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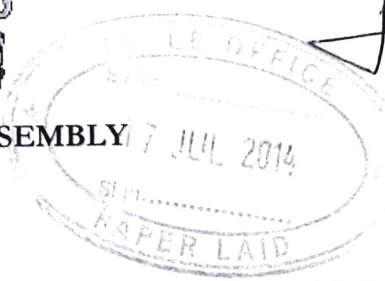
*Paper laid
by Hon. An*

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

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J. Sialai

17/7/14

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL
RESOURCES

ELEVENTH PARLIAMENT-SECOND SESSION

REPORT
ON

THE CONSIDERATION OF THE MINING BILL, 2014

THE FOURTH REPORT OF THE SECOND SESSION, 2014

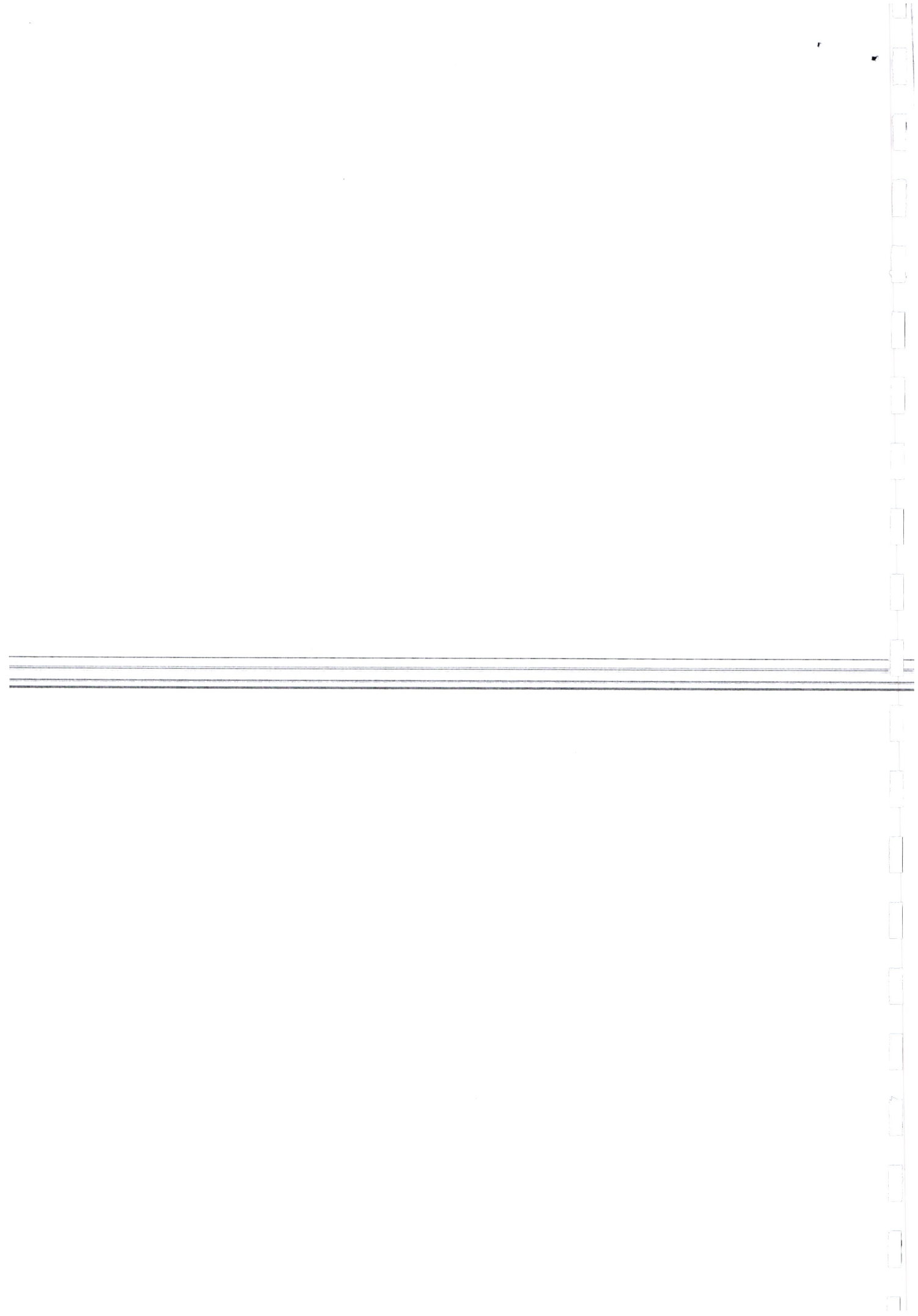
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JULY 2014

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CHAPTER 1

1.0 Introduction

1.1 Committee Mandate and Membership

The departmental committee on Environment and Natural Resources is established under the National Assembly Standing Orders No. 216(1). The functions and mandate of the Committee are also contained under the National Assembly Standing Orders, No. 216(5) as:-

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - b) Study the programme and policy objectives of the Ministries and departments and the effectiveness of the implementation;
 - c) Study and review all legislation referred to it;
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- d) Study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
 - e) Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - f) Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
 - g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The subject matter of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216(f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

1.2 Current Committee Membership

1. Hon. Amina Abdalla, M.P., **Chairperson**
2. Hon. A. K. Kosgey, M.P., **Vice Chairperson**
3. Hon. Alice Ng'ang'a, M.P.
4. Hon. Samuel Ndiritu, M.P.
5. Hon. Aisha Jumwa Karisa, M.P.
6. Hon. Ejidius Njogu Barua, M.P.
7. Hon. Jude Njomo, M.P.
8. Hon. Moitalel Ole Kenta, M.P.
9. Hon. Kathuri Murungi, M.P.
10. Hon. Sunjeev Birdi, M.P.

11. ~~Hon. Jackson K. Rop, M.P.~~

12. Hon. Abdi Noor Ali, M.P.
13. Hon. Joyce Emanikor, M.P.
14. Hon. Abdulaziz Farah, M.P.
15. Hon. Ronald Tonui, M.P.
16. Hon. (Dr.) Reginalda Wanyonyi, M.P.
17. Hon. Gideon Mwiti, M.P.
18. Hon. Hassan Dukicha, M.P.
19. Hon. Zainab Chidzuga, M.P.
20. Hon. Chachu Ganya, M.P.
21. Hon. Opiyo Wandayi, M.P.
22. Hon. Charles G. Mongare, M.P.
23. Hon. (Dr.) Wilber K. Ottichilo, M.P.
24. Hon. Khatib Mwashetani, M.P.
25. Hon. George Ogalo, M.P.

26. Hon. (Major) Muluvi Mutua, M.P.
27. Hon. Mohamed, Diriye M.P.
28. Hon, Peter Kinyua, MP.
29. Hon. Shukra Hussein Gure, M.P

1.3 The Mining Bill, 2014

1.3.1 Pre-publication activities

The committee had previously engaged the key stakeholders in anticipation of the publication of the Bill. In the year 2013, the committee hired two consultants with help from SUNY Kenya to prepare background information on the mining sector policy direction in the country. The consultants presented their findings in a breakfast meeting with the Committee held at Crowne Plaza hotel in Nairobi. The consultants generated useful data on behalf of the committee and advised them on the preferred strategic direction the government should take in relation to the mining sector. This breakfast was subsequently followed by one with the Chamber of Mines where the Committee listened to the concerns and fears of the investor in the sector. The Committee took into consideration these concerns of the investors in a three-day policy retreat between the Ministry and the Committee that took place in Mombasa just before the publication of the Bill. In this retreat Members of the Committee and the Ministry officials agreed to fast-track processing the Bill. It was also agreed that the Bill should be grounded on an explicit policy guide.

1.4 Referral to the Committee

The bill having been read a first time, stood committed to the committee for consideration pursuant to the provision of the National Assembly Standing Orders No. 127(1).

The Bill seeks to give effect to the draft Mining Policy and set out a new governance and regulatory regime for the mining sector. The elevation of the Department of Mining to a full- fledged ministry by the current government was informed by the need to focus on mining as one of the key

contributing sectors to the achievement of Vision 2030. The proposed legislation is expected to overhaul the various pieces of legislation relating to the sector and inspire greater need for transparency, accountability and good practice. It is envisioned that a streamlined legislative framework would enable the country to derive maximum benefit from the sector and manage it sustainably for benefit of the present and the future generations.

1.5 Conduct of the review inquiry

In line with the constitutional requirement for public participation in legislative processes, the committee advertised call for public participation in the Daily Nation newspaper and invited the public to make submissions by 8th May 2014. A copy of the advertisement is attached to the report as **annex 1**.

The committees received submissions, listed in annex 2 and are available with the Committee Secretariat. These submissions were made through written memoranda and verbally by the interested parties.

The Committee held meetings which involved receiving stakeholders input and a clause by clause review of the bill. **Annex 3**.

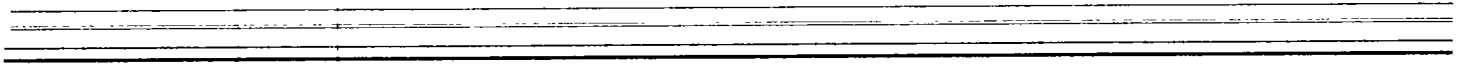
1.6 Output of the Review Inquiry process

The review process concluded with a list of agreed amendments that the Committee will be presenting to the house for consideration and possible adoption. In making its recommendations, the Committee examined the Bill clause by clause. Where objections were registered with respect to a particular clause in the Bill, the Committee proposed Amendments by consensus using the available information and triangulating different sources of submissions made on the provisions of the clause to be amended. The Committee intends to move these amendments at the Third Reading stage of the Mining Bill, 2014.

SIGNED *Abdalla*

CHAIRPERSON
(HON.AMINA ABDALLA, MP)

DATE *17/7/2014*



CHAPTER 2

2.0 The Rational for the Review of the Mining Legal Framework

According to the draft Minerals and Mining Policy from the Ministry of Mining the overarching goal for the review of the Mining Sector Policy and legislative reform is driven by the government's recognition of the importance of the mineral sector in national development in line with vision 2030. This vision necessitated the creation of the full-fledged Mining Ministry by the government.

The development of policy and legislative framework would be expected to guide this capital intensive sector and create an enabling environment for investments. The review process would be geared towards optimal utilization of the minerals resources, inculcation of environmental protection regimes into these legal framework and protection of the rights of the future generations to enjoy the same benefits from exploitation of the sector by the present generation. In addition, it will address the need to nationalize the management and exploitation of the mineral resources without necessarily being protectionist and investor unfriendly.

The Bill would be expected to put monitoring mechanisms in place to make sure that every investor plays by the rule and guarantee a level playing field for every player in the sector including artisanal miners and small-scale explorers.

The Bill would be expected to adequately address the challenges arising from the mining sector such as royalties, benefit sharing, environmental rehabilitation, community issues, artisanal miners, mineral rights, minerals promotion and marketing; appropriate and accurate geodata; volatility of mineral prices, intergenerational equity, local participation, institutional and human capacity; and environmental degradation among others.

In the face of the existing and emerging challenges, the current legal framework in the sector was found to be inadequate to address the challenges and their complexities. The Mining Bill, 2014 seeks to repeal the *Mining Act (CAP 306)*, the *Trading in Unwrought Precious Metal Act* and the *Diamond Industry Protection Act* to enact a simple, clear, conclusive and responsive legislation that will robustly address the challenges and opportunities in the sector

2.1 Kenya's Minerals potential

According to the Ministry of Mining Kenya has a variety of known mineral resources that include soda ash, fluorspar, titanium, rare earth minerals, gold, coal, gemstones, Manganese, Iron ore, gypsum, carbon dioxide, diatomite, chromites, silica sand, limestone, and dimension stone among others. There is also potential of discovery of other minerals.

2.2 Provisions of the Mining Bill, 2014

The legislative proposal giving rise to this Bill has been submitted by the Cabinet Secretary for Mining. The main objective of this Bill is to repeal the existing legislation relating to mining and to establish new legal framework for the management of Mineral resources in Kenya.

The Constitution of Kenya, 2010, brought into focus the requirement for greater public participation in the management of Mineral Resources. It further vests all Minerals in the national government and provides for the sustainable exploitation, utilization, management and conservation of the Environment and natural resources and the equitable sharing of the accruing benefits.

This Bill proposes to establish the legal framework within which operations in the mining sector shall be conducted. It also proposes to consolidate several laws relating to the sector, in order to ease the administration of the sector. The proposed Mining Bill, 2014 constitutes of the following parts:

Part I- Preliminary

The part of the Bill sets out the preliminary provisions. Clause 3 of the Bill excludes the application of the Act to Petroleum and hydrocarbon gases.

Part II – Ownership of Minerals

The part of the Bill provides for the ownership of minerals. All minerals are vested in the National Government. Clause 8 of the Act gives the National Government the right of pre-emption of strategic minerals.

Part III- General Principles

The part of the Bill sets out the general principles to govern the operations of the sector. It provides for restrictions on the acquisition of Mineral Rights and acquisition of rights in minerals.

Part IV- Administration

The part of the Bill deals with administration of the Act. It sets out the general powers of the Cabinet Secretary. Clause 16 sets out the power of the Cabinet Secretary to declare certain minerals as strategic minerals. Clause 17 establishes two directorates which are necessary for implementation the Act, those being the Directorate of Mines and the Directorate of Geological Survey. Clause 18 provides for the appointment of the directors to head the directorates. Clauses 20 and 21 set out the function of the Director of Mines and Director of Geological Survey respectively.

Part V-Mining Institutions and Bodies

The part of the Bill contains provisions on the various mining institutions and bodies. Clause 22 established the National Mining Corporation. Clause 24 provides the functions of the Corporation while clause 25 provides for the Board of the Corporation. Clause 28 provides that the Cabinet Secretary may establish a Minerals and Metals Commodities Exchange for the promotion of minerals. In Clause 30, the Cabinet Secretary is given the power to establish an ad hoc Tribunal to handle disputes which may arise under this Act.

Part VI-General provisions on Mineral Rights

The part of the Bill contains general provisions on Mineral rights. Clause 31 provides for categories of Mineral Rights. This part also provides for Mineral Rights on private land, Mineral Rights on community land. Clauses 44 and 45 are very important because they provides for the employment and training of Kenyans and for preference of Kenyan citizen during employment of works by Mineral Right holders. Clause 46 provide for government participation in Mining Licenses by acquiring ten percent free carry interest. Clauses 58 to 70 provide application of a Prospecting Licence, the term and renewal of a Prospecting Licence, the rights and obligations of a Prospecting Licence holder and relinquishment of a Prospecting Licence. Clause 71 to 77 provide for eligibility to obtain a Retention Licence, the application for a Retention Licence, the term for a Retention Licence and the rights and obligations of a Retention Licence holder. Clause 78 to 94 deal with the application and consideration of an application for a Mining Licence, feedback on status of the application, the form and term of a Mining Licence, the rights and obligations of a Mining Licence holder, cessation, suspension or curtailment of production under a Mining Licence and the application and term for renewal of a Mining Licence.

Part VII-Mineral Agreements

The part of the Bill provides for Mineral Agreements. Clause 95 gives the Cabinet Secretary power to negotiate Mineral Agreements. Clause 100 provides for categories of Small Scale Operations. Clause 103 to 109 provide for application for a Prospecting Permit, the term of a Prospecting Permit, the rights and obligations under a Prospecting Permit and the renewal and term of renewal of a Prospecting Permit. Clauses 110 to 116 set out the procedure for application for a Mining Permit, the term of a Mining permit the rights and obligations of a Mining Permit Holder and the renewal of a Mining Permit.

Part VIII-Surrender, suspension and revocation of Mineral Rights

The part of the Bill provides for surrender, suspension and revocation of Mineral Rights.

Part IX- Surface Rights, Compensation and Disputes

The part of the Bill contains provisions on surface rights, disputes and compensation.

Clause 127 sets out the principles of compensation while clause 128 general provisions for dispute resolution. Clause 129 provides for determination of disputes by the Cabinet Secretary.

Part X-Dealing in Minerals

The part of the Bill provides for dealings in minerals. Clause 132 provides for disposal of minerals. Clauses 134 to 138 sets out the procedure for application of a Mineral Dealer's Licence, the term of a Mineral Dealer's Licence and the obligations of a mineral dealer.

Clause 140 to 143 provides for a Diamond Dealer's Licence. Clause 144 and 145 provide for import and export of minerals. Clause 146 to 148 provide for suspension and revocation of Mineral Dealer's Licenses.

Part XI-Health Safety and Environment

The part of the Bill deals with health, safety and environmental issues.

Part XII-Financial Provisions

The part of the Bill contains financial provisions. Clause 156 provided for royalties to be paid. Clause 162 provides for recovery of royalties, fees and other charges.

Part XIII- Records and Registration of Mineral Rights

This part of the Bill covers records and registration of Mineral Rights. Clause 164 makes it an obligation for establishment a Register of Mineral Rights

Part XIV-Monitoring, Compliance and Enforcement

The part of the Bill contains provision on monitoring and enforcement of the provisions of the Bill. It also sets out the offences.

Part XV- Miscellaneous Provisions

The part of the Bill contains miscellaneous provisions.

Part XVI- Repeals, Savings and Transitional Provisions

The part of the Bill contains repeals, savings and transitional provisions.

This Bill is not a Bill concerning county governments.

CHAPTER 3

3.0 The Review Process for the Mining Bill, 2014

3.1 Issues Raised in Submissions by the stakeholders and the Public

Several issues were raised by the stakeholders and the public concerning certain provisions in the Bill. The different stakeholders hailed the content of the Bill as progressive and positive improvement from previous laws and described the spirit of the bill as very encouraging. They identified themselves with many sections of the Bill and accepted that it has the capacity to streamline and transform the mining sector. They commended the Bill for having the potential to transform the research, exploration, investment and exploitation of mineral resources and secure mining sector as a strategic and economic asset for the prosperity of the nation. They were also in agreement that Mining Bill, 2014 required further amendments on certain sections and clauses and presented memoranda and made verbal submissions to support their arguments.

~~On their part, the members of the Committee identified themselves with the sentiments of the stakeholders and were grateful to all the stakeholders who responded to the committee's advertisement for public participation and for providing valuable information that would help the committee make an informed decision on the provisions of the Bill. The Committee assured the members of the public and stakeholders that their views would be considered and their fears addressed determinedly. The Committee also agreed with the stakeholders that the Mining Bill, 2014 had indeed many positive and progressive provisions as compared to the current scattered and antiquated laws in the sector~~

The stakeholders who submitted comments in response to the advertisement for memoranda to the Mining Bill, 2014 included, the Commission on Revenue Allocation (CRA), Base Titanium Limited, the Kenyan African Mining Association(KAMA), the Commission for the Implementation of the Constitution(CIC), Kenyan Investment Authority(KenInvest), Kenya Chamber of Mines(KCM),

African Barrick Gold Ltd and Farasi Strategy Advisors Ltd among others. The major concerns raised by stakeholders included:

- A) The interpretation of terms,
- B) Management of mineral rights and transparency in licensing,
- C) Status of existing contracts and licenses,
- D) Framework on the determination of royalties,
- E) Definition of strategic minerals and preemptive rights,
- F) Revenue sharing and local equity participation,
- G) Royalties
- H) Taxation by county governments,
- I) Establishment of a fair and transparent dispute resolution mechanism,
- J) Land consents and;
- K) Representation of the private sector in decision making.

3.1.1 Interpretation of terms

With regard to the Preliminary section on the interpretation of terms, CIC and CRA raised issue with Clause 4 on the omission of the interpretation of the terms “**block**” as an area of land covered by a prospecting license or permit and mining licence or permit. The CIC and CRA further noted that the cadastral map of Ghana from which the clause is borrowed is on a scale of 1: 50,000 while what has been proposed in the Mining Bill is 1:150,000. CIC and CRA recommended that the Mines and Geology department of the Ministry of Mining should clarify whether the scale should be 1: 50,000 or 1:150,000 while KCM proposed that a scale of 1:250,000.

KCM further proposed that in calculating the block size the units are changed to 1 minute from 15 seconds. On the geometric section, KCM suggested that the drafting language should be in a manner that allows people not particularly versed in surveying to understand the section in terms of land size as was previously utilized under the Mining Act Cap.306. Under the consideration of 1 minute, an approximate block size will be equal to 3.434 sq. km.

3.1.2 Exclusion of Coal, Shale oil and Shale gas

They also recommended amendments on the definition of “**minerals**” in the interpretation section of the Bill which specifically excluded petroleum or hydrocarbon gases as listed under the First Schedule (**pages 390 to 392**). Coal and shale had been included under “FUEL MINERAL GROUP” and also coal seam gas under “gaseous material”. They said there was potential overlapping of licensing duties between the Energy Regulatory Commission (ERC) proposed under the Energy Bill and Ministry of Mining responsible for regulating the Mining industry under the Mining Bill. The stakeholders recommended that to avoid an overlap of functions, coal, and shale oil and shale gas should be deleted from the list of minerals which are regulated under the Ministry of Mining as it will be regulated by the Energy Bill.

3.1.3 Right of Pre-emption by the state

Clause 8 on the right of preemption attracted comments from most the stakeholders including KCM, KenInvest, Farasi Strategy Advisors, Base Titanium, KAMA and African Barrick Gold. The clause regards the right of the State to preempt all strategic minerals raised, won or obtained within the territory of Kenya. They argued that the clause was against the rights bestowed on a holder by virtue of grant of a mineral right. It created conflict with **Clause 86 (2) (c)** where the disposal of any mineral recovered stood as a right conferred on a mineral right holder. The clause did not provide the criteria to be used in determining the value of the mineral. The stakeholders proposed that the mineral right holder should offer for sale at market value to the State any strategic mineral won or obtained within the territory of Kenya and that the effect of a rejection of offer and regulations for sale of strategic minerals to any other buyer on commercial terms. KCM proposed the addition of a **sub-clause 9 (8)** whereby to allow for an application to the Cabinet Secretary for exempted from the States right of preemption on existing operations.

3.1.4 Inclusion of first right of refusal in discovery of minerals

KCM proposed that upon reporting of the discovery, the discoverer should be offered the first right of refusal to stake the claim on the mineral by application for a mineral right **Clause 9** stipulated the

terms under which discovery of mineral should be reported to the Cabinet Secretary but the clause did not offer any rights to the discoverer of the minerals.

3.1.5 Artisanal miners

In Part III which covers General Principles, KCM noted that **Clause 11 (1) (d)** on acquisition of rights in minerals had the potential of leaving out artisanal miners from acquiring minerals and suggested that the clause be redrafted to cater for the rights of artisanal miners. It was proposed a new part be introduced to legalize and support artisanal miners.

3.1.6 Discretionary powers of the Cabinet Secretary and Parliamentary oversight

The wide discretionary powers given to the Cabinet Secretary in the Bill attracted comments across the board amongst the stakeholders. Some of these powers included establishing the criteria for determining strategic minerals and strategic mineral deposits (**Clause 16 (3)**), appointing members of the Tribunal (**Clauses 30 (3)**), granting, denying or revoking a mineral right (**Clauses 40 (1)**), determining the conditions of community development (**Clauses 40 (1)**), determining staff/ labour issues like the replacement and number of expatriate staff (**Clauses 44 (3)**), approval of an organizations ownership interests exceeding 25 % (**Clauses 49(6)**), approval of changes to prospecting and mining work programs (**Clauses 89**) and (**Clauses 91**), compelling an operation to transition from retention to mining and setting criteria for value addition. The Cabinet secretary also retains discretion in **Clauses 14, 31, 49, 58, 72,78,90,92,103,110** and **115**. They argued that these unmitigated discretionary powers created the potential for abuse of power.

KCM, CIC, KenInvest and CRA proposed measures to create checks and balances on these discretionary powers. These included Parliamentary oversight on certain issues, mandatory award of mineral rights by tender and with detailed regulations to guide the tendering process with regard to **Clause 14**, the formation of an independent Commission or Authority in place of the two Directorates proposed in the Bill and the formation of an independent and transparent Licensing Committee.

3.1.7 Classification of strategic minerals

With regard to **Clause 16** which covers strategic minerals concerns were raised by KCM, Base Titanium and Farasi Strategy Advisors. The concerns raised were that clause discouraged investors since a mineral may be declared strategic at any time. The stakeholders proposed that Parliament and not the Cabinet Secretary should approve the declaration of strategic material. Base Titanium and KCM proposed that a schedule of minerals classified as “strategic” should be included and a clear criteria of determining the same. On the contrary, CIC and CRA suggested that **Clause 16 (3) (a)** be deleted citing that the Government of Kenya or Cabinet secretary should not be under obligation to publish or explain the criteria for determining a mineral was strategic.

3.1.8 National Mining Board and the Mining Tribunal

CIC and CRA raised concerns over the security of tenure for directors to be appointed under **Clause 18** which was not sufficiently provided by the three year term renewable once for another three year term. The CIC and CRA recommended that the maximum of three years should be removed since the government will not be able to attract well trained persons if there is no security of tenure.

The mandate and leadership of the proposed Board of the National Mining Cooperation stipulated in **Clause 25** also raised concern with some of the stakeholders. KCM and Farasi Strategy Advisors suggested a clear definition of the mandate of the proposed National Mining Cooperation as an investment arm of the ministry while the Ministry led by the Cabinet Secretary should focus on policy. They also proposed the inclusion of more members from the private sector as **Clause 25 (1) (e)** can be interpreted that only two positions will be for the private sector.

The role of the Cabinet Secretary in appointing members of the Mining Tribunal as stipulated in **Clause 30** raised comments across the board with all the stakeholders opposing the clause. The stakeholders noted that there is a risk of conflict of interest in if the Cabinet Secretary appoints the members of the Tribunal since he may be a party to the dispute. They recommended that

appointment of Tribunal members be independent of the Cabinet Secretary since it is likely that the government will be party to disputes from the private sector.

3.1.9 Objections on applications for mineral rights

KCM noted that **Clause 32 (8) and Clause 32 (6)** requires the cabinet secretary to grant the mineral right within twenty one days after publication of notice of the applicants notice of acceptance to the Cabinet Secretary of offer of grant of a mineral right. There is no room for objections. It was recommended that since **Clause 83 (4)** provides for feedback on the status of applications on mining licences, objections should be considered on applications for mineral rights after the application in prescribed form and the public notified in the gazette. KCM further stated that the stipulated time of twenty one days to notify acceptance or rejection of grant is too short in the context of delays. They proposed that the time period should be increased to 60 days.

3.1.10 Land Consents and role of the National Land Commission

KCM also raised concern with regard to **Clause 34** that there is need for clarity on the role National Land Commission in the issuance of consent. Article 62 (1) (f) of the Constitution defined that all mineral as “public land” and therefore administered by the National Lands Commission. The word consent was omitted in **Clause 32 (2) (a)** and should be added. Consent from National Lands Commission on land would be sufficient on all matters of consent.

3.1.11 Conditions to the grant of a mineral right

Base Titanium, Barrick Gold, KCM commented on **Clause 40** and suggested that the “protection of mineral interest” and “Community development” needed better definition. KCM recommended clear regulations on the involvement of the community to avoid exploitation while Base Titanium suggested that there should be minimum conditions on community development to be determined by the Cabinet Secretary and Mineral Holder to avoid communities being misled by unrealistic expectations. KCM further opposed the limitation of the number of licenses a person can hold as it will limit free enterprise.

CIC and CRA suggested that **Clauses 44, 49(4) and (5) and (7)** on employment and training of Kenyans should be promulgated without delay. They argued that there should be clear guidelines/regulations to investors both local and foreign to include a provision for the employment of Kenyans. On **Clause 44(3)**, provisions should be made to prioritize procurement of local products of goods as part of the provisions on the recruitment and training of Kenyans. However, KCM, Barrick Gold and Base Titanium proposed the amendment of **Clause 45** which required a mineral right holder to give preference to citizens of Kenya. They proposed that it should be subject to the availability of experience and skilled Kenyans.

KCM, African Barrick Gold and Base Titanium further proposed the deletion of **Clause 46** on the government participation on mining licenses. The stakeholder suggested that the free carried interest proposed should be limited to strategic mineral. In the event that a mineral is declared strategic then any participation in an existing operation will not be on a free carried basis but through purchase at a fair market price.

3.1.12 Local Equity Participation

~~**Clause 47** which requires the mining company to offload at least 20% of its equity at a local stock exchange was opposed by KCM, African Barrick Gold and Base Titanium as cumbersome,~~ expensive, capital draining and against free enterprise. KCM proposed that instead of involuntary regulation, companies can be encouraged to list on the stock exchange to include tax and other fiscal incentives. African Barrick Gold proposed that local equity participation should be focused on the merit of ownership or capital demands. Base Titanium reiterated that while local equity participation should be encouraged it should be on market basis. Base Titanium noted that its previous endeavors under Base Resources had been actively promoting local investment funds and had so far on only managed around 1% local ownership due to the Kenyan investments community's lack of experience. It was further noted that the term 'offload' is vague and has no legal meaning. A company generally 'lists', 'floats' or 'offers for sale' equity on a securities exchange.

3.1.13 Mineral Agreements

Base Titanium, KCM, CRA and Barrick Gold noted that with regard to **Clause 95(2)** having the Cabinet Secretary prescribe the type of operations subject to a mineral agreement creates uncertainty

and provided too much discretion to the Cabinet Secretary. Base Titanium noted that Mineral Agreements are meant to create a stable and predictable environment. CIC and CRA recommended that a minimum threshold of investment should be provided in the Bill followed by a more detailed terms and conditions in the regulations. The proposed regulations should provide for Mineral Investment of Development Agreements not all mining licenses should be subject to mineral agreements. There should be a distinction between large scale and small scale operations. Mineral agreements should be limited to operations that involve huge costs of money and have a huge impact of the economy. CRA recommended that there is need for a standard model agreement.

3.1.14 Surrender, Suspension and Revocation of Mineral Rights

CIC and CRA noted that according to Kenya Revenue Authority (KRA), the income tax laws have no specific provisions. The current practice was for mining companies to submit their expenditures to be considered for approval on a case by case basis. There is no doubt that mining companies will treat all of the above as expenditures that will be submitted to KRA for deductions. The cabinet secretary requires that the assets (immovable and movable) should not be removed. It is recommended that **sub-clauses (5) and (6) of Clause 123** of the bill should be deleted entirely. The reason is that some or all the assets may have depreciated for tax purposes the time of surrender or termination.

3.1.15 Relocation and resettlement of communities

CIC and CRA raised concern over **Clause 126** on the right to graze livestock and cultivate land and the relocation and resettlement of entire communities. CIC recommends that a new Clause 126 (c) should be inserted. They proposed that Cabinet Secretary should make regulations to give effect to this clause Regulations should be made where relocation and resettlement of an entire community or village is necessary for mining operations to be carried out. There is need for structured social contracts with communities and obtaining an informed consent of the community is important especially at the Agreement stage. A quasi-legal agreement for example a Benefit-Sharing Agreement (BSA) with community leaders is paramount to social acceptance and ownership of the project.

3.1.16 Protection of the environment

Clause 154 covers environmental Protection Bonds. CIC and CRA noted that if the clause is adopted, there will be overlapping of functions between the Ministry of Mining and NEMA and will impose additional costs on the Mining Companies. CIC recommends that it should be deleted. KCM proposes that the clause is limited to Mining rights to the exclusion of prospecting.

3.1.17 Royalties

KCM, African Barrick Gold and Base Titanium proposed that there should be limits for royalty rates enshrined within a separated body of law. CIC and CRA recommended that **Clause 156 (2)**, should be amended to expand the definition of royalties to be, “mineral royalties’ rates for different categories of minerals are to be set at internationally competitive levels”. There should be separate regulations to set limits for royalty rates made in a consultative process. There should be different rates for different minerals as opposed to a flat rate on all minerals. There should be an index on the royalty to the price of the mineral. African Barrick Gold proposed that royalties should be set out in the Bill and that a 6% cap is set out of kilter with other mining jurisdictions and that a 4% cap be imposed for metallic minerals such as copper, gold, silver, and platinum group minerals. **Clause 155**

(5) should be deleted as it imposes an additional cost to the stated to recover fees and charges payable to the state. **Clause 161 and 162** were recommended for deletion by the stakeholders. Mining companies do not pay corporates for several years due to the large capital allowances. Clause 163, there is need to secure these rules beyond the 2006 rules and include subsequent amendments

3.1.18 Revenue Allocation

CRA proposed that the Bill should include a provision giving it the mandate to make recommendations for the sharing of royalties and minerals between the national government, county government and the community on the basis of production volumes reported by the Cabinet Secretary under **Clause 97** through a Benefits Sharing schedule based on regulations by the Cabinet Secretary. The revenue sharing formula proposed by CRA is 5% for local communities from which the mineral is produced, 20% for the County government from which the mineral is produced and 75% to the national government. The share going to the local community and 15% of the revenue

to the county governments should be spent specifically on infrastructure projects such as Health, Education and Water. 30% of revenue going to the National government should be spent on infrastructure projects, 20% should go to a Heritage fund while 15% will go to budgetary support while 15% will be shared among the 47 counties. The formula proposed should be reviewed every five years.

3.1.19 Role of County governments

CRA proposed the involvement of county governments in regulating the mining sector by issuing mineral holders, who have obtained licenses or permits from the national government, with business operation licenses. Such levies should be paid to the county governments. The County governments can also monitor mineral right holders in matters such as the protection of the environments and socio-economic impact assessments. The County government can also be involved in capacity building and empowerment of communities with regard to community consents and mining related entrepreneurial activities.

3.1.20 Immunity of officials

~~In **Clause 192** with regard to public officials, KCM notes that this provision exempts the Cabinet Secretary and Public officials from being sued for their actions. The distinction of what is good faith cannot be ascertained unless subjected to a judicial process.~~

3.1.21 Repeal and Transitional Provisions

KCM proposed better clarification on the status of existing legislation, that is, the Mining Act, Cap 306 and the status of licenses issued under the repealed law. There should be transitional clauses to cater for licenses governed by previous legislation.

CHAPTER 4

4.0 Committee Observations and Recommendations

4.1 General Observations

The Mining Bill 2014 is set to address the legislative gaps that existed in the industry and replace the antiquated, scattered and the poorly articulated laws in the mining sector. A corollary of this is that the new legislation should be able to address itself to the existing and emerging challenges. The legislation must be able to take into account concerns raised by the stakeholder and investors in the sectors during the scrutiny stage. The committee accorded exceptional consideration to the views of the public on the proposed legislations and have gone beyond the clauses and sections of the Bill.

Analyses of the perception of the public on the Bill and the daily impact it will have once enacted have formed part of the Bill review process. The committee has invested both resources and time to decipher and comprehend the various interrelated complex issues in the sector. The Committee took advantage of experts who have extensive experience of regional and international dimensions of minerals and mining sectors. Extensive consultations have punctuated the review process from the beginning so that the committee is not bogged down by the technicality of the mining sector in general and the rudimentary nature of the nascent mining industry in Kenya in particular.

After the extensive consultations, deliberations and scrutiny of the Bill the committee has agreed on general categories that will guide specific amendments to the Bill to carry the views of the public and stakeholders as well as strengthen the legislative architecture of the sector.

The Committee observed that the proposed amendments focused mainly on the following:

- A) The Scope of the Bill with regard to coal, shale oil and shale gas
- B) Artisanal Miners
- C) Local equity participation
- D) Institutional framework
- E) Royalties and Revenue Sharing formula
- F) Resettlement of communities
- G) Public participation

4.2 Specific Recommended Amendments for Consideration

4.2.1 The Scope of the Bill with regard to coal, oil shale , shale gas and coal seam gas

In order ensure that there is no overlap of functions of the Ministry of Energy and Petroleum and the Ministry of Mining and to ensure that resources are optimized the Committee agreed to separate coal from oil shale, shale gas and coal seam gas and retain the mining of coal in the Ministry of Mining while the conversion of coal into energy will be dealt with by the Ministry of Energy. The committee agreed to delete oil shale, shale gas and coal seam gas from First Schedule (Part F and Part G) of the Bill.

4.2.2 Artisanal Miners and small-scale explorers

In order to ensure that artisanal miners and small-scale explorers who have relied on mining for decades for their livelihood are recognized, licensed and supported, the Committee agreed that a section catering specifically for artisanal miners should be included in the Bill.

4.2.3 Local equity participation

~~The Committee noted that Article 66 (2) of the Constitution which requires legislation to ensure that~~
investments in property benefit local communities and their economies was not operationalized in the Bill. In order to ensure there are safety mechanisms to guard local content, that the revenue obtained from mining operations is invested back in the community rather than individuals and that there is ownership of the minerals by the community from which the minerals are obtained, the Committee agreed on amendments to allow local communities to own the shares and listing on the Stock Exchange.

4.2.4 Institutional framework

Under the institution framework the committee agreed as follows. The board will be tasked with all activities and processes that lead to approval and revocation of mining licences and permits. The board will further devise elaborate mechanisms that will guide the process.

- i. Establishment of a Mineral Rights Board: in order to guarantee a determinable and a stable mining licenses regime and ensure transparency, accountability and good practice in the licensing and revocations the committee agreed to establish the Board. The Board is expected to be a government lead agency in determination of minerals rights, licensing, revocation and the related processes and procedures. The board is expected to reduce the bottleneck in relation for investors seeking consent from various government agencies and become the leading agency to facilitate the investors. The composition of the Board will reflect the interest of the various stakeholders in the sector. The committee further agreed on the composition of the Mineral Rights Board to include:
- a) Chairman who shall be appointed by the president from amongst persons with knowledge and experience in mining matters;
 - b) Principal Secretary responsible for mining who shall be the Secretary of the Board;
 - c) Principal Secretary responsible for National Treasury or designate;
 - d) Principal Secretary responsible for matters related to devolution or designate;
 - e) Chairperson of the National Lands Commission or designate;
 - f) Director of mines;
 - g) Director of Geological Survey; and
 - h) ~~Two members with professional qualifications and substantial experience in the~~
mining industry, who shall be appointed by the Cabinet Secretary one of whom shall be from the Geological Society.
- ii. Mining Tribunal: The Committee noted that disputes are inevitable in a vibrant and growing mining sector, some of which may involve the State as a major player and in order to ensure that there is a stable, transparent and impartial dispute resolution mechanism, the Committee agreed on amendments regarding the Mining Tribunal which includes having a permanent tribunal instead of an *ad hoc* tribunal, revising the qualifications of the members and the modalities of appointment.
- iii. The Director of Mines and Director of Geological Survey: The committee further agreed that the proposed statutory offices of the director of Geology and the Director of Mines need amendments in terms of mandate and establishment of the two offices in light of the establishment of the Mineral Rights Board.

- iv. National Mining Corporation: The committee noted the significant role of the National Mining Cooperation established by the Bill and its mandate as the investment arm of government in respect to minerals. The committee agreed that the National Mining Corporation should be professionally managed and that members of the Board should be competitively recruited.

4.2.5 Royalties and equitable sharing of accruing benefits

The Committee acknowledged that minerals and mining operations are often found in historically marginalized areas. The Committee sought to operationalize the provisions of the Article 69 (1) (a) of the Constitution on equitable sharing of accruing benefits by specifying the utilization of the benefits at community, county and national levels. The Committee agreed there will be need to cap expenditures on revenue accrued from mining resources, to establish sovereign funds and protect the rights of the future generations to derive benefits from the exploitation of the mineral resources.

The Committee further agreed on a Revenue Sharing Formula which will be 70% to the National Government, 20% to the County Government and 10% to the Community. The Committee further agreed to make provisions to ensure that revenue allocated to the community is not utilized for recurrent expenditure of the County and that the community from where the minerals are exploited are the primary beneficiaries of the revenue allocated. The Committee agreed that the Cabinet Secretary in consultation with the Treasury should prescribe regulations for investment of royalties for future generations at all levels.

4.2.6 Mineral agreements

The Committee noted that Article 71(1) (a) of the Constitution provides that a transaction is subject to ratification by Parliament if it involves the grant of a right or concession by any person, including the national government, to another person for the exploitation of any natural resource of Kenya. The committee noted that the Bill did not provide a threshold as to which mineral agreements shall be passed by parliament. The Committee agreed that a financial threshold should be introduced in the amendments so as to determine which mineral agreements will be passed by parliament.

4.2.7 Resettlement of communities

The Committee noted the socio-economic impact that mining operations have on local communities and the inevitable displacement of people from their land. While the Bill provides for mechanisms for compensation, it did not adequately cater for communities that may be relocated and resettled to

give way for mining operations. The Committee agreed that licence-holders will be required to fully compensate the lawful owners or users of the land before commencing operations.

4.2.8 Public participation

Article 69 (d) of the Constitution provides that public participation in the management, protection and conservation of the environment should be encouraged. The committee also noted that there were no adequate provisions in the Bill for public participation specifically on the application and grant of mineral rights. The Committee agreed to include provisions that will include public participation and community involvement at all levels, specifically through the provisions catering for artisanal and small scale miners who are mainly members of the community and inclusion of clauses that allow public input and objections before the grant of mineral rights and licenses.

4.3 Recommendation for amendments

The Committee intends to propose detailed amendments to the Mining Bill, 2014 to the House for consideration. The Committee would generally be proposing the re-organization of various sections of the Bill and sequence it as appropriate and recommend editing and correction of typographical errors that could alter the intended meaning of certain provisions. The Committee will further be ~~proposing amendments in line with the observations and recommendations made by the~~ committee during the review of the Bill. The Committee proposes to move the agreed amendments during the third reading stage of the Mining Bill, 2014.

4.4 Conclusion

The Committee presents its report on the deliberations on the Mining Bill, 2014 to the National Assembly for consideration and adoption. The Committee subject to the consideration of the agreed amendments that will be moved during the third reading stage of the Bill recommends that the Mining Bill, 2014 be passed by the House.

ANNEXES

MINUTES OF THE 37TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, JUNE 17TH 2014 IN THE NEW MEMBERS LOUNGE, MAIN PARLIAMENT BUILDING AT 11:00 AM.

PRESENT

1. Hon. Amina Abdalla, MP. – Chairperson
2. Hon. Alexander Kosgey, M.P. - Vice Chairperson
3. Hon. Geni Charles Mong'are, M.P.
4. Hon. Ole Kenta Richard Moitalel, M.P.
5. Hon. Murungi Kathuri, M.P.
6. Hon. Tonui Ronald Kiprotich, M.P.
7. Hon. Dr. Wanyonyi Reginalda N. M.P.
8. Hon. Barua Ejidius Njogu, M.P.
9. Hon. Farah Abdulaziz Ali, M.P.
10. Hon. Mwashetani Khatib, M.P.
11. Hon. Ndiritu Samuel Mathenge, M.P.

12. ~~Hon. Ottichilo Wilber Khasilwa, M.P.~~

13. Hon. Abdinoor Mohamed Ali, M.P.
14. Hon. Wandayi James Opiyo, M.P.
15. Hon. Peter Kinyua, M.P.

ABSENT WITH APOLOGY

1. Hon. Chidzuga Zainab Kelekye, M.P.
2. Hon. Dukicha Hassan Abdi, M.P.
3. Hon. Emanikor Joyce Akai, M.P.
4. Hon. Gure Shukra Hussein, M.P.
5. Hon. Mohamed Diriye Abdullahi, M.P.
6. Hon. Ogalo George Oner, M.P.

7. Hon. Jude Njomo, M.P.
8. Hon. Gideon Mwiti, M.P.
9. Hon. Jackson Rop Kipkorir, M.P.
10. Hon. Ng'ang'a Alice Wamboi, M.P.
11. Hon. Sunjeev Kour Birdi, M.P.
12. Hon. Katana Aisha Jumwa, M.P.
13. Hon. Muluvi Marcus Mutua, M.P.
14. Hon. Ganya Francis Chachu, M.P.

IN-ATTENDANCE NATIONAL ASSEMBLY

Ahmad Kadhi	– First Clerk Assistant
Joshua Ondari K.	– Third Clerk Assistant
Naserian Lotuai	– Third Clerk Assistant
Clare Jerotich	– Research Assistant

MIN. NO. 144/2014 – PRELIMINARIES

The meeting was called to order at 11.10 am and prayers were said.

MIN. NO. 145/2014 – ADOPTION OF THE MINING BILL 2014, REPORT

Members went through the report that had been circulated and noted that the findings were a true reflection of the Committee. The report was therefore adopted by the Committee.

MIN. NO. 146/2014 – ANY OTHER BUSINESS

The Committee noted as follows;

- There was need to engage the Cabinet Secretary for Environment, Water and Natural Resources to update the Members on the contents of the Poaching Task Force Report.

MIN. NO. 147/2013: ADJOURNMENT

There being no other business the meeting was adjourned to Thursday 19th June at 10.00am.

SIGNED.....

Hon. Amina A. Abdalla, MP

(Chairperson)

Committee on Environment and Natural Resources

DATE.....

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY ELEVENTH PARLIAMENT

In the Matter of consideration of the Water Bill, 2014 and the Mining Bill, 2014;

Article 118(1) (b) of the Constitution provides that “Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.” Standing Order 127(3) states that “the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House.”

SUBMISSION OF MEMORANDA

The Water Bill, 2014 and the Mining Bill, 2014, have undergone First Reading as stipulated in the Standing Orders of the House. The Bill, having been read for the first time, stands committed to the Departmental Committee on Environment & Natural Resources for consideration and thereafter to make a report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the Water Bill, 2014 and the Mining Bill, 2014.

The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to the clerk@parliament.go.ke; to be received on or before 8th May, 2014 at 5.00 pm.

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

14th July 2014

The Clerk of the National Assembly
Parliament Buildings
NAIROBI

RE: COMMITTEE STAGE AMENDMENTS -THE MINING BILL, 2014

NOTICE is given that the Chairperson of the Departmental Committee on Environment and Natural Resources Hon. Amina Abdalla M. P., intends to move the following amendments to the Mining Bill, 2014 at Committee Stage—

CLAUSE 4

THAT, clause 4 be amended –

(a) by inserting the following new definitions in their proper alphabetical sequence—

“artisanal mining” means traditional and customary mining operations using traditional or customary ways and means;

“Artisanal Mining Permit” shall mean a permit issued under section 141

“Block or Cadastral Unit” means a pseudo-quadrilateral formed by two meridians of longitude and two parallels of latitude of the Cadastral Graticule spaced fifteen seconds apart;

“Community Development Agreement” means an agreement between a Large-Scale Mining Licence Holder and a community;

“ deleting the words “ all forms of rock, limestone” in the definition of the term “construction minerals”

“ day”, shall mean a calendar day;

“inspector of mines” means a public officer who has been appointed in accordance with section 169;

“Mineral Rights Board” means the Board established under section 29 of this Act;

“precious stones” means the minerals specified in Part C of the First Schedule;

“strategic minerals” means minerals declare to be strategic minerals under this Act;

(b) by inserting the word “permit” immediately after the word “licence” on paragraph (b) of the definition of the terms “application”.

(c) in the definition of “mineral right” by inserting the word ‘or’ immediately after the word “permit” and by inserting the following new paragraph immediately after paragraph (e) –

(f) an artisanal permit.

(e) by deleting “mines inspector” and substitute therefor with “ inspector of mines”

(f) by deleting the word definition of the term “ Board”

(g) in the definition of the expression “prospecting area” by inserting the word “ or permit” immediately after the word “licence”.

CLAUSE 6

THAT, clause 6 be amended—

(a) in sub-clause (4) by deleting the expression “ 1:150,000” and substituting therefor the expression “ 1: 50,000”; and

(b) in sub-clause (6) by deleting the word “mining” and substituting therefor the words “and artisanal mining operations”.

CLAUSE 7

THAT, Clause 7 be amended by inserting the words “in consultation with the mineral rights board” after the word “may”.

CLAUSE 8

THAT, clause 8 be amended by deleting sub-clause (2), (3), (4), (5) and (6) and inserting the following new sub-clause immediately after sub-clause (1) -

(2) The Cabinet Secretary may by regulations, provide for the manner of dealing with the exploration, mining, processing and export of strategic minerals and strategic mineral deposits.

CLAUSE 9

THAT, clause 9 be amended by—

- (a) renumbering the existing clause as sub clause (1); and
- (b) by inserting the following sub-clause immediately after the renumbered sub-clause (1) –

“(2) Subject to sub-section (1) a person who reports the discovery of any mineral shall be granted the first right of refusal to apply for a mineral right over the area of discovery.”

CLAUSE 11

THAT, clause 11 be amended by inserting the following new sub-clause immediately after sub-clause (3)-

(3A) The provisions of sub-section (1) (d) and (3) shall not apply to artisanal miners.

CLAUSE 13

THAT, clause 13 be amended—

- (a) In sub-clause (1) by
 - (i) inserting the words “ upon recommendation from the Mineral Rights Board” immediately after the word ‘ may”
 - (ii) by inserting the words “ and artisanal” immediately after the word “ scale”; and
- (b) in sub-clause (2) by inserting the words “and artisanal” immediately after the word “scale”.

CLAUSE 14

THAT, clause 14 be amended in sub-clause (1) by deleting the words “may, by notice in the Gazette,” appearing immediately after the word “secretary” and substituting therefor the words “shall, in a manner as prescribed in Regulations”.

CLAUSE 15

THAT, clause 15 be amended by

- (a) inserting the words “ upon recommendation of the Mineral Rights Board” immediately after the word “may”
- (b) deleting the word “licence” and substituting therefor the words “ mineral right”.

CLAUSE 16

THAT, clause 16 be amended-

- (a) in sub-clause (1) by deleting the words, “for social economic development and national security purpose”; and
- (b) in sub-clause (3) by deleting paragraph(a) .

CLAUSE 18

THAT, clause 18 be amended in sub-clause (4) by deleting the words “three years” and substituting therefor the words “five years”.

CLAUSE 20

THAT clause 20 be amended-

- (a) in sub-clause (1) by inserting the following new paragraph immediately after paragraph (k) –
“(ka) exercising regulatory administration and supervision over the use of commercial explosives in accordance with the Explosives Act;”
- (b) in paragraph (n) by inserting the word “of” immediately after the word “development”; and
- (c) in sub-clause (3) by inserting the words, “ of Mines” immediately after the words “Director” .

CLAUSE 21

THAT clause 21 be amended-

- (a) by renumbering the existing clause as sub-clause (1);
- (b) by inserting a new sub-clause immediately after the renumbered sub-clause (1) as follows –

(2) In the performance of his duties, the Director of Geological Survey or a duly authorised officer may -

- (a) enter any license or permit area;
- (b) enter into or upon any land for the purpose of carrying out surveys; such entry shall be upon informing the lawful owner or legal occupant;
- (c) take soil samples or specimens of rocks, or, concentrate, tailings, or minerals from any license or permit area for the purpose of examination or assay;
- (d) break up the surface of the land for the purpose of ascertaining the rocks or minerals within or under them; and
- (e) dig up any land and fix any post, stone, mark or object to be used in the survey of such land.

CLAUSE 22

~~**THAT**, clause 22 (3) be amended by deleting the word “company” and substituting therefor with the word “corporation”.~~

CLAUSE 25

THAT, clause 25 (i) be amended by

- (a) deleting the phrase “who shall be non-executive unless the President otherwise directs” appearing in paragraph (a);
- (b) in paragraph (e) by
 - (i) deleting the word “four” and substituting therefor with the word ‘ three’ and
 - (ii) deleting the words “ of not more than two shall be public officers” appearing immediately after the word corporation

CLAUSE 29

THAT, clause 29 (a) be amended

- (a) by deleting the word "record" and substituting therefor with the word 'database'
- (b) deleting the word 'data'.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses-

Mineral
Rights
Board

29A (1) There is established a Mineral Rights Board.

(2) The Mineral Rights Board shall comprise of-

- (a) a chairperson with demonstrable knowledge and experience of the minerals and the mining sector, who shall be appointed by the President;
- (b) the Principal Secretary responsible for matters related to mining who shall be the secretary to the board
- (c) the Principal Secretary responsible for matters National Treasury or the designate;
- (d) the Principal Secretary responsible for matters related to devolution;
- (e) the Chairperson of the National Land Commission or the representative;
- (f) the director of Mines
- (g) director of Geological Surveys;
- (h) two members with professional qualifications and substantial experience in the mining industry, who shall be appointed by the Cabinet Secretary one of whom shall be from the Geological Society.

(1) A person shall be qualified for appointment as a chairperson or member of the Mineral Rights Board under subsection(2) (a) and (i), if that person-

- (a) is a citizen of Kenya

- (b) holds a degree from a recognized university, in geology, geophysics, mining engineering, economics, business administration, or law ;
- (c) has experience in the mining sector for a period not less than ten years for the chairperson and five years for any other member; and
- (d) satisfies the requirements of Chapter Six of the Constitution

(2) A person shall not be qualified for appointment as a Chairperson or member of the Mineral Rights Board if that person:-

- (a) is a public officer;
- (b) is an un-discharged bankrupt;
- (c) suffers from physical or mental infirmity which renders him or her incapable of discharging the function of the Mineral Rights Board;
- (d) has been convicted for an offence whose term of imprisonment exceeds six months

(4) The Chairperson and members of the Mineral Rights Board appointed under subsection (2) (a) and (g) shall hold office for a period of three years and may be eligible for re appointment for one further term.

Functions
of the
Mineral
Rights
Board

29 B. (1) The functions of the Mineral Rights Board shall be to advise and recommend, in writing, to the Cabinet Secretary on-

- (a) the grant, rejection, retention, renewal, suspension, revocation, variation, assignment, trading, tendering, or transfer of mineral rights;
- (b) areas suitable for small scale and artisanal mining;
- (c) areas which mining operations are excluded and restricted;
- (d) the declaration of certain minerals as strategic minerals;
- (e) cessation, suspension, or curtailment of production in respect of mining licences;
- (f) fees, charges and royalties payable for mineral right or mineral;
- (g) negotiation, conclusion and execution of mineral agreements;
- (h) matters which under this Act, are required to be referred to the

Mineral Rights Board; and

(2) The Mineral Rights Board may for the purpose of facilitating the performance of its functions establish such number of committees to advise the Mineral Rights Board on matters relating to mining and minerals.

(3) A committee of the Mineral Rights Board shall—

- (a) perform functions as may be assigned by the Mineral Rights Board upon such terms and restrictions as the Mineral Rights Board may determine;
- (b) receive and process, except as provided in the sections on artisanal mining, all applications and consents for mineral rights, licences and permits; and
- (c) exercise the powers and perform the functions specified under this Act in relation to the Mineral Rights Board and supervise implementation of the provisions and Regulations made under this Act.

CLAUSE 30

THAT, clause 30 be amended by -

- (a) deleting sub-clauses (1) and (2) and substituting therefor with the following new sub-clause —
 - (1) There is established a Mining Tribunal which shall hear and determine any disputes under this Act.
- (b) deleting sub-clause (4) and substituting therefor with the following new sub-clauses -
 - (4) The Tribunal shall consist of-
 - (a) a Chairperson and Vice-Chairperson appointed by the President, in consultation with the Judicial service Commission from among persons qualified as judges of the High Court of Kenya;

(b) three other members appointed by the Cabinet Secretary.

(5) A person shall be eligible to be appointed to the Tribunal if the person

(a) holds a university degree; and

(b) has at least five years relevant experience in matters related to natural science, law, finance, economics, or engineering and

(6) A member of the Tribunal shall hold office for a period of three years and shall be eligible for re-appointment for a further term of three years.

(7) A member of the Tribunal shall hold office on such terms and conditions as shall be prescribed in the instrument of appointment.

(8) The Tribunal shall determine its own procedure.

CLAUSE 31

THAT, clause 31 be amended –

(a) in sub-clause (1) by inserting the words “on the recommendation of the Mineral Rights Board” immediately after the words “ may”;

(b) in sub-clause (4) by inserting the words “ on the recommendation of the Mineral Rights Board” immediately after the words “Cabinet Secretary may”.

(c) In sub-clause (2)(b) by inserting a subparagraph immediately after subparagraph iii as follows-

“(iii) Artisanal mining permit

CLAUSE 32

THAT Clause 32 be amended-

(a) in the marginal note by deleting the words “except mining lease” and substituting therefor the words “ for large scale operations”;

(b) in sub-clause (1) by deleting the word “may” and substituting therefor with “shall”

(c) in sub-clause (1) by deleting the word, “Cabinet Secretary” and substituting therefor with “ Mineral Rights Board”

(d) by deleting sub-clauses (2),(3),(4),(5),(6),(7),(8) and (9) and substituting therefor with the following new sub-clauses –

(2) The Cabinet Secretary shall, on the recommendation of the Mineral Rights Board, approve or reject an application-

(a) within ninety days in the case of an application for prospecting license; and

(b) within one hundred and twenty days in the case of an application for a mining licence.

(3) Subject to subsection (2), the Cabinet Secretary shall notify the applicant in writing whether the application has been accepted or rejected.

(4) Where the application is approved, the applicant shall by notice in writing accept or reject the offer for grant of the mineral right within twenty-one days from the date of receipt of notification of the approval.

(5) Where the applicant does not notify the Cabinet Secretary of the acceptance of the offer, the approval of the application shall lapse after twenty-one days.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 32 –

Application
for mineral
rights

32A. (1) The Cabinet Secretary shall, on receipt of an application for a mineral right, give notice in writing of the pending application for the grant of a mineral right to –

(a) the land owner or lawful occupier, as the case may be;

(b) the community;

(c) the relevant county Government;

(2) The Cabinet Secretary shall, on receipt of the application, publish notice of the pending application in a newspaper of wide circulation.

(3) A notice given under sub-section (1) shall-

(a) state the proposed boundaries of the land in relation to which an application for a mineral right is made;

(b) be published, for twenty one days in the Gazette and in the offices of the County Government within whose county the land is situated.

(4) Subject to sub-section (3) a person or community may object to the grant of a licence-

(a) within twenty one days in case of an application for prospecting licenses; and

(b) within forty two days in case of an applications for a mining licence, from the date of notice given under subsection (i).

(5) The Cabinet Secretary shall hear and determine any objection raised against an application under subsection (4) through the mining rights advisory committee

CLAUSE 33

THAT clause 33 be amended-

(a) in sub-clauses (1) by deleting the words “ a certificate”;

(b) in sub-clause (2) by deleting the words “ and certificate”; and

(c) by deleting sub-clauses (3), (4) and (5);

CLAUSE 34

THAT clause 34 be amended in sub-clause (2)-

(a) by deleting the opening statement and substituting therefor the following

“(2) The Mineral Rights Board shall, prior to recommending to the Cabinet Secretary the grant of a Mineral Right, require the applicant to seek consent of-“

(b) by deleting paragraph (a) and substituting therefor with the following new paragraph-

- (a) The National Land Commission in relation to public land.
- (c) by deleting the words “consent” appearing in paragraph (b) and (c) and substituting therefor with the word “approval”.
- (d) by deleting the words “ Cap 376” appearing in the marginal note

CLAUSE 35

THAT clause (1) be amended by—

- (a) inserting the words “ and such consent shall not be unreasonably withheld” immediately after the word “owner”

CLAUSE 39

THAT clause 39 be amended by deleting the word “may” and substituting therefor with “shall”

CLAUSE 40

THAT, clause 40 be amended in sub-clause (1) (g) by –

- (a) deleting the word “licenses” and substituting therefor with “ blocks”;
- (b) inserting the words, “or company” immediately after the word, “ person”.

CLAUSE 45

~~THAT clause 45 be amended in sub-clause (2) by-~~

- (a) in paragraph (d) deleting the word “ at” and substituting therefor with the word “towards”
- (b) inserting the words, “ as prescribed in regulations” immediately after the word “ agreement”. in paragraph (g)

CLAUSE 47

THAT clause 47 be amended –

- (a) by deleting sub clauses (1), (2),(3) and (4) and substituting thereof the following sub clauses —
 - “
 - (1) A holder of a mining license whose planned capital expenditure exceeds the prescribed amount shall list at least twenty percent of its equity on a local stock exchange within four years after commencement of production.”

- (2) The holder of a mining licence may –
- (a) apply in writing to the Cabinet Secretary for an extension of the period set out under subsection (1); or
 - (b) request to execute an alternative mechanism that will allow the company to meet the requirement.
- (3) The Cabinet Secretary, may after consultation with the National Treasury extend the period set out in subsection (2) for reasons that the market conditions do not allow for a successful completion of the offering in the local stock exchange.

CLAUSE 49

THAT clause 49 be amended-

- (a) in sub-clause (1) by inserting the words, “ on recommendation of the Mineral Rights Board” immediately after the word, “shall”;
- (b) in sub-clause (5) by inserting the word, “ Secretary” immediately after the word “Cabinet” ;

CLAUSE 50

THAT Clause 50 be amended by deleting the words, “ Director of Mines shall through the Principal Secretary” and substituting therefor with “Mineral Rights Board shall”

CLAUSE 51

THAT clause 51 be amended-

- (a) in sub-clause (2) by inserting the words “in accordance with International Accounting Standards” immediately after the word “statements”.

CLAUSE 53

THAT clause 53 be amended in sub-clause (2) by deleting the words “to grant”.

CLAUSE 54

THAT clause 54 be amended by deleting sub-clause (2).

CLAUSE 58

THAT Clause 58 be amended –

(a) in sub-clause (3) by –

- (i) inserting the words, “on the recommendation of the Mineral Rights Board” immediately after the word “shall”;
- (ii) deleting paragraph (c)
- (iii) deleting the word “proposal” in paragraph (d) and substituting therefor with the words, “ local product plan”

(b) in sub-clause (4) by inserting the words “ upon recommendation of the Mineral Rights Board” immediately after the word “ shall”

CLAUSE 59

THAT clause 59 be amended by deleting the words “seven hundred and fifty” substituting therefor with the words, “one hundred and fifty”

CLAUSE 63

THAT Clause 63 (1) be amended by-

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- (i) ~~deleting the words, “ such other period as may be specified in the licence”~~“ appearing in paragraph (a) and substituting therefor with the words, “ the approved programme for prospecting operations”; and
 - iii) inserting the words “comply with the environmental rehabilitation plan” appearing immediately after the words “ of conditions”
 - iv) deleting the words “ of any environmental and social impact assessment licence and the environmental management plan which relates to the prospecting operations to be carried out under the prospecting licence”

CLAUSE 67

THAT clause 67 be amended–

(a) by deleting sub-clause (2) and substituting therefor with the following-

(2) The holder of a prospecting Licence, who has complied with the conditions of the Licence, may apply to the Mineral Rights Board for the renewal of all or part of the prospecting Licence area

(b) by deleting sub-clause (5) and substituting therefore with the following—

(5) where an application has been made and the Cabinet Secretary fails to respond before the expiry of the Reconnaissance Licence, the Mineral Rights Board shall, upon expiry of the Licence, communicate to the applicant its decision according to the recommendation submitted to the Cabinet Secretary

(c) in sub-clause (4) by inserting the words “on recommendation of the Mineral Rights Board” immediately after the word “Secretary” and by deleting the words “two months” and substituting therefor the words “sixty days”.

CLAUSE 69

THAT Clause 69 be amended —

(a) in sub-clause (1) be amended by deleting the word “two and” substituting therefor with the word “three”; and

CLAUSE 70

THAT Clause 70 be amended -

(a) by deleting sub-clause (2) ; and

(b) in sub-clause (3) by inserting the word, “or company” immediately after the word, “person”.

CLAUSE 72

THAT Clause 72 be amended in sub-clause (3) by inserting the words. “on recommendation of the Mineral Rights Board” immediately after the word “shall” .

CLAUSE 73

THAT Clause 73 be amended

a) by deleting the words “in any case” appearing immediately after the word “years”
b) by inserting new sub-clauses (1) and (2), as follows—

- (1) The holder of a retention licence may, at any time but not later than three months before expiration of the initial term of the licence, apply to the Director of Mines in the prescribed manner
- (2) The Cabinet Secretary on the recommendation of the Committee shall grant a renewal of the term of the licence for a further period not exceeding two years

CLAUSE 75

THAT Clause 75 be amended by deleting paragraph (d) and substituting therefor with a new paragraph—

- (d) “Comply with the environmental rehabilitation plan” appearing immediately after the words “of conditions”

CLAUSE 77

THAT clause 77 be amended —

(a) In sub-clause (1) by—

- i) inserting in sub-clause (1) the words, “on recommendation of the Mineral rights Board” immediately after the word “may” ;

ii) deleting the word “him” substituting therefor with the words, “the holder immediately after the word “requiring” ;

(b) in sub-clause (4) b inserting the words “on recommendation of the Mineral rights Board” immediately after the word “shall” ;

(c) in sub-clause (5) by deleting the word “cancelled” and substituting therefor the word “revoked” .

CLAUSE 78

THAT Clause 78 be amended by inserting the words “or company” immediately after the word “person” .

CLAUSE 79

THAT Clause 79 be amended—

(a) by inserting the following words in the opening statement, “upon recommendation of the Mineral rights Board” immediately after the word “shall” ; and

(b) by deleting the word “holder” and substituting therefor the word “applicant” immediately after the word “the” at paragraph (b).

CLAUSE 80

THAT Clause 80 be amended by –

- (a) inserting in the opening statement the words, “on recommendation of the Mineral rights Board” immediately after the word “may” ;
- (b) by renumbering clause (80) in the proper sequence

CLAUSE 81

THAT Clause 81 be amended by -

- (a) inserting in the opening statement the words, “on recommendation of the Mineral rights Board” immediately after the word “ shall” ;
- (b) deleting the words “ in respect of minerals to which the prospecting licence relates” in paragraph (a).

CLAUSE 83

THAT Clause 83 by being deleted.

CLAUSE 87

THAT Clause 87, be amended-

- (a) in sub-clause (1) by deleting the words “such other period of time as may be specified in the licence” appearing in paragraph (a) and substituting therefor the words, “ as in the approved program for mining operations”;
- (b) by inserting the following new paragraph immediately after paragraph (h) –

“(ha) sign a community development agreement with the local community where mining operations are to be carried out in a manner as shall be prescribed in Regulations.”

CLAUSE 90

THAT Clause 90 be amended by-

- (a) inserting in sub-clause (1) the words “of potential economic significance” immediately after the words “mineral ”

- (b) inserting in sub-clause (5) the words “on recommendation of the Mineral rights Board” immediately after the word “secretary” .

CLAUSE 91

THAT Clause 91 be amended-

- (a) in sub-clause (2) by deleting –

- (i) the words “ twelve” in paragraph (a) and substituting therefor with the words “six”;
- (ii) the word “ six” in paragraph (b) and substituting therefor with word “three”; and
- (iii) the words “three” in paragraph (c) and substituting therefor with the word “one”;

CLAUSE 93

THAT clause 93 be amended in paragraph (d) by inserting the words “upon recommendation of the Mineral Rights Board” after the word “may”.

CLAUSE 95

THAT Clause 95 be amended by-

- (a) deleting sub-clause (1) and substituting therefor the following new clause –

(1) The Cabinet Secretary in consultation with the National Treasury may enter into a mineral agreement with the holder of a mining licence where the proposed investment exceeds five hundred million United States Dollars.

- (b) deleting sub-clause (2)

- (c) inserting the following new paragraphs immediately after paragraph (j) –

(ja) the payments of royalties, taxes, cess and other fiscal impositions; and

(jb) financial arrangements.

- (d) by renumbering sub-clause (3) in the proper sequence

CLAUSE 101

THAT Clause 101 be amended by inserting the following paragraph immediately after paragraph (b) –

- (c) an artisanal mining permit.

CLAUSE 102

THAT Clause 102 be amended by-

- (a) in sub-clause (1) by —
 - i) inserting the words, “ artisanal mining permit” immediately after the words “ acquire”;
 - ii) by deleting the words “wholly owned by Kenyan citizens” in paragraph (b) and substituting therefor the words “ where at least sixty percent of the shareholding is held by citizens of Kenya” ; and
- (b) in sub-clause (2) by inserting the words, “an artisanal mining permit” immediately after the words “A prospecting” .

CLAUSE 105

THAT Clause 105 be amended in sub-clause (2) by deleting the word “licence” and substituting therefor with the word “permit”.

CLAUSE 111

THAT Clause 111 be amended by inserting the words “on recommendation of the Mineral rights Board” immediately after the word “shall”.

CLAUSE 112

THAT Clause 112 be amended in sub-clause (1) by deleting the word “ten” and substituting therefor the word “five”.

CLAUSE 113

THAT Clause 113 be amended in sub-clause (2), by deleting the word “temporary” in paragraph (b).

CLAUSE 114

THAT Clause 114 be amended in paragraph (g) by

- i) deleting the words “large scale Mechanised equipment” and substituting therefore the words “equipment’

- ii) inserting the word “as prescribed in the regulations” immediately after the word “mercury”

NEW PART

THAT the following new part be inserted immediately before part VIII

PART VIIA- ARTISANAL MINERS

Application of Part

116A. (1) This Part shall only apply to artisanal miners.

Establishment of
Offices in the County.

116B. (1) The Cabinet Secretary may establish a county office of the Ministry.

(2) The Cabinet Secretary shall appoint an officer who shall be the head of the county office and who shall report to the Director of Mines.

(3) The functions of an officer appointed under subsection (2) shall be to-

(a) grant, renew and revoke Artisanal mining permits;

(b) compile a register of the Artisanal miners and specifying particulars that may be determined by the Cabinet Secretary;

(c) supervise and monitor the operation and activities of artisanal miners;

(d) advice and provide training facilities and assistance necessary for the effective and efficient artisanal mining operations;

(e) submit to the director of mines, reports or other documents and information on artisanal mining activities within the county as requested by regulation;

(f) facilitate the formation of artisanal association groups or cooperatives.

(g) promote fair trade of artisanal miners

116 C. (1) There shall be established in every county an Artisanal Mining Committee.

(2) An Artisanal Mining Committee shall comprise of-

- (a) a representative of the governor who shall be the chairperson of the committee;
- (b) the officer appointed under clause 116B who shall be the secretary;
- (c) three persons not being public officers and elected by the association of artisanal miners in the county;
- (d) a representative of the inspectorate division of the Ministry;
- (e) A representative of the National Environmental Co-ordination and Management Authority; and
- (f) a representative of the county land board.

(2) The Committee shall advise the authorised officer in the granting renewal or revocation of artisanal mining permits.

(3) The members of the Committee shall hold office for a period and on such terms and conditions may be determined in the instrument of appointment.

Qualification of
applicants for an
Artisanal Mining
Permit

116 D. a permit for an artisanal mining operation shall be granted to a person who:-

- (b) is a citizen of Kenya
- (c) has attained the age of majority
- (d) is registered as an artisanal mining cooperative association or group

- (1) Where a mineral right has been granted over a parcel of land an artisanal permit shall not be granted
- (2) A person shall engage in artisanal mining operations upon being granted an artisanal mining permit under this Act.
- (3) A person may apply for an artisanal mining permit to the county officer in the area of operation in the prescribed form.

- (4) An application for an artisanal permit shall contain the following information—
- (a) the name, nationality and address of the applicant
 - (b) the name of the cooperative, association or group, place of registration and the registered office address
 - (c) the minerals in respect of which the permit is sought
 - (d) description of the area in respect of which the permit is sought
 - (e) the land owner's consent where the land is not designated as an artisanal or small scale mining area
- (5) The county Officer shall notify the applicant of the grant or refusal of the application within the prescribed time
- (6) A permit granted by the authorised officer shall be for the specified mineral in the application and shall be subject to conditions specified in the permit

Duration of a permit

116 E. (1) A permit granted under this Act shall be for a period three years from the date of issue and shall be renewable

(a) A holder of an artisanal permit may apply to convert it to a small scale permit as prescribed in regulations

Revocation of a permit

116 F. (1) The authorised officer may revoke a permit granted where the holder of the permit—

- (a) contravenes the terms and conditions of the permit
- (b) is convicted of any offence relating to smuggling or illegal sale or dealing in minerals

Operations of Artisanal Miners

116 G. (1) A holder of a permit may mine and produce minerals in an effective and efficient method

(1) a holder of a permit shall observe good mining practices, health and safety rules and pay due regard to the protection of the environment

(2) the Cabinet Secretary shall prescribe regulations for the protection, health and safety of all stakeholders in a mining activity.

Compensation of use of land

116 H. Where a permit is granted in a designated area to a person other than the owner of the land, the holder shall compensate the owner of the land in the prescribed manner

Sale of Minerals

116 I. The sale of mineral won by an artisanal miner shall be subject to the regulations prescribed by the Cabinet Secretary

CLAUSE 118

THAT Clause 118 be amended by—

- (a) inserting in sub-clause (1) the words “on recommendation of the Mineral Rights Board” immediately after the word “may”; and
- (b) inserting in sub-clause (4) (b) the word “any” immediately after the word “of”.

CLAUSE 119

THAT Clause 119 be amended by—

- (a) inserting in sub-clause (1) the words “on recommendation of the Mineral Rights Board after the word “gives”.
- (b) inserting in sub-clause (2) the words “on recommendation of the Mineral Rights Board after the word “may”.

CLAUSE 121

THAT Clause 121 be amended by—

- (a) inserting in sub-clause (1) the following words “on recommendation of the Mineral Rights Board” after the word immediately after the word “may”;
- (b) deleting in sub-clause (2) the words “within three months of date of grant thereof” and substituting therefor with “in accordance with approved work programme or programme of mining operations”

CLAUSE 123

THAT Clause 123 be amended by —

- (a) deleting in sub-clause (1) the word “following” and substituting therefor with the words “statement of the immovable and movable assets and any other” immediately after the words, “with the” ;

(b) deleting sub-clauses 3,4,5 and 6 and substituting therefor the following sub clauses 3,4,5 and 6

(3) All immovable assets of the holder under the mining licence shall vest in the National Government from the effective date of the surrender or termination of the licence.

(4) All movable assets of the holder in the mining area which are fully depreciated for tax purposes shall vest in the National Government without charge on the effective date of such termination and any property not then fully depreciated for tax purposes, the National Government or the Republic shall have the right of first refusal for the sale of such assets from the effective date of termination at the depreciated cost.

(5) Subject sub-clause 4, the Cabinet Secretary may permit the assets to be removed solely and exclusively for the purpose of use by the holder in another mining operation in the country.

(6) The Cabinet Secretary shall prescribe regulations for the use of assets

CLAUSE 127

~~THAT Clause 127 be amended by-~~

(a) ~~Deleting sub-clause (7) and replacing therefor the following clause-~~

(7) A holder of a mineral right shall not commence mining exploration unless the lawful occupier is compensated

(b) inserting the following new sub clauses immediately after sub-clause (7)-

(7A) The Cabinet Secretary in consultation with the National Government, the local community and the National Land Commission in a manner as prescribed shall ensure that the inhabitants or communities who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled on suitable alternate land, with due regard to their economic wellbeing, social and cultural values and the resettlement is carried out in accordance with the relevant physical planning law.

(7B) The cost of resettlement under sub clause (8) shall be borne by the holder of the Mineral Right .

CLAUSE 128

THAT Clause 128 be deleted.

CLAUSE 130

THAT Clause 130 be amended by deleting sub-clauses (5), (7), (8), and (9).

CLAUSE 131

THAT Clause 131 be amended by deleting the words “an ad hoc” and substituting therefor with “the Mining”.

CLAUSE 149

THAT Clause 149 be amended in sub-clause (2) by deleting the words “mineral right” and substituting therefor with “mining licence”.

CLAUSE 153

THAT Clause 153 be amended by deleting the words “a prospecting licence, a retention licence or”.

CLAUSE 156

THAT Clause 156 be amended by inserting the following new sub clauses immediately after sub clause (4) –

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-
- (3) ~~The national Government, county government and communities where mining operations~~
occur shall receive 70, 20 and 10 percent respectively of all royalties paid under sub-clause (1)
- (4) The Cabinet Secretary shall in Consultation with the Treasury prescribe Regulations to govern the use of royalties including provision for investment for future generations at all levels

CLAUSE 160

THAT Clause 160, be amended by inserting the words “requiring repayment” immediately after the word “holder” in sub-clause (1).

CLAUSE 163

THAT Clause 163 be amended by inserting the words “or successor legislations” immediately after “2006”.

CLAUSE 164

THAT Clause 164 be amended by deleting the word “at reasonable hours by any interested person on the payment of prescribed fee” and substituting therefor with “in a manner as may be prescribed in Regulations.”

CLAUSE 170

THAT Clause 170 be amended by inserting in sub clause (1)(g) the words “for a maximum period of seven days” immediately after the word “seize”.

CLAUSE 188

THAT Clause 188 be amended by deleting the word “ten years” and substituting therefor with the word “two years” and deleting the word “ten million” and substituting therefor with “ two million”.

CLAUSE 195

THAT Clause 195 be amended by—

- (c) deleting sub-clause (1); and
- (d) renumbering sub-clause (2) as sub-clause (1).

CLAUSE 198

THAT Clause 198 be amended by—

(a) deleting sub-clause(2) and substituting therefor the following new sub-clause—

- 2) Any regulations made under the Acts which have been repealed under sub-section (1) shall continue to be in force in so far as they are consistent with this Act until such time as they are revoked by the Cabinet Secretary.

(b) by inserting new sub-clauses—

2A) Subject to sub-clause (1), any mineral right, permit or authorization granted under any of those enactments and subsisting immediately before the commencement of this Act, shall continue in force until expiration by passage of time, except that the holder of any Mineral Right in respect of a Large Scale operation as defined under this Act, shall be required, not later than eighteen months after coming to force of this Act to—

- (i) re-register the licence in accordance with the provisions of this Act and its Regulations; and

- (j) have the licence amended to include obligations to comply with all provisions of the Act and its regulations and include a plan and performance timeline which shall be described in its updated mine plan in regard to adherence to conditions of employment, health and safety and the treatment of the environment .

2B) A mineral Right for prospecting, mining or dealing granted prior to this Act shall not be extended or renewed but where the prior granted Mineral Right provided a right to apply for a renewal or extension of the right, the holder of that mineral right may apply, subject to this Act and its Regulations, for a similar type of licence or permit as provided for under this Act on priority basis.

2C) Any pending applications made under the written laws specified in sub-clause (1) shall be determined in accordance with the provisions of this Act and its Regulations.

HON AMINA ABDALLA

MEMBER OF PARLIAMENT

