	22(1)(2)(5)	Long term vs. annual local content plans and commencement of extractive activities	<p><i>"(1) An <u>applicant</u> shall, <u>when before</u>-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."</i></p> <p><i>"... (2) An operator-<u>applicant</u> shall, for the purposes of subsection (1), —</i></p>	<p>Clarity Needed: Proposed amendment seeks to give clarity so as to distinguish between long term local content plans required to be submitted by an applicant and annual local content plans required to be submitted by an Operator.</p> <p>Without this clarity, there is confusion as to what exactly is being approved before an approval to carry out an extractive activity is granted given that an Operator (as</p>

ITEM	REFERENCE	ISSUE REVIEW	REQUIRING AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
			<p>(a) <i>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...</i></p> <p>Proposal to amend section 22(2)(b) to instead read as section 22 (3) and to provide as follows:</p> <p><i>"An operator shall, 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."</i></p> <p>Proposal to amend section 22(5) to instead read as section 22 (6) and to provide as follows:</p> <p><i>"An applicant shall subject to the provisions of this Act and for the purposes of subsection (2), include in the <u>long term</u> local content plan, the following plans."</i></p>	<p>referred to in section 22(2) is already licensed to carry out operations as per the interpretation in section 2.</p> <p>Unpredictability: Additionally, given licensing requirements under the Petroleum Act (<i>Also under the proposed Petroleum Bill</i>), to require an Operator to be subject to an additional approval process under this section introduces unpredictability for the investor.</p> <p>Alignment: The approval of the long term local content plan submitted by an applicant to the Committee under this section needs to be aligned with approval/bidding processes for a licence under the Petroleum Act {Section 8 as read with 9(1)(h)} <i>Also under the proposed Petroleum Bill {Section 44(1) as read with 46(1)(g)}</i></p>
8.	22(3)(b)	Definition of "standards of remuneration"	<p>"... the qualification requirements and employment of local persons to be engaged in the extractive or related activities and the standards for the remuneration <u>minimum wages applicable for such employees of such employees;</u>"</p>	<p>Clarity is needed on what is meant by "standards of remuneration". In the alternative, this sub-section may be reworded to require an Operator to indicate the minimum wages applicable for employees engaged in its activities. Ideally, government should advise on standards.</p>

ITEM	REFERENCE	ISSUE REQUIRING REVIEW	AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
9.	23(1), (3) (5), (6)	Clarity needed	<i>(1) The Committee shall review and assess the long term local content plan submitted to it by an applicant under section 22(2)(a) within a period of sixty days from the date of receipt of the plan.</i>	<p>Clarity Needed: Proposed amendment seeks to seek to give clarity so as to identify the plan that is required to be reviewed in the manner provided under section 23. This is also consistent with the process envisioned under section 23(2)(b).</p> <p>Alignment: The approval of the long term local content plan submitted by an applicant to the Committee under this section needs to be aligned with approval/bidding processes for a licence under the Petroleum Act {Section 8 as read with 9(1)(h)}. Also under the proposed Petroleum Bill {Section 44(1) as read with 46(1)(g)}</p>
10.	25(1)(b)	Technology Transfer Improper imposition of obligations of technology transfer strategies on the Operator	<i>"An Operator shall prepare and implement strategies and plans for the utilization of... technology transfer strategies with local enterprises to provide credible and measurable plans on incremental transfer of technological know-how to locals, provided that said technology transfer strategies conform to applicable intellectual property rights and are based on mutually agreed terms of transfer with the owner of the referenced technology."</i>	<p>Ownership: For an upstream oil and gas operations, the Operator is not the holder/ owner of the technology used as it usually sub-contracts to local/international companies for the required services. It is therefore onerous to require the Operator to prepare and implement strategies for technology transfer that it does not own or hold any rights and has no capacity to control the transfer.</p> <p>Obsolete Technology Risk: To oblige a Service Provider to transfer its technology without clear guidelines on intellectual property rights, poses the risk of being saddled with old/obsolete technology that will not benefit of the country.</p>

ITEM	REFERENCE	ISSUE REQUIRING REVIEW	AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
11.	27(1)(a)	Education and training of Kenyans who are not employed by Operator	<p><i>"Where local persons are not employed due to their lack of expertise, the Ministry responsible for that sector shall, in consultation with the satisfaction of the Committee-</i></p> <p><i>(a) make every reasonable effort within a reasonable time to supply such training locally..."</i></p>	<p>Unreasonable Burden: This provision places an unreasonable and undue burden on operators by making them totally responsible for the training of all affected Kenyans.</p> <p>Existing Training Fund: Given that under the various PSCs, the Operator is already paying an annual training levy to the Ministry of Petroleum & Mining sometimes more than Ksh 30 Million per block, the onus of training as envisioned in this section, should then be passed on to the Ministry and not left to the Operator. Accordingly, this obligation is best placed to be performed by the Ministry responsible for the sector under reference.</p> <p>State Responsibility: The responsibility of the State to organize and administer training of local persons and public officers is also consistent with the constitutional and legal framework on education and training. (Article 55 (a), Industrial Training Act etc.</p>
12.	27(3)	Training of Public Officers.	<p><i>"A training carried out by an operator a Ministry under subsection (1) shall extend to the training of local persons and public officers in the entire value chain of extractive operations."</i></p>	<p>Onerous Burden: The definition of Public Officer as defined under Article 260 of the Constitution is very wide and presupposes that the Operator should train every Public Officer who expresses interests in upstream operations.</p>

ITEM	REFERENCE	ISSUE REQUIRING REVIEW	AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
13.	28(2)(a)	Consultation with Operator	<p>“An operator shall, in meeting the requirements set out under subsection (1) -</p> <p>(a) maintain such reasonable number, based on the <u>Operator’s scope of operations as may be determined</u> shall be agreed by the Committee and the Operator, of local personnel who have the requisite expertise and</p>	<p>Existing Training Fund: Given that under the various PSCs, the Operator is already paying a training levy to the Ministry of Petroleum & Mining sometimes more than Ksh 30 Million annually per licence, the onus of training as envisioned in this section, should then be passed on to the Ministry and not left to the Operator.</p> <p>KEPTAP: There exist under the World Bank funded Kenya Petroleum Training Assistance Programme (KEPTAP), resources to train public officials. Accordingly training of public officers should be under MoPM / KEPTAP.</p> <p>State Responsibility: The responsibility of the State to organize and administrate training of local persons and public officers is also consistent with the constitutional and legal framework on education and training. (Article 55 (a), Fourth Schedule, Part 1 (32)) and Industrial Training Act)</p> <p>Consensus: The Bill to be amended to provide for consensus with the Operator and for recruitment requirements to be based on operations of the project.</p> <p>Scope of Operations: For the avoidance of doubt and to act responsibly with respect to stakeholder expectations, it is important to state that the recruitment of local</p>

ITEM	REFERENCE	ISSUE REVIEW	REQUIRING AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
			<p><i>qualifications, from the area that the operator carries out its significant operation;"</i></p>	<p>personnel is subject to qualification and scope of Operator's operations.</p> <p>Safety: Qualifications and expertise are important in the oil and gas industry to ensure safety of the operations and efficiency.</p>
14.	29(2)	<p>Nationalization</p> <p>The Bill to be amended to remove restrictive approach towards succession planning.</p>	<p><i>"A succession plan shall provide for the nationalization, by local persons, of each position held by an expatriate for such period as shall be determined agreed by the Committee and the Operator on a case by case basis and at the end of such period, the position shall be assumed by the local person."</i></p>	<p>Nationalization: It would be best to simply share a plan on how to nationalise the positions held by expatriates as compared to restricting it as proposed.</p> <p>Challenges: Considering the normal attrition within any organization, it would be a challenge to give specific names of persons earmarked to replace expatriates as some of these positions; external recruitment may have to be done to replace the expatriate. Furthermore, some jobs are undertaken on a short-term basis and it is therefore difficult to come up with a succession plan for such jobs.</p>
15.	30(1)(a), (b)	<p>Technology Transfer</p>	<p><i>"The Cabinet Secretary shall, in consultation with the Committee, the owner of technology and in collaboration with the relevant State agencies and county governments..."</i></p>	<p>Ownership; Transfer of technology in the absence of mutually agreed terms with the owner of the technology will amount to expropriation of intellectual property rights and therefore, the owners of technology need to be consulted.</p>

ITEM	REFERENCE	ISSUE REQUIRING REVIEW	AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
16.	32(1)	The Bill to be amended to replace the word "operator" with "owner of technology"	<u>"Every owner of technology in relation to extractive activities carried out under this Act, shall prepare and submit to the Committee, together with its best content plan under section 22, a plan for the implementation of its transfer of technology programme."</u>	For the upstream oil and gas sector, the Operator is not the holder/owner of the technology used as it usually sub-contracts to local/international companies for the required services. It is therefore onerous, if not infeasible to require the Operator to prepare and implement strategies for technology transfer that it does not own or hold any rights and has no capacity to influence/control the transfer/ assignment/ deployment of the technology under reference.
17.	33(1)	The Bill to be amended to replace the word "operator" with "owner of technology"	<u>"Every owner of technology in relation to extractive activities carried out under this Act, shall facilitate the transfer of technology and shall, for this purpose..."</u>	
18.	34	Amendment of this section to replace the word "operator" with "owner of technology"	<u>"Every owner of technology in relation to extractive activities carried out under this Act, shall "4# operator shall not commence its extractive activities unless it has prepared and submitted to the Committee, an annual report for the year under review, on the implementation of the technology transfer plan and the initiatives being undertaken by the such owner in implementing the plan."</u>	Rationale as above (See item number 17 above) Further, section 34 as worded requires an Operator to submit an annual report prior to commencement of its activities. It is impractical to expect the Operator to report on activities it has not started.

ITEM	REFERENCE	ISSUE REQUIRING REVIEW	AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
19.	35(1)	The amendment of the section to be applicable to operators that are involved in research and development.	" <u>Where an operator is involved in research and development, it shall prepare and submit to the Committee, its research and development plan.</u> "	<p>Definition Required: Research and Development (R&D) with reference to the petroleum sector needs to be defined. Does it refer to technological research and development etc.?</p> <p>Service Companies and R&D: Generally, most of oil and gas Operators worldwide are not involved in Research and Development, given their reliance on service companies which offer the specialised services to the Operator and which are more likely to be involved in research and development</p> <p>Funding: For the oil and gas sector, it is envisioned under the Energy Bill (sec 55), that an agency would be established to carry out research and development in the sector and shall attract private sector funding. Further, the Operator is already required under the Petroleum Training Fund Regulations 2006 to contribute to the training fund for Kenyans in the upstream sector.</p>
20.	38(5)	Sustainable Access to Financial/Banking Services	"For the purpose of this section, <u>"an indigenous Kenyan Bank means a bank that has been duly licensed by the Central Bank of Kenya to carry out banking activities in Kenya."</u>	<p>Indigenous Banks & Shareholding: This definition limits the Operator's ability to open and maintain a bank account with banks in Kenya, cognisant of the changing shareholding within the Banking Sector including local banks that have had to allow for foreign investment to improve the service delivery/ensure compliance with CBK thresholds.</p>

ITEM	REFERENCE	ISSUE REQUIRING REVIEW	AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
21.	39(2)(b)	<p>Privacy of remuneration</p> <p>Deletion of the word "remuneration" from the provision.</p>	<p>The local performance report shall be in a format prescribed by the Committee and shall contain information regarding-</p> <p><i>"...the employment achievement in terms of hours worked by local persons and foreigners as well as their job positions and remuneration."</i></p>	<p>Constitutional Right to Privacy: Publication of employee remuneration as envisioned in this section shall be an infringement of Article 31 of the Constitution and section 6 of the Access to information Act (limitation of right to access)</p> <p>Privity of Contract: Additionally, the principles of "privity of contract" come into play with regard to disclosure of employee's salaries, unless consent is obtained from them.</p>
22.	40(1)	<p>Baseline Survey to Inform Assessment</p>	<p><i>The Committee shall within thirty days after receipt of the local content performance report under section 3941, assess and review the report, to ensure compliance with the provisions of this Act taking into consideration the findings made level of local content in the Country as assessed under section 11 of the Act.</i></p>	<p>For avoidance of doubt and for purposes of predictability, it is important that the assessment is measured against the qualified services and goods <u>assessed to have been available in -country.</u></p>
23.	40(2)	<p>Promotion of efficiency and confidentiality (as applicable)</p>	<p><i>"For the purposes of assessment and verification of the report, an operator shall upon receipt of reasonable notice, not being less than 48 hours, permit an employee or a designated agent of the Committee access to their facilities, documents and information as the Committee may require."</i></p>	<p>The Bill should be amended to specify that access should be during normal working hours and after issuance of a 48 hours' notice to the operator so as to ensure efficiency.</p> <p>There is also a need to provide for the confidentiality of information acquired during investigations carried out under this section.</p>

ITEM	REFERENCE	ISSUE REVIEW	REQUIRING	AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
				<p><u>Proposal to insert section to be read as section 40 (3) and to provide as follows:</u></p> <p><u>The Committee and any employee or designated agent of the Committee having had access pursuant to sub-paragraph (2) above shall observe strict confidentiality in respect of all information obtained and not disclose such information to any person except with the explicit prior written approval of the relevant contractor, sub-contractor, licensee., or other entity.</u></p>	<p>Requiring the Operator to permit an employee access to its facilities, documents and information should be subject to any other written law i.e. the right to privacy under Article 31 of the Constitution and the limitation of the right to access to information under section 6 of the Access to information Act.</p>
24.	41(3)(c)	Quality, quantity & timelines		<p><u>"An operator shall, in considering and evaluating a bid in relation to a project in the extractive industry-</u></p> <p><u>(b) Give preference to local persons where the price differential does not exceed ten percent of the bidding price quoted by a foreign entity, provided that the said goods and services meet the relevant extractive industry standards with regard to quality, quantity and timelines".</u></p>	<p>The provision imposes a strict requirement on operators to acquire goods which are locally produced whether or not they meet the quality required by the industry. The Bill should be amended to ensure that the quality of goods is considered.</p>

ITEM	REFERENCE	ISSUE REQUIRING REVIEW	AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
25.	41(4)	Quality, quantity & timelines	<p><i>"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 provided that the said goods and services meet the relevant extractive industry standards with regard to quality, quantity and timelines."</i></p>	<p>The provision imposes a strict requirement on operators to acquire goods which are locally produced whether or not they meet the quality required by the industry.</p> <p>NOTE: (This provision to offer contracts to indigenous Kenyan companies even if they do not have the lowest bid is an unfair obligation on the operator and likely to increase project costs up to 10%.)</p>
26.	43(2)	Baseline Survey to Inform Conditions/Approval	<p>(2) Notwithstanding subsection (1), and taking into account findings made under section 11, 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, authorize the continued importation of the required goods or service.</p>	<p>For avoidance of doubt and for purposes of predictability as well as guiding the Cabinet Secretary decision, it is important that the conditions and approvals are well informed by the baseline survey.</p>
27.	44(3)	Sustainability of Operations	<p>(3) <u>Subject to existing laws and unless exempted by the Committee and unless exempted by the Committee, 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.</u></p>	<p>State entities are guided by existing law e.g. Public Procurement and Disposal Act hence cognizance needs to be taken to avoid nullification of the process envisaged under this section.</p> <p>Committee needs to be granted discretionary powers to accommodate unique situations or circumstances e.g. where threshold may not be met and yet activity or operation at hand needs to be undertaken expeditiously.</p>

ITEM	REFERENCE	ISSUE REQUIRING REVIEW	AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
28.	47(2)	Consultation with Operator	<p><i>"Subject to existing laws, 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 and an Operator prescribe to the Fund in support of the objectives of this Act."</i></p>	<p>Existing Laws: Cognizance needs to be given to existing laws that govern taxation & training and accord a right & privilege to a party as envisaged under section 23 of the Interpretation and General Provisions Act (Cap 2)</p> <p>Consultation: Given that the section targets the Operator's revenue i.e. property, the Operator has a right to be consulted.</p> <p>Existing Training Fund: Under the various PSCs, the Operator is already paying a training levy to the Ministry of Petroleum & Mining of up to Ksh 30 Million annually, the imposition of an additional levy is onerous.</p>
29.	48(4) & (5)	Impact on project timelines and costs	<p>4) <u>All tenders in the extractive industry shall only be advertised, evaluated and awarded in Kenya and where necessary, they shall be advertised internationally.</u></p> <p>(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.</p>	<p>Current wording is too restrictive. Operator should be allowed to advertise locally at first instance and internationally where necessary without the need for approval (i.e. red-tape) as is the case currently.</p> <p>The baseline survey/findings under section 11 should also inform and guide the need for the operator to advertise internationally without prior approval.</p>
30.	51(2)	Promotion of efficiency and confidentiality (as applicable)	<p><i>"An operator or connected entity shall permit an agent designated by the Committee to access the records of the operator or connected entity upon receipt of a 48-hour notice, for the purposes of assessment and verification of</i></p>	<p>The Bill should be amended to specify that access should be during normal working hours and after issuance of a 48 hours' notice to the operator to ensure efficiency.</p>

ITEM	REFERENCE	ISSUE REQUIRING REVIEW	AMENDMENT AS PROPOSED	RATIONALE AND JUSTIFICATION FOR AMENDMENT
			<p><i>the local content information reported by an operator or connected entity under this Act."</i></p> <p><i>Proposal to insert section to be read as section 51 (3) and to provide as follows: The Committee and any employee or designated agent of the Committee having had access pursuant to sub-paragraph (2) above shall observe strict confidentiality in respect of all information obtained and not disclose such information to any person except with the explicit prior written approval of the relevant contractor, sub-contractor, licensee, or other entity.</i></p>	<p>There is also a need to provide for the confidentiality of information acquired during investigations carried out under this section.</p> <p>Requiring the Operator to permit an agent to access records should be subject to any other written law i.e. the right to privacy under Article 31 of the Constitution and the limitation of the right to access to information under section 6 of the Access to information Act.</p>
31.	57(3)(a)	Clarity	<i>The industry currently has no proposal and will refer to the Senate Energy Committee to advise.</i>	Section refers to "neglected children"
32.	57(4)(a)	Clarity	<i>The industry currently has no proposal and will refer to the Senate Energy Committee to advise.</i>	Section refers to "County Executive Committee Members" as having the power under this National Bill to make regulations.
33.	New Clause	Propose to add a new transitional clause.	<u><i>An Operator or a connected entity having obligations under this Act, shall comply with this Act within twenty-four (24) months after the commencement of this Act.</i></u>	Transitional period is needed for purposes of compliance. If the period is too short, the Operators will be prone to fail and be exposed to hefty fines and/or custodial sentences if the transition period is too long, it will likely raise anxiety or discouragement to the stakeholders and the local suppliers/citizens. Accordingly, Industry proposes a reasonable transition period of 24 months.

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csenate@parliament.go.ke

MEMORANDUM BY EASTERN AFRICA EXTRACTIVE CONSULTING LIMITED TO THE SENATE STANDING COMMITTEE ON ENERGY WITH RESPECT TO THE LOCAL CONTENT BILL, 2018.

From : Faith Waigwa <faithwaigwa@gmail.com>

Thu, Jun 21, 2018 03:56 PM

Subject : MEMORANDUM BY EASTERN AFRICA EXTRACTIVE CONSULTING LIMITED TO THE SENATE STANDING COMMITTEE ON ENERGY WITH RESPECT TO THE LOCAL CONTENT BILL, 2018.

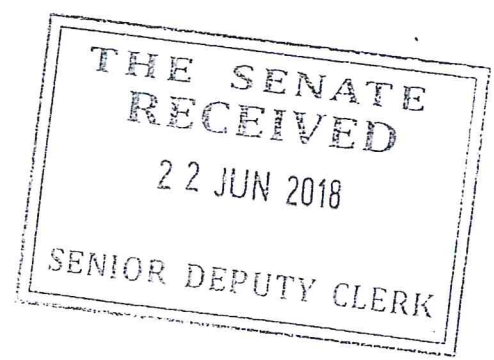
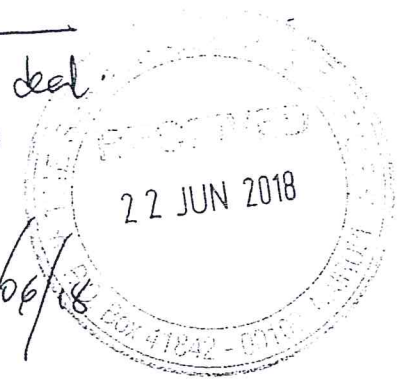
1 attachment

To : csenate@parliament.go.ke

Cc : Gloria W Advocate <gloriaednah@gmail.com>, Martin Muhoro <martinmuhindimuhoro@gmail.com>, Abel Nyamai <Abel.Nyamai@strathmore.edu>, Janet Okari <janet.okari@yahoo.com>, Julius kemboy <kemboy@kemboylaw.com>, Julius Kemboy <jkemboy@icloud.com>, maria kirima <maria.kirima@yahoo.com>, mercyleneshiro@yahoo.com, M Kimani <kimhoreria@gmail.com>, BULLE@hassanbuleadvocates.com, BULLE@hbulleadvocates.co.ke, Purity Kibugi <pnwangigi@gmail.com>, sheila nandako <snandako@gmail.com>, Thomas Louis <tommilouis@gmail.com>, Victor Bett <bettvictorkip@gmail.com>, Kirui Victor Llm 2 <victorkirui623@gmail.com>, zadarack achoki <zeddachoki@gmail.com>, mohamedbillow@gmail.com, Phillips Anyang Ngong <ngonganyang@gmail.com>, Phillips Anyang Ngong <anyang@lawyer.com>, Veronica Tayo <v.tayo@va-advocates.com>, faiTH WAIGWA <faith.waigwa@nowadvocates.co.ke>

Dlom ①
DLS

Kindly deal
EG
22/06/18



Dear Sir,

The above subject matter and your notice on public hearings/receipt of memoranda of 14th June 2018 refers.

Pursuant to the aforesaid notice, Eastern Africa Extractive

② Clerk Assist - Energy

Please bring to the attention of the Committee

22/06/18

6/22/2018, 7:45 AM

Consulting Limited today appeared before the Senate Committee on Energy and presented its concerns on various provisions of the Local Content Bill, 2018 orally and thereafter, handed over its written Memorandum in hard copy to the Committee through madam Gloria Wawira.

As requested by the Committee, find herein as an attachment a soft copy of the Memorandum by Eastern Africa Extractive Consulting Limited for your consideration.

We trust that the Committee will incorporate most of our proposed amendments if not all.

Thank you.

F. Waigwa



**MEMORANDUM TO THE SENATE STANDING COMMITTEE ON ENERGY ON
LOCAL CONTENT BILL, 2018 .docx**

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MEMORANDUM TO THE SENATE STANDING COMMITTEE ON ENERGY

Julius Kemboy (Chairman), Faith Waigwa (Vice-Chairman)
Martin Muhoro (Managing Director), Philips Ngong (Managing Director-South Sudan
Chapter)

Maria Kirima (Administration Director) , Janet Okari (Human Resource Director,
Veronica Mwangoma (Legal Services Director) , Thomas Abira (Finance Director) ,
Victor Kipchirchir (Marketing & Advertising Director), Abel Nyamai, Mohamed Billow,
Zadrack Achoki, Mercylene Njoroge, Sheila Nandako, Michael Horeria, Victor Bett
(Directors)

SUBMISSION

BY

EASTERN AFRICA EXTRACTIVE CONSULTING LIMITED

TO

**THE SENATE STANDING COMMITTEE ON ENERGY ON MATTERS RELATING TO
THE LOCAL CONTENT BILL (SENATE BILLS NO.10 OF 2018)**

THURSDAY 21ST JUNE 2018

**THE COUNTY HALL MINI CHAMBER, FIRST FLOOR, COUNTY HALL BUILDING,
NAIROBI**

**Honourable Chairperson of the Senate Standing Committee on Energy,
Distinguished Honourable members of the Senate,
Ladies and Gentlemen,**

We thank you for affording us the opportunity to make our presentation on the Local Content Bill (Senate Bill No.10 of 2018) (hereinafter the Local Content Bill, 2018) and welcome the opportunity to address you.

Eastern Africa Consulting Limited is a company registered in Kenya with operations in Kenya and South Sudan. Our Strategic Intent is to transform the oil and gas industry in the region into the economic engine for job creation and National Participation by organizing and developing in-country capacity and indigenous capabilities in all sectors of the economy. Our Vision is to see a sustainable integration of oil and gas activities to other sectors of the economy. Our philosophy is that through participation of the 'people', a true and lasting 'license to operate' is achieved.

The Petroleum, Oil and Gas industry is emerging in the Country with enormous economic opportunities for Kenyans. As such, it is imperative to provide a framework to ensure that the benefits relating to the resource trickle down to Kenyans. The Senate has developed a Local Content Bill, 2018 pursuant to its functions under article 96 of the Constitution. Having reviewed the contents of the Bill, we hereby make the following comments, observations and proposals:

SPECIFIC COMMENTS

No.	Issues	Provision in the Local Content Bill	Problem	Remedy
1.	Preamble	Preamble	In the introduction section also known as the preamble, the Bill restricts/limits itself to gas, oil and other petroleum resources. However, Section 2 of the Bill assigns the meaning of 'extractive industry' as oil, gas and mining sectors in Kenya.	The words "other petroleum resources" be substituted with "minerals" for the Bill to substantively provide for the extractive industry and rationalize this inconsistency.
2.	Interpretation	Section 2	Labour and services used in the manufacture of local goods must be at least 50% of the cost of the finished product. This higher requirement may not be practical to our developing economy.	Substitute 50% with an irreducible minimum percentage of 20% to be reviewed progressively.
3.	Application	Section 3	The use of "other petroleum resources" is limiting in view of the fact that the extractive industry has been	Replace "other petroleum resources" with "minerals".
			The use of "all commercial activities related to the exploration" locks out core activities during exploration.	Ammend the section to read ".....all commercial activities in and related to the exploration....." to ensure all activities are included.
4.	Objects and purposes	Section 4(d)	The use of the words "sustainable labour	Amend the sub-section to read

			force" is open to foreign labour force which is not an objective or purpose for which an Act of Parliament will be established	".....sustainable local labour force....."
5.	Obligations of the National and County Governments	Section 6(2)	Makes reference to subsection (2) instead of subsection (1).	Amend the subsection to make reference to subsection (2).
6	Functions of the National Government and role of the Cabinet Secretary	Section 7(b)(i)	Makes reference to locals yet the meaning of locals hasn't been provided for.	Replace the word "locals" with "local persons" because the meaning of local person has been provided for.
		Section 7(b)(ii)	Reference is made to in-country programmes yet no entity or individual has been tasked to come up with such programmes	Assign the tasks if identifying the in-country programmes to the Committee so as to have this subsection read as follows:- "..... in-country programmes identified by the Committee....."
		Section 7(b)(ii)	The duty to Measure and report the performance of operators in the extractive industry with respect to local value addition is bestowed upon the Committee	A similar duty tantamount to self assessment by the operator should be bestowed on the operators .
7.	Establishment of the Local Content Development Committee	Part III (Sections 9 to 20)	The sections are jumbled up.	Re-arrange the sections as follows:- Establishment of the Legal Content

				Development Committee, Membership of the Committee, Term of office, Qualification for appointment, Disqualification from membership, Functions of the Committee, Assessment of local capabilities, Conduct of the affairs of Committee, Sub-committees of the Committee, Vacation of office of member, Secretariat, Functions of the Secretariat
	Membership of the Committee	Section 12	Committee lacks representation from the Ministry of Education yet such ministry is key in building educational capacity in the extractive industry	Provide for the Permanent Secretary responsible for matters relating to education or a representative designated in writing
8	Local content certification	Section 24(1)(d), 24(2), (3) & (4)	The provision for independent certifying agents are unnecessary layers of administration and may inadvertently create an environment for corruption.	Amend these clauses to assign the role of local content certification to a department at the Secretariat. Further provide for regulations that will govern the certification.

9	Funding of research and development	Section 37(1)	The percentage for the funds set aside for research and development is not statutory stated nor is it a fixed percentage. This leaves room for discretion to the Cabinet Secretary and gives room for the Operator to maneuver out of it.	A statutory formula to inform the percentage to be used be prescribed. This clause should be a clause in the model Production Sharing Contracts in the proposed Petroleum Bill, 2017.
10	Submissions of a financial services plan and Thresholds for Kenyan equity stake in an operator	Section 38(3) and 45(2)	The is no definition of an indigenous Kenyan bank and a non-indigenous Kenyan Company respectively	Provide for the definition of an indigenous Kenyan bank and a non-indigenous Kenyan company
11	Monitoring of local content of expenditure incurred	Section 49(3)(e)	Only applies to expenditure incurred in terms of payments made to the locals	A similar section should be provided to enable the Committee assess how much is paid to foreigners as against the locals
12	Impact assessment	Section 50(2)	Makes reference to a report by the Committee to be submitted to the Cabinet Secretary but does not stipulate the frequency for submission of such report.	The Committee's report to the Cabinet Secretary should be submitted annually.
13	Offences and penalties	Section 54	The offences created under this section attracts a maximum penalty and no minimum penalty. This is open to abuse	The stated maximum penalties be converted into minimum penalties.

			because an offender can actually be found guilty but no penalty is metted on them.	Clarify whether a breach of any other provision of the Bill constitutes an offence other than those stated in section 54
14	Regulations	Section 57(3)(a)	Makes reference "...to neglected children....." which is misplaced and could be a case of copy and paste	Delete "to neglected children" and replace it with the relevant wordings
15	Memorandum of Object	in page 211,		Should clarify whether the bill deals exclusively with oil, gas and petroleum or includes minerals.

Finally Honorable Chairperson and members of the committee, the Eastern Africa Extractive Consulting Limited wishes to implore on you as an arm of Government to safe guard other sectors of our economy even as we venture into oil exportation to avoid as a nation from being a victim of what in economics is known as the dutch disease. The **Dutch disease** as defined in Wikipedia is the relationship between the increase in economic development of a specific sector (for example natural resources) and a decline in other sectors (like the manufacturing and agricultural sectors). The putative mechanism is that as revenues increase in the growing sector (or inflows of foreign aid), the given nation's currency becomes stronger (appreciates) compared to currencies of other nations (manifest in an exchange rate). This results in the nation's other exports becoming more expensive for other countries to buy, and imports becoming cheaper, making those sectors less competitive.

We trust that you will consider our proposals and we wish you all the best with the ongoing public hearings.

Thank you.

EASTERN AFRICA EXTRACTIVE CONSULTING LIMITED

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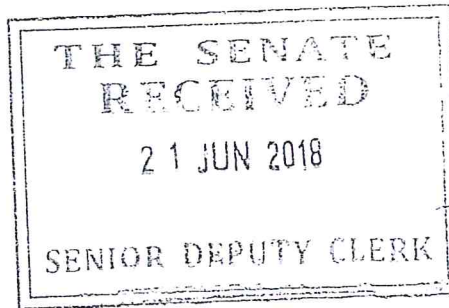
TURKANA COUNTY GOVERNMENT

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Kindly deal.

21/06/18

LEGISLATIVE MEMORANDUM ON THE LOCAL CONTENT BILL, 2018



2) Clerk Assist - Energy

Please bring to the attention of the Committee
22/06/18

SUBMITTED TO: THE SENATE

FROM: TURKANA COUNTY GOVERNMENT



THE TURKANA COUNTY GOVERNMENT is established by the Constitution of the Republic of Kenya, 2010, in particular under Article 176(1) as read together with the first schedule thereof.

The Turkana County Government is aware that a Bill known as Local Content Bill 2018 is currently pending before the Senate, in particular, before the Senate Standing Committee on Energy.

In responding to the call for representations from the public over the Bill aforesaid, the Turkana County Government via this memorandum, recommends as follows:

	CURRENT PROVISION	PROPOSED AMENDMENTS	RATIONALE/ JUSTIFICATION
Clause 2 Interpretation	There are several definitions under this clause. However, two critical definitions are missing; definition of “host community” and “host county”	We propose the inclusion of the definition of the said terms as follows: “host community” means the community or communities living in the subcounty which is, or sub-counties which are the source of the extractive resource or resources being the subject of the extractive activities of an operator. “host county” means the county which is, or counties which are the source of the extractive resource or resources being the subject of the extractive activities of an operator	It is essential to include the definitions of these terms because their use is proposed hereinafter for purpose of giving priority to persons from host counties and host communities to benefit from the local content plans and local content development strategies.
Clause 3 Application of the Act	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	This Act shall apply to all commercial activities related to the exploration, extraction, development and exploitation of oil, gas and other petroleum resources, and all other resources in the extractive industry in Kenya	It is a constitutional imperative that all resources should be utilized for the benefit of the people of Kenya, pursuant to Article 69(1)(h). Therefore, the Local Content Bill, once passed, should secure the rights of citizens to benefit not only in oil, gas and other petroleum resources, but across all extractive industries in Kenya.
Clause 6(2) Obligations of the National and County Government	(2) The National Government shall, in performing its functions under subsection (2), collaborate with County Governments	(2) The National Government shall, in performing its functions under subsection (1), collaborate with County Governments	There seem to be a typographical error. The provision is meant to refer to a different subsection, and not to itself.



<p>Clause 8 Duties of the County Government</p>	<p>8. (1) 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 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 function necessary for the implementation of the</p>	<p>This clause does not have sub-clauses. Therefore, it should be cited as clause 8, not clause 8(1).</p> <p>Secondly, one more function for the county government should be introduced between paragraph (f) and (g). the current paragraph g should change to paragraph (h). the new arrangement of paragraph (f), (g) and (h) should thus reads as follows:</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;</p> <p>(g) in cooperation with the Secretariat of the Committee, identify, register and keep a database of, and share with the Committee, the database of the locally available goods and services in the County for local content consideration; and</p> <p>(h) perform such other function necessary for the implementation of the objectives of this Act.</p>	<p>The county government is well placed to identify goods and services obtaining within its jurisdiction. It is essential to give this role to county governments to ensure that qualified and merited individuals and entities are considered.</p>
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	objectives of this Act.		
Clause 9 and 10 Establishment and Function of the Local Content Development Committee	Clause 9 establishes the Local Content Development Committee. Clause 10 lists the functions of this Committee	It is noteworthy that there are plans to create another entity for the management of local content in the petroleum industry, namely, the Upstream Petroleum Regulatory Authority (herein "Authority") created under clause 14 of the Petroleum (Exploration, Development and Production) Bill, 2017 (herein "Petroleum Bill") which is currently pending before the National Assembly. One of the functions of the Authority under Clause 78(1) Petroleum Bill is to "...supervise, co-ordinate, and manage the development of local content." This local content is specific to the petroleum industry. We thus have two Bills that seek to establish two separate entities to manage local content. The difference is that the one under the Local Content Bill will manage the local content in the entire extractive industry, while the entity under the Petroleum Bill will have authority over the local content in petroleum industry only. We propose that the Committee be retained. At an appropriate time, the local content power of the Authority under the Petroleum Bill should be withdrawn.	It makes sense to have a one-stop shop for management of local content across the entire extractive industry, instead of have specialized local content authorities for each subsector of the extractive industry. Have one entity for all promotes the ideal of the prudent use of public finance espoused in Article 201(d) and principle of good governance under Article 10(2)(c) of the Constitution.
Clause 12 (1) Membership of the Committee	Some of the members of the Committee Council of Governors representatives, captured under clause 12(1)(e) as follows: 12. (1) The Committee shall consist of— (a)... (b)...	We propose the following amendment to paragraph (e): (e) seven persons nominated by the Council of Governors, four of whom must be representatives of host counties;	The Council of Governors comprises all the forty-seven counties. Being an umbrella body representing the interests of forty-seven counties, it amounts to inadequate representation for the Council to have only two representatives in the

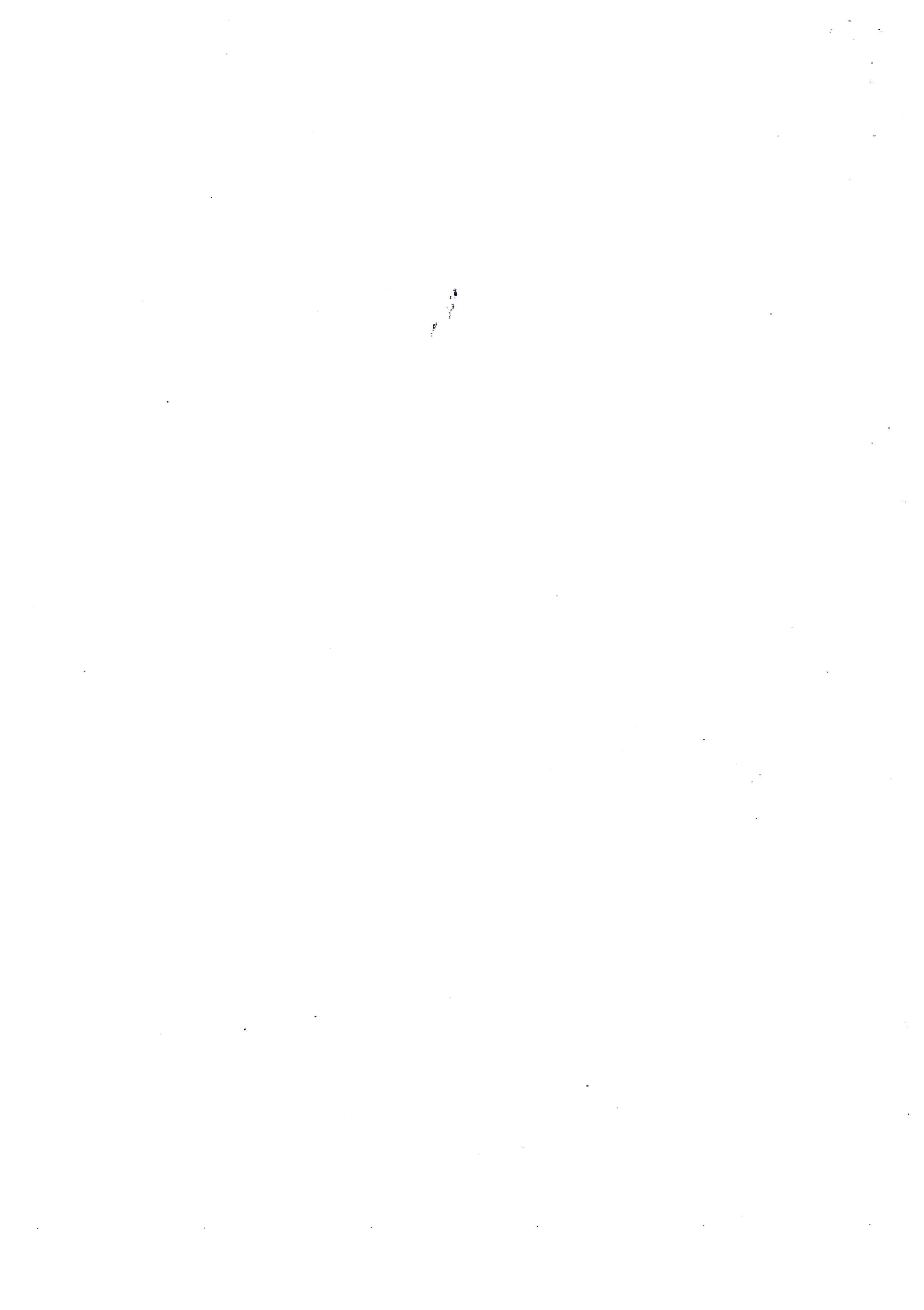
	(c)... (d)... (e) two persons nominated by the Council of Governors;		Committee. Extractive industries operate in counties. Therefore, county governments need influential presence in critical decision-making organs such as this Committee
Clause 19 Secretariat of the Committee	19.(1) The Cabinet Secretary 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 word "petroleum" should be replaced by "extractive" 19.(1) The Cabinet Secretary shall designate an appropriate administrative unit within the Ministry responsible for matters relating to the extractive industry to serve as the Secretariat of the Committee.	The Committee's mandate is not limited to petroleum industry. It covers the entire extractive industry. Therefore, it's secretariat should not be placed under a unit confined to petroleum matters only.
Clause 21 Minimum Local Content	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.	21.(1) The Committee shall, 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.	The Committee is well represented, taking care of various constituencies of interests, and therefore it is expected that their product in the minimum local content will be inclusive.
Clause 26(2)(b) Employment and Skills Development	(2) An employment and skill development plan submitted under subsection (1) shall include— (a)... (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;	We propose the replacement of the term "local community" with the term " host community ". This term should replace the term "local community" where used in other parts and provisions of the Bill. Thus, the provision should read as follows: (2) An employment and skill development plan submitted under subsection (1) shall include— (a)... (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	Though the provision uses the term local community, the Bill does not provide definition of this term. We propose the change so that it comes under our proposed definition of host community. This will also help to avoid the temptation to try to give the term "local community" a definition that is closer to the definition of the term "local person" in terms of geographical scope. It is noteworthy that in the Bill, local person is a person or entity whose principal place of business is Kenya.

		opportunities;	
Clause 41(3) (c) Procurement	(3) An operator shall, in considering and evaluating a bid in relation to a project in the extractive industry,— (a)... (b)... (c) give preference to local persons where the price differential does not exceed ten percent of the bidding price quoted by a foreign entity.	(3) An operator shall, in considering and evaluating a bid in relation to a project in the extractive industry, — (a)... (b)... (c) give preference to local persons where the price differential does not exceed ten percent of the bidding price quoted by a foreign entity: Provided that first preference among the local persons shall be accorded to persons from the host county or host communities where the operator carries out its extractive activities	It is necessary to empower the surrounding community.
Clause 47 Establishment of Local Content Training and Development Fund	47.(1) There is established a fund to be known as the Local Content Training and Development Fund. (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.	The original provision establishing the Fund leaves a broad discretion to the Cabinet Secretary to define the areas and scope of application of the Fund. The Bill should outline the general guiding principles on the areas and scope of the application of the Fund. From these principles, the Cabinet Secretary can then create regulations to implement them.	There is risk that the discretion left to the Cabinet Secretary may be improperly used. Therefore, clear boundaries must be set by general body of principles on the utilization of the Fund.
Clause 54(1) Offences and Penalties	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	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 ten million shillings or to imprisonment for a term of not more than three years, or to both.	A maximum fine of two million Kenya shillings is not deterrent enough, especially operators whose worth may be too enormous to feel a penalty of up to two million shillings. A maximum fine of ten million Kenya shillings is likely to have a deterrent effect. Secondly, it is not fair

	both.		to subject a local to a higher fine of three million for acting as a front for foreign entities [see clause 54(2)] while subjecting operators, which are mainly foreign entities, to a significantly lower penalty.
Clause 54(3) Offences and Penalties	54(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.	54(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 ten million shillings or to imprisonment for a term of not more than five years, or to both.	Considering the economic scale of operators, a fine of up to a maximum of three million Kenya shillings may not be felt by, or serve as a deterrent to them. Fine of up to ten million Kenya shillings is likely to serve as a deterrent.
Clause 58 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— (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.	58. Upon the commencement of this Act, all oil, gas and all other extractive industry arrangements, agreements, contracts or memoranda of understanding relating to any operation or transaction in the extractive industry in Kenya— (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	This is in line with our proposal that the Bill should cover local content across the entire extractive industry.

SIGNED BY: 

**THE COUNTY EXECUTIVE COMMITTEE MEMBER
WATER, ENVIRONMENT AND MINERAL RESOURCES
TURKANA COUNTY GOVERNMENT**



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Acacia Exploration Kenya Limited
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T: +254 (0) 718274193



ACACIA

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Clerk Assist - Energy

Please, bring to the attention of the
Committee

20/06/18



19TH June 2018

Clerk of the Senate
Secretary Parliamentary Service Commission,
P.O. Box 41842-00100,
Nairobi

BY EMAIL TO cSenate@parliament.go.ke

Dear Sirs

ACACIA : SUBMISSION ON SENATE LOCAL CONTENT BILL 2018

Further to the invitation to interested members of the public and organizations to submit any representations that they may have on the Senate Local Content Bill 2018, we forward herewith our submission.

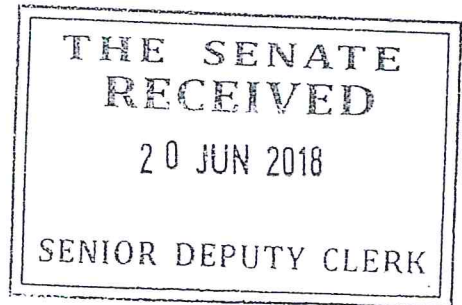
By way of background, we are a mineral exploration company conducting gold exploration in Western Kenya, and our work is primarily regulated by the Ministry of Mining and Petroleum. We forwarded a submission on the then Local Content Bill 2016 in May 2016, seeking that Local Content for the Mining sector should be governed only by the Mining Regulations that cover local content in the Mining Sector. These regulations have since passed into law, and provide a comprehensive and workable set of local content obligations that are tailored to mineral activities. The regulations are as follows:

- Mining - Use of Local Goods and Services Regulations 2017
- Mining - Employment and Training Regulations 2017

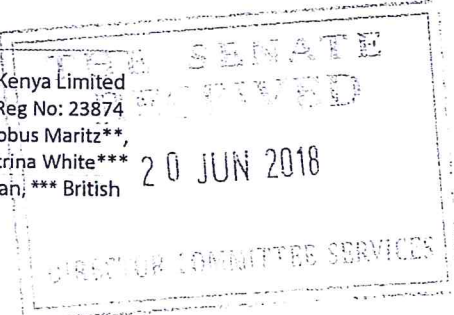
We note with appreciation that indeed, the 2016 Bill has been adjusted so that the Local Content Bill 2018 does appear to apply primarily to the Oil, Gas and Petroleum sectors. However we believe that there remains some ambiguity in whether or not the Bill, if passed into law, could be interpreted to apply to mining activities as well. Should this be the case, there would be duplicated and, in places, conflicting obligations imposed on operators in the mineral sector.

We consider the ambiguity is introduced through the clauses below: 3, which clearly states that the application of the Bill is for oil, gas and other petroleum resources, versus 4 (as an example), which cites 'the extractive industry' which itself is defined in the Bill as 'Oil, gas and mining sectors'.

<p>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.</p>	Application.
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Acacia Exploration Kenya Limited
Reg No: 23874
Directors: Bradley Gordon*, Jacobus Maritz**,
Katrina White***
* Australian, ** South African, *** British



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4. The objects and purposes of this Act are to—

Objects and
purposes.

- (a) promote the maximization 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;

We ask that this ambiguity be addressed so that the Local Content Bill 2018 is clearly and unambiguously only applicable to the Oil, Gas and Petroleum sectors.

We therefore propose that either:

- A clause be inserted into the Senate Local Content Bill 2018 similar to that which is included in the Senate's draft Natural Resource Revenue Sharing Bill (Clause 5 (3)) as follows:

Where a Statute or Statutes prescribes the details of local content in a particular natural resource sector, the provisions of that Statute or Statutes shall apply in respect to that Sector.

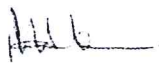
OR

- Wherever 'extractive industry' is mentioned without specific mention of restriction to oil, gas and petroleum within the extractive industry, that such restriction is added.

We urge your consideration of providing clarity in the Bill so that it unambiguously only applies to the Oil, Gas and Petroleum sectors, since local content for mining industry players is already covered in the relevant Mining regulations passed in 2017.

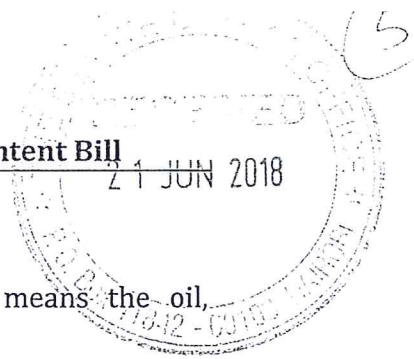
Thank you,

Yours faithfully



PHILIPPA HUTCHINSON
MANAGER GEOLOGY SUPPORT

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Kenya Chamber of Mines Proposal in regards to the Local Content Bill

21 JUN 2018

PROPOSAL SETTING

Section 2 of the Bill defines the "*extractive industry*" to means the oil, gas(hydrocarbon gases) and mining sectors in Kenya;

This is correct since the extractive industry refers to **mineral resources and petroleum resources**;

Section 3 of the Local Content Bill states that "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.

This is very clearly guided and excludes the mineral resources.

Then, if the mineral resources are excluded, which Act provides for their administration? It the Mining Act 2016

Section 2 of the Mining Act 2016 states "This Act shall apply to the minerals specified in the First Schedule".

The First Schedule in the Mining Act 2016 provides comprehensive listings of the mineral resources on which the Act applies. It should be noted that the listings deliberately exclude oil, gas and other petroleum resources as was stipulated under Section 3 of the Mining Act when it states that 'Save to the extent provided for in this Act, this Act shall not apply to matters relating to **petroleum and hydrocarbon gases**.

It would then be right to state that the Mining Act does not envisage a situation where it deal with oil, hydrocarbon gases (gas) and other petroleum resources.

AMBIGUITY

However Section 4(a) of the Local Content Bill states:

The objects and purposes of this Act are to—

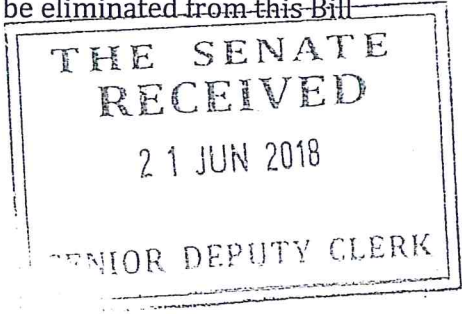
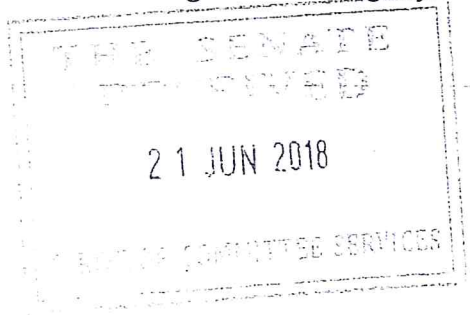
(a) promote the maximization of value-addition and the creation of employment opportunities in the **extractive industry** value chain through the use of local expertise, goods, services, businesses and financing and their retention in the country;

The Section fails to qualify the resources within the extractive industry impacted by Section 4(a) since the extractive industry is interpreted to include mineral resources listed in the First Schedule in the Mining Act 2018.

This hence brings about ambiguity, which should be eliminated from this Bill

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2) Clerk Assist - Energy
Please bring to the attention of the Committee
21/06/18



Kenya Chamber of Mines Proposal

As KCM, we propose the following words to be inserted before the extractive to eliminate the possible ambiguous situation; "**oil, gas and other petroleum resources of**" to read as follows:

Section 4(a) The objects and purposes of this Act are to—

promote the maximization of value-addition and the creation of employment opportunities in the **oil, gas and other petroleum resources of the *extractive industry*** value chain through the use of local expertise, goods, services, businesses and financing and their retention in the country;

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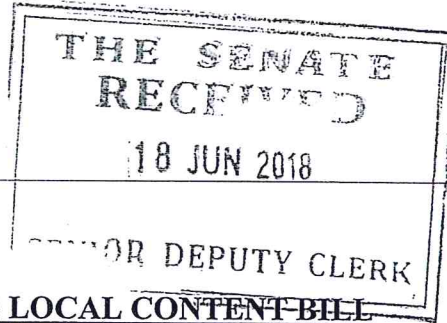
REF: GMM-1-2018

FROM: GEORGE MATI MUCEE (BA, MA, LLB-ON GOING)

TO: CLERK OF THE SENATE/SECRETARY TO PSC

SUBJECT: MEMORANDA ON LOCAL CONTENT BILL (SENATE BILL NO. 10 OF 2018)

DATE: JUNE 17, 2018



Kindly see
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 19/06/18

THERE IS NEED TO EXPAND THE LOCAL CONTENT BILL

In the matter of article 118(1) b of the constitution of Kenya 2010 and standing order number 134 of the Senate Standing orders and having read the Local Content Bill now before the senate, I would like to give my thoughts and views on the bill.

My name is George Mati Mucee, a Kenyan citizen and a professional Immigration consultant, communication consultant and a law student. I have over 15 years' experience working in Government, United Nations and the private sector where I am currently the Practice Leader at Fragomen Kenya Limited in charge of Kenya and EAC operations. I advise clients on Immigration matters and I have studied Local Content bills of several countries around Africa and mainly oil producing countries and would thus like to share my insights with the Senate.

Introduction:

The Local Content Bill 2018 sponsored by the Baringo County Senator, Hon Gideon Moi is currently before the Senate. This bill is designed to provide a legal framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil and other mineral resources in Kenya. Expectations are that it will provide a framework of increasing uptake of jobs, contracts for supply of goods and services by locals in the exploration sector and cushion locals from exploitation.

② Client Assist - Energy
 Please bring to the attention of the Committee
 19/06/18

This comes in the wake of high rates of unemployment in Kenya and limited local skills in the oil, gas and extraction sector. Consequently, this bill seeks to protect jobs that can be taken by locals and to encourage foreign companies to support local businesses by awarding them contracts or sub contracts for goods and services and further to address situations where local communities have been protesting exclusion by Foreign companies in allocation of contracts or sub contracts by requiring all multinationals to provide a plan on skills and technology transfer to locals.

I will focus on the segments that address issues of skills transfer and employment of expatriates within the oil and gas sector and also ventilate on; who is local and what does it mean? Are there existing policies on localisation? Is this bill the panacea to all matters ado expatriates in Kenya? If passed, how successful will we be in enforcing this law and who are the critical stakeholders in this among other issues of concern.

My thoughts

Many countries in Africa and elsewhere in the world, have in place localisation policies that mostly take the names of the countries such as Kenyanization, Gabonisation, Saudianization...to mention a few. Such policies were initially intended to facilitate the transfer of mainly the public service jobs from remnants of colonial masters to indigenous people. At independence, many white collar jobs were held by foreigners mostly from the colonizing empires such as Britain, France and Germany and as such an affirmative action was required to ensure that those jobs were gradually handed over to locals. Over time and space this has been transformed to cover the transfer of skills and jobs from expatriates to locals.

In Kenya, there is a Kenyanization policy at the Department of Immigration which is meant to ensure that only jobs that require skills not readily available in Kenya are held by expatriates or foreigners and that there are Kenyan nationals understudying the expatriates with a view to localizing the jobs over time. There used to be a section called Kenyanization section at the Department of Immigration Services (DIS) that was tasked with enforcing this policy by looking at all applications for employees work permits to ensure that evidence is availed by the employing company to prove that no Kenyan was qualified for it and that a Kenyan understudy

had been identified to get training from the expatriate. Although the section has now been merged with the Permits section, the Kenyanization function still exists and is considered for all permit applications in line with the localisation policy.

Who is local and what does local really mean?

An important question to ask ourselves, is who is local and what does local really mean? Looking at the bill casually one may think that local means Kenyan. While this is true, it goes further down to the exact location of the project. A lot of the viable oil and gas rigs are now in Northern Kenya like Turkana where Ngamia 1 is located. Using this example local has two meanings: Kenyan and the community around the oil wells, in this case Turkanas. Whereas the company may be 100% employing Kenyans it would be fundamental for the community around the project to be a big percentage of the employees. In my view, the bill should have laboured to define the local person to the specific man or woman historically residing in the areas where such a project is taking place. Part IV addresses the local content plans where local content means “maximizing the level of usage of local goods and services, people, business and financing”. I must say it is quite elaborate because it sets out the modalities and framework for ensuring that companies applying for various permits to operate in the industry must meet a set criterion for local content.

What is the role of Government in building capacity for the extractive industries?

However, in terms of human capital, the bill seems to focus exclusively on the role the companies seeking to operate in this sector will play without addressing the role to be played by government ministries in charge of education and energies. As we speak, the government is well aware that Kenya is on its path to being an oil producer and that there are no properly trained professionals in this field. I would have expected to see the bill tasking the relevant ministries to work with our technical schools, universities and companies setting up in the sector to develop curriculum to train our people to make them ready for the market when things start rolling. To require that only companies that will be involved in the sector should train and avail skills required is tantamount to government absconding its duties. Granted, the operators in the industry will be required to offer tailored skills to their employees to enable them perform, but

the overall responsibility of training citizens in readiness for the industry should be undertaken by the relevant universities following a curriculum jointly developed by key stakeholders. Why are we sitting pretty and waiting for extraction to start then start demanding that the companies involved in the process look around for qualified Kenyans to employ and if they are not available, train them? Can we not be proactive and develop a curriculum for our universities and technical colleges to start training such people way before extraction proper starts?

Why a local content bill for only extractive Industries?

Local content law for extraction industries is a good idea but in my view not enough. As it is, this bill only addresses itself to this sector and not any other. I think it would have been more useful to develop a local content law that cuts across all sectors of our economy that in effect guides specific sectors as the case may be. I would, for instance, like to see this bill address itself to the huge infrastructural projects undertaken by the national government where we have seen foreign contractors bringing in foreigners to do simple jobs like operating a grader! The very specific nature of the bill may bring about a situation where each sector seeks to come up with its own law on local content which would be a duplication of laws and would confuse people. Why can't we have one local content law that sets the framework to guide all sectors with one board and secretariat that is comprised of stakeholders from key industries? The sectors may be diverse, but the approach is basically the same...empowering Kenyans to compete fairly with others regardless of the sector. That said, I believe that a good law may not achieve the expected results if not well implemented.

How will we ensure compliance?

In Kenya today, good laws are in place but implementing them is the real deal. The institutions tasked with implementation are either incapable or unwilling to implement. Giving the example of the Kenyanization policy at Kenya Immigration, the problem has been that the Department of Immigration is not adequately empowered to implement the policy. In cases where they have attempted to implement with zeal, political interference and corruption have defeated their efforts. This eventually demoralizes the implementers and defeats the whole idea. I am therefore hoping this law will be passed with amendments to broaden it to cover other sectors of the

economy and those tasked with it given enough support to implement it. We also need to ask ourselves if key stakeholders have been consulted in the drafting of this law because although this bill is for the extraction industry there are critical government agencies like Immigration, KRA, Police, Labour that will be critical in ensuring it succeeds. The composition of the board and the local content development committee limits itself mainly to extraction industry and does not even incorporate such departments as labour which in my view should be a permanent member of the committee and the board. This seems to be relegated to sub committees that may be constituted under section 15 & 16.

In conclusion, I must applaud the Hon. Gideon Moi for thinking about this bill because indeed it will be necessary to have a legal framework to ensure that locals benefit from resources found within their areas. I hope this marks the beginning of a discourse on how best we can capture the issue of skills and knowledge transfer not only for the extractive industry but also for other sectors of the economy.

Kind regards.

George Mati Mucee,

Practice Leader,

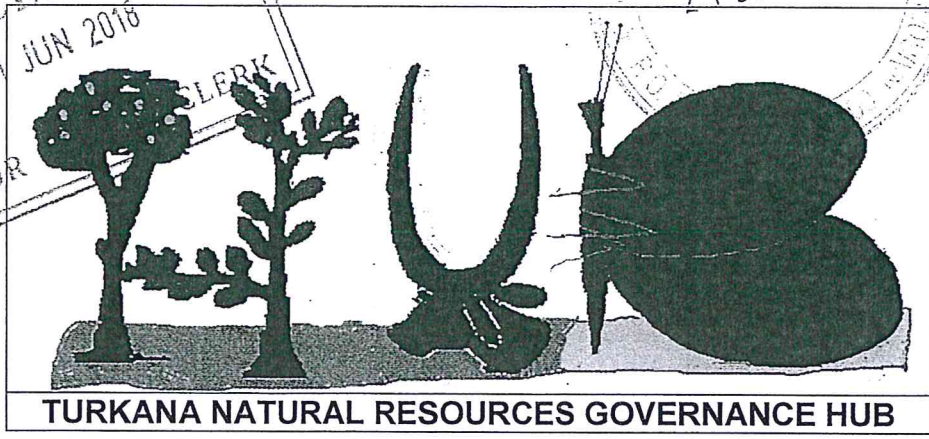
Fragomen Kenya Limited.

1st Floor 9 West Building, Westlands.

Nairobi.

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THE SENATE RECEIVED
21 JUN 2018
SENIOR CLERK

21 JUN 2018



TURKANA NATURAL RESOURCES GOVERNANCE HUB

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MEMORANDUM SUBMITTED TO SENATE BILL ON LOCAL CONTENTS 2018

Turkana Natural Resource Governance Hub (referred in short as Hub) is a consortium of 15 civil society organizations. The organization has been in operation in Turkana County for the last 7 year working in the area of conservation and protection of natural resource, with main focus on oil and gas extractives. Hub is currently concentrating on issues on land, environment and governance related to oil and gas extraction.

Hub aims to ensure that the community maximizes benefits accruing from oil and gas extraction.

Hub, therefore, submits the following views for consideration to be included in the Bill:

1. Definition

- Local Content should be defined as the sum of the inputs of local goods and services, including employment, provided in oil and gas operations.
- Local should be classified into three categories: national locals, county locals and community locals. National locals should be defined as the citizens or residents of the country. County locals should be defined as the residents or citizens of the county and community locals should be defined as the residents of the area around the extractive.

2. Local Content Policy Objectives

Local content Bill should have the following objectives:

- i. To Maximize the benefits of oil and gas wealth generation on a comprehensive local content platform by:

② Clerk Assist - Energy
Please bring to the attention of the Committee
21/06/18

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OFFICE OF THE CLERK

a. *Maximizing the use of local expertise, goods and services, job creation for people, businesses and financing in the oil and gas industry value chain and*

b. *Retention of the benefit within country*

- a. To develop local capability in the oil and gas value chain through education, skills and expertise development, transfer of technology and know-how and an active research and development.
- b. To target some agreed level of local content and local participation in all aspects of oil and gas industry value chain
- c. To Increase capabilities and international competitiveness of domestic business and industrial sectors
- d. To create/enhance supportive capabilities and/or industries that can sustain economic development
- e. The county and community should be given opportunity to invest in mid-stream or down-stream activities, including providing transport trucks, buying shares into the pipeline, providing oil tankers, etc.

3. There should be knowledge and technology transfer, from

- a. foreign to local county and local community participants to ensure that county locals and community locals are given the opportunity to participate fully at all levels, in all roles and disciplines required for the conduct of the sector's business and operations, so as to build and enhance capacity in people, companies, government or other services, utilities, institutions, infrastructure or facilities to support the oil and gas sector,
- b. oil sector to other sectors by using revenue from oil to increase productivity of other sectors, to produce goods and services that meet international standards, to reduce imports, and to generate export opportunities.

4. To ensure that benefits are shared equitably 70% of all levels of employments and business opportunities (including more lucrative and longer-term contracts) should go to county local and community local while 30% should go to national local.

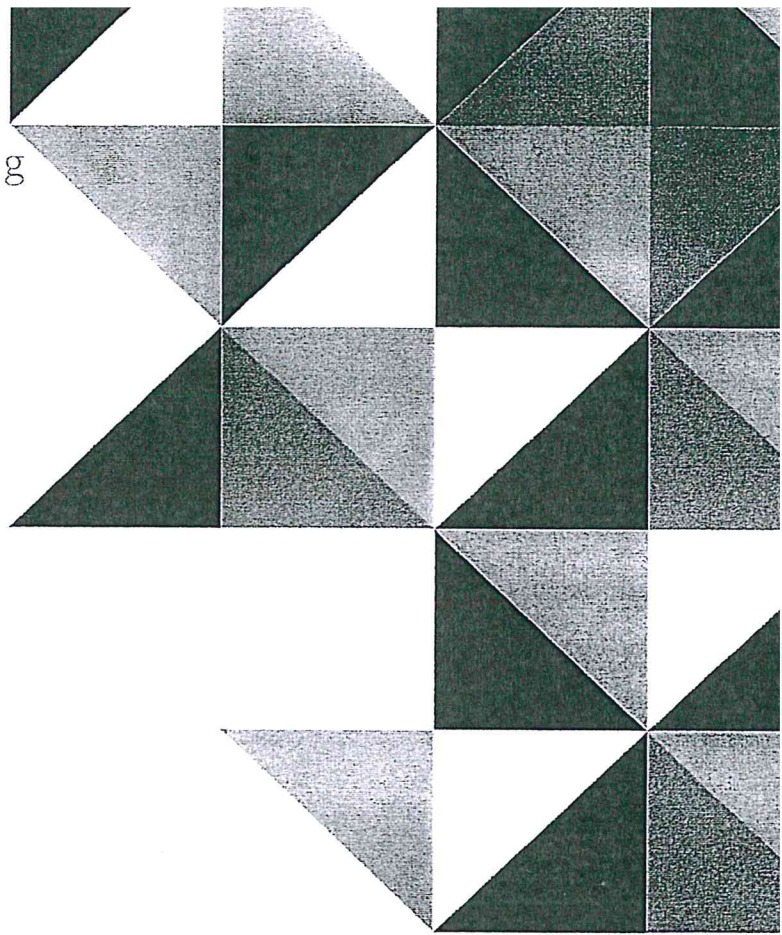
5. Achievement of local contents should be measured by considering income received by locals, revenues accrued by owners of land and resources, income streams to local shareholders and creditors, and number of county locals and community locals employed into senior and other positions in the company.

6. Local Capacity Building shall be measured in a variety of ways, including number of people trained, number of people certified, number of firms certified, level and value of technology introduced, infrastructure built, capital introduced into local economy
7. The county government, national government and investor shall improve skills development by identifying demand, current capability and gaps; developing and implementing strategies for growth, and involving various stakeholders in improving or expanding training, including
 - a. The industry skills
 - b. Business skills and
 - c. Experience base, via:
 - i. Education
 - ii. On-the-job training
 - iii. Mentoring, coaching and
 - iv. research
8. The county government, national government and investor shall improve supplier development by:
 - a. Enhancing existing capacities by improving existing supplier capabilities through LC&CD best practices
 - i. Supplier selection
 - ii. Longer-term contracts
 - iii. Contract/KPI management
 - iv. Supplier skill
 - b. Investing in new assets/capabilities
 - c. Creating regional/global centre of excellence
9. Government and investor priorities should be investment in
 - a. People by developing
 - i. High value-added skills, including
 - ii. Technical
 - iii. General management
 - iv. Design engineering
 - v. Project management
 - vi. Seismic processing
 - vii. Human resource development
 - b. Technology, Business know-how, Diversification by developing skills in
 - i. Fabrication;
 - ii. Seismic processing & data
 - iii. Management
 - iv. Operations & Maintenance
 - v. Maritime Services

- vi. Business support services:
 - Accounting,
 - HR Services,
 - IT support
 - Consulting
 - Financing
 - Logistics

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MEMORANDUM ON THE LOCAL CONTENT BILL

(Senate Bills No. 10 of 2018) SUBMITTED TO THE
SENATE STANDING COMMITTEE ON ENERGY



ESAL AFRICA

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SENATE STANDING COMMITTEE ON ENERGY

ESAL AFRICA LIMITED MEMORANDUM ON THE LOCAL CONTENT BILL

(Senate Bills No. 10 of 2018)

Energy Solutions Africa Limited is an Africa focused solutions provider that prides itself in offering cutting edge tools to equip key players in the energy, oil and gas sectors, both within the public and private sector, with quality, relevant, timely knowledge and information to guide decision making as well as investments.

Energy Solutions Africa Limited (ESAL) has been contracted by the Ministry of industry, Trade and Cooperatives (MoITC) and Ministry of Energy and Petroleum (MoEP) to develop local content policy and Kenya oil and gas local content regulations under the Kenya Petroleum Technical Assistance Project (KEPTAP) funded by the World Bank.

This project is critical as it will culminate with a policy and regulations that will shape the country's nascent industry and facilitate the participation of Kenyans in the industry. This is why we have taken an interest in the Local Content Bill as the policy we are currently developing will inform this bill greatly.

It is our proposal that the bill preceding the policy might miss out important issues that can be added to the bill from the policy currently being developed. We suggest that the considerations of the Policy be included in the bill once the development of the policy is complete so that the bill does not lack the elements of the policy.

PART I- Preliminary

"Company". There is need to clearly and explicitly define a local company. We propose that it should redefine this and deem a local company to be effectively owned and controlled by Kenyans if it has not less than 51% equity shares by Kenyans.

Part III- Establishment of the local content development committee

Section 9 provides for the establishment of the Local Content Development Committee. The policy will have a Local content Committee which will act as a regulator. The executive seeks to create a local content policy that is overarching. The policy will create an institutional

framework that will have a local content committee similar to the one provided under the policy. This is a challenge that has been created by having a bill coming before the policy. Furthermore, the Petroleum Bill requires plans to be submitted to the Upstream Petroleum Regulatory Authority and the bill requires the plan to be submitted to Local Content Committee and the Mining Act, the plan is submitted to the Cabinet Secretary. The Senate should look ensure that all these laws are in sync.

Section 11 provides for assessment of local capabilities and this will lead to creation of a comprehensive register of service categories, available capacity.

We propose that the section should indicate the local content committee will establish a database where it will list the available opportunities and qualified and certified local suppliers. This information should also be accessible to the public so that Kenyans are able to easily access the information and industries can be informed on local industries that have capacity. This will be in line with the Constitution under article 35.

GENERAL PROPOSALS

We propose that the bill should put more provisions specifically on strategies to address local ownership. This includes joint ventures and local equity participation. This is in order to make Kenyans not only supplier to the industry but also owners. Local ownership has just been identified but the Bill has not provided the strategies to realize it as it has done for other measures such as training, research and development, local sourcing of goods and local employment.

The bill has devolved the local content bill by bringing in active participation of county governments but it is not clear how county government will implement the bill for locals within the county. It needs to be clear if it intends that locals within the county will get more preference.

We foresee that the local content bill will have conflicts with the Mining Act 2016 and the Petroleum bill. Senate should consider these to ensure that there is no conflict. This is due to the fact that the Act's focus keeps referring to the extractive industry to include mining.

There should be consideration given as to what exactly is meant by transfer of technology. It should be clear which technology is to be transferred so as to avoid over burdening of the investors and intellectual property right claims arising in the future.

The country should be clear what area of skills development should be properly developed. This will lead to establishment of centers of excellence that will guide in development of capacity required for the identified skills. Therefore we propose that the bill includes the establishment of centers of excellence. This can also call for regional integration through collaboration in these centers for excellence.

The level of employment to be developed is very important. The country should not only aim at achieving employment but there should be levels indicated. This is to ensure there are locals participating right from managerial level. This will ensure that the country not only gets to understand the operations of the industry but also the business.

Finally it is our submission that not only should there be transfer of technology but there should also be provision that encourages innovation. This will enhance creativity in the industry and encourage development.

LIST OF PARTICIPANTS



THE SENATE

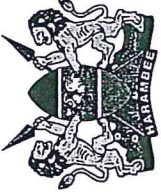
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PUBLIC HEARING ON THE LOCAL CONTENT BILL, 2018**

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