

*Paper tabled  
on 22/8/12, 2-30pm  
Omondi*

REPUBLIC OF KENYA



PARLIAMENT  
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KENYA NATIONAL ASSEMBLY

(TENTH PARLIAMENT – FOURTH SESSION)

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DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL  
RESOURCES.

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**Report on**  
**Question by Private Notice by Hon. Edick Omondi**  
**Anyanga, MP on the licensing of Mid Migori**  
**Mining Company Limited to explore and prospect**  
**gold in Nyatike, MIGORI COUNTY**

National Assembly  
Parliament Buildings  
Nairobi

August 2012

## INTRODUCTION – THE QUESTION

1. On Wednesday, April 27, 2011, the Member for Nyatike, Hon. Edick Omondi Anyanga, MP through a Question by Private Notice, asked the Minister for Environment & Mineral Resources the criteria and requirements for licensing mineral prospecting rights and license for gold mining by Mid Migori Mining Company Limited.
2. The Member sought to know from the Minister:-
  - (a) The criteria and official requirements for mineral prospecting rights and license for gold mining;
  - (b) Criteria used to award Mid Migori Mining Company Limited an exclusive prospecting rights and license for gold mining in Nyatike Constituency and for how long has the company been operating;
  - (c) How much the company has spent on corporate social responsibility for the benefit of the local community; and
  - (d) The member cited tension between the company and the local residents.
3. In his answer, the Minister for Environment and Mineral Resources reply as follows, that:-
  - (a) The requirements for exclusive prospecting license/special prospecting licenses are:-
    - (i) The name of the prospecting right holder;
    - (ii) A receipt for deposit with the Provincial Commissioner of the Province in which mineral resource is to be prospected;
    - (iii) A written consent from the land owner;
    - (iv) A written consent from the County Council of the mineral prospecting area;
    - (v) A map showing the proposed mineral prospecting area;
    - (vi) A schedule description of the area based on a map scale of 1:50,000 where possible;
    - (vii) A detailed work programme;
    - (viii) An expenditure proposal for implementing the work programme;
    - (ix) Name of the company represented by the applicant;
    - (x) Certificate of registration of the company/partnership;
    - (xi) A copy of the Memorandum and Articles of Association of the company (if liability);
    - (xii) Name and nationality of the director(s)/partner(s) of the company;
    - (xiii) Position of applicants in relation to or under the company;

- (xiv) A statement of Technical Capability and experience in previous similar work/programme;
  - (xv) Financial capability of the applicant, giving supporting bank statements; and
  - (xvi) The name and the qualifications of the supervisor/manager who will be responsible for the programme.
- (b) That:-
- (i) Mid Migori Mining Company Limited was granted two licenses after satisfying the requirement for grant of special licenses.
  - (ii) The Company had been exploring for gold in an area for which they were licensed since 1989. The year the license was granted.
  - (iii) Licenses held by Mid Migori Mining Company Limited are exploratory licenses and not mining licenses; therefore their Social Responsibility is limited to employment benefits and also because the company is at a spending stage of mineral development.
  - (iv) Hoped that aerial surveys completed and commencement of a detailed programme for drilling, the company would consider starting a mining project; and
  - (v) Noted the company expenditure of large sums of monies of its exploration work hence needs to be supported in all ways.
- (c) The company is trying its best to employ locals.
4. Following the Minister's answer, the House raised further queries and comments, which included, that:-
- (a) The company has been operating in Nyatike without the consent of the County Council of Migori;
  - (b) The company has been undertaking exploratory activities without the consent of the land owners.
  - (c) The company was issued with a license unprocedurally without the laid down rules and procedures.
  - (d) The company has not been sharing the resources out of its activities with the local community pursuant to Article 69 (1) of the Constitution.
  - (e) The company was undertaking mining rather than exploration and that the company has taken a long time in exploration approximately 22 years;
  - (f) The company directors could be senior citizens or Ministers or Members of Parliament who acquired the license while they were civil servants contrary to Section 81 of the Mining Act, Cap 306, Laws of Kenya.

(g)The Company has not renewed its Licenses since 1989; as per Section 13 of the Mining Act,Cap.306, Laws of Kenya;

5. The Committee noted from the answer by the Minister and supplementary questions, comments in the House, the following, that:-
- (a)The company has undertaken exploration of Gold and other minerals in Nyatike for over 20 years without any indication of completing it. Yet they were licensed only to undertake exploration of Gold;
  - (b)The Company drilled and dug tunnels for extraction of the Gold;
  - (c)The Ministry alleges that they were granted special license after satisfying all the requirements.
  - (d)The Ministry appears to be protecting further information on the company including disclosing the directors, whether consent was given by the County Council and whether it was undertaking Mining or prospecting.
  - (e)The company's only corporate social responsibility is employment of locals;
  - (f) The company may have operated without the County Council consent and may have either acquired the consent unprocedurally or illegally.
  - (g)The company may have been doing mining but processing samples outside Kenya in the name of prospecting hence producing gold.
  - (h)The company may have been reaping from the resources accrued from prospecting and not sharing the benefits with the locals.
  - (i) There is tension between the company and the local community.
6. And the Minister's answer being unsatisfactory, the matter was referred to the Parliamentary Committee on Lands and Natural Resources pursuant to provisions of Standing Orders of the House to investigate and make a report.

#### **MANDATE OF THE COMMITTEE**

7. The Departmental Committee No. J on Lands and Natural Resources is established pursuant to provisions of Standing Order No. 198 (2) and (3) with the following terms of reference: -
- i. to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;

- ii. to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- iii. to study and review all legislation referred to it;
- iv. to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- v. to 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 or a Minister; and
- vi. to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

8. The Committee is mandated to consider the following **subjects**:-

- i.) Lands and settlement,
- ii.) forestry, water resource management and development,
- iii.) irrigation;
- iv.) environment,
- v.) wildlife,
- vi.) Mining and natural resources.

#### **OVERSIGHT**

9. The Committee oversees the following Government Ministries; namely: -

- i) Ministry of Water and Irrigation;
- ii) Ministry of Environment and Minerals Resources;
- iii) Ministry of Lands; and
- iv) Ministry of Forestry and Wildlife.

#### **COMMITTEE COMPOSITION**

10. The Parliamentary Committee on Lands and Natural Resources was constituted on June 17<sup>th</sup> 2009 and its membership is as follows:-

- 9.1 Hon. Mutava Musyimi, M.P. – **Chairperson**;
- 9.2 Hon. Peris Chepchumba Simam, M.P. - **Vice Chairperson**
- 9.3 Hon. Benjamin Jomo Washiali, M.P.
- 9.4 Hon. Silas Ruteere Muriuki, M.P.
- 9.5 Hon. Benedict Fondo Gunda, M.P.
- 9.6 Hon. Justus M. Kizito, M.P.
- 9.7 Hon. Njuguna Peter Gitau, M.P.
- 9.8 Hon. Mohammed Abdi Affey, M.P.

- 9.9 Hon. Omar Mbwana Zonga, M.P.
- 9.10 Hon. Kiema Julius Kilonzo, M.P.
- 9.11 Hon. Dr. Erastus Kihara Mureithi, MBS, HSC, MP

## **TERMS OF REFERENCE**

11. During its sitting, on Thursday May 12, 2011, the Parliamentary Committee on Lands and Natural Resources undertook the following, to:-
- (i) Considered the Question by Private Notice by Hon. Anyanga and the Answer provided by the Minister for Environment & Mineral Resources, the Committee noted that:-
    - (a) There is need to establish the director(s) of the company, shareholding in the company and the actual name of the Company;
    - (b) The procedure in which the company followed to acquire the license and meeting the set out criteria/requirements for licensing.
    - (c) The Company Tax/custom compliance;
    - (d) Status of Licensing – renewable or non-renewable, special/exclusive prospecting or mining license.
    - (e) The activities of the Company – are they mining or prospecting for minerals;
    - (f) Establish whether the company met all the criteria and requirements for the granting of special prospecting license to explore gold in Migori;
    - (g) Consent – by either land (private) owners or County Council of Migori.
    - (h) Its Corporate Social Responsibility and including the Company relationship with locals in Nyatike; and
    - (i) Land ownership and or acquisitions;
  - (ii) Considered the comments, observations and supplementary questions raised in the House on the Company activities and licensing and the Minister's answer and or response;

## **METHODOLOGY**

12. From the above, the Committee resolved that:-
- (i) The Member of Parliament briefs the Committee on issues raised and in particular his question to the Minister for Environment & Mineral Resources.
  - (ii) The Committee meets the Mid Migori Mining Company Limited in the area of operation, inspect their activities;

- (iii) The Committee holds a public hearing in Nyatike to establish the relationship between the Local Community and Mid Migori Company, the activities of the Company and seeks the views of the local community on the same.
- (iv) The Committee seeks the views of the Commission of Mines & Geology on the Licensing requirements legal regimes, status of the Mining industry Kenya, the monitoring of the activities of Mid Migori Company Limited for a report on the following:-
  - (a) Acquisition of special/exclusive prospecting license;
  - (b) Land ownership and acquisition;
  - (c) Relationship with locals;
  - (d) Change of name from Migori Mining Company Limited to Mid Migori Mining Company Limited;
  - (e) Consent by the County Council of Migori; and
  - (f) Prospecting duration/tenure.
- (v) The Committee invites the Minister for Environment & Mineral Resource to submit a report and for a meeting on the following, respectively:-
  - (a) Acquisition of special/exclusive prospecting license;
  - (b) Land ownership and acquisition;
  - (c) Relationship with locals;
  - (d) Change of name from Migori Mining Company Limited to Mid Migori Mining Company Limited;
  - (e) Licensing for mineral prospecting and mining in Kenya; and
  - (f) Legal frameworks to support the mineral and mining sub sector in Kenya.
- (vii) The Committee seeks the Kenya Revenue Authority and the Registrar-General, Department of the Registrar General; and
- (viii) The Committee invited the Clerk, County Council of Migori to clarify the consent granted to Mid Migori Mining Company Ltd.

### **SUMMARY OF FINDINGS**

13. The Committee therefore found out that:-

- a.) **Consent from the County Council** - Mid Migori Mining Company Limited has been undertaking exploration without the consent of the Migori County Council and or the former South Nyanza County Council, as the consent provide was irregularly signed;

- b.) **A written consent from the land owner** - Mid Migori Mining Company Limited has been undertaking exploration within privately-owned pieces of land, with the help of the Provincial Administration and Department of Mines & Geology, without the consent of land owners in some instances;
- c.) **Consent is non-transferable** - Mid Migori Mining Company Limited did change the name once from Migori Gold Mining Limited to Mid Migori Mining Company Limited and there is no evidence to show that the consent granted by the Commissioner of Mines & Geology was noted pursuant to the provision of the Mining Act;
- d.) **Environmental Impact Assessment Report** – following the enactment of the Environment Management Coordinating Act, 1999 (the company was licensed in 1989); the Company should have complied with the rules and regulations under the Environment Management Coordinating Act, 1999 and prepared an Environmental Impact Assessment report.
- e.) Following the Committee inspection, the Company appears not to have been **rehabilitating and restoring back dug out or excavated areas** as required;
- f.) Mid Migori Mining Company Limited, appears to have a **frosty relationship with the locals** as a result of:-
  - (a) Lack of corporate social responsibility by the company in form of employment and provision of other social amenities or assistance;
  - (b) Lack of information on the activities of the company;
  - (c) The company has been in Nyatike for long mining;
  - (d) In some instances, the locals believe that the company is doing mining instead of prospecting or exploration;
  - (e) In some instances, the company has been defrauding the locals of their lands without due regard to procedure and law;
  - (f) In some instance, The company has failed honour leases or agreement on land rent for private land; and
  - (g) In some instance, the company has been invading into people's land conducting mining, exploration and extracting activities without consent.
- g.) **Renewal of Licenses** – Based on evidence adduced by the Commissioner of mines & Geology, licenses granted to the Company have been renewed several times. This is because Company was granted Special Prospecting License under S.L. 122 and 202 (158) from 1<sup>st</sup> April, 1988 and 1<sup>st</sup> November 1989 respectively. The licenses were re-granted (read



renewed) to the company from February 1995; and the same SPL licenses were renewed again on February 1, 2011.

- h.) **Consents from land owners** - As late as November 2010, the company was still requesting the Commissioner of Mines to assist to get consents from land owners and County Councils in Migori, Kuria West and Nyatike. Contrary to claims by Mid Migori Mining Company Limited to have consents from Land owners, for them to be granted a special prospecting license by the Commissioner of Mines & Geology and thus satisfying the criteria for grant of a license.
- i.) Despite Mid Migori Mining Company Limited being in Migori, Kuria West and Nyatike for about 30 years, it's intriguing to note, that there no results to show, have not raised or voiced any challenges or grievances or complaining but appear to be undertaking mining activities beyond prospecting or exploration with different ventures;
- j.) Mid Migori Mining Company Limited has not met the following requirements for grant of exclusive prospecting license/special prospecting licenses, these are:-
- i. A receipt for deposit with the Provincial Commissioner of the Province in which mineral resource is to be prospected;
  - ii. A written consent from the land owner;
  - iii. A properly acquired written consent from the County Council of the mineral prospecting area;
  - iv. A detailed work programme;
  - v. An expenditure proposal for implementing the work programme;
  - vi. A statement of Technical Capability and experience in previous similar work/programme; and
  - vii. Financial capability of the applicant, giving supporting bank statements.
- k.) According to the evidence adduced by the Commissioner of Mines & geology, In 2009, the Commissioner of Mines & geology, after it became evident that the Company has held the license areas for quite a long time without concluding exploration work, ordered for a fast tracking and completion of activities vide letter Ref.SPL/232/IV/(49) dated May 14, 2009. In the letter, the Commissioner noted that Mid Migori Mining Company Limited has not met the following specific special license conditions:-
- i. Transfer or assignment of the special license requires the Commissioner's consent;

- ii. The company to rehabilitate any degraded areas by exploration activities; and
  - iii. Renewal of the special license on application by the licensee and subject to satisfactory performance on the work programme and fulfillment of the license conditions.
- l.) Mid Migori Mining Company was penalized by the Commissioner of Mines & Geology for holding the license area for long without completion of exploration works; and
- m.) Lack of transparency and accountability in their declaration of samples meant for export to Tanzania - Mid Migori Mining Company Limited has been taking mineral samples to Tanzania for laboratory testing and from the records availed to the Committee, there is no customs declaration and appear incomplete. Consequently, the results of the testing undertaken in Tanzania are not availed.
- n.) Mid Migori Mining Company Limited was granted a special prospecting rights through his applicant, one Mr. James Mathenge, a former government employee and Permanent Secretary while still services contrary to section 81 of the mining Act, Cap 306 Laws of Kenya;

## **CONCLUSION**

14. Following the Question by private notice by the Member for Nyatike, Hon. Anyanga, MP, Committee makes the following conclusion, that:-
- (a) Mid Migori Mining Company Limited did not meet the following requirements for grant of exclusive prospecting license/special prospecting licenses, these are:-
- i. A receipt for deposit with the Provincial Commissioner of the Province in which mineral resource is to be prospected;
  - ii. A written consent from the land owner;
  - iii. A properly acquired written consent from the County Council of the mineral prospecting area;
  - iv. A detailed work programme;
  - v. An expenditure proposal for implementing the work programme;
  - vi. A statement of Technical Capability and experience in previous similar work/programme; and
  - vii. Financial capability of the applicant, giving supporting bank statements

- b.) Mid Migori Mining Company Limited did not meet the following specific special license conditions:-
- i. Transfer or assignment of the special license requires the Commissioner's consent;
  - ii. The company to rehabilitate any degraded areas by exploration activities; and
  - iii. Renewal of the special license on application by the licensee and subject to satisfactory performance on the work programme and fulfillment of the license conditions.
- c.) Mid Migori Mining Company Limited, appears to have a **frosty relationship with the locals** as a result of:-
- (h) Lack of corporate social responsibility by the company in form of employment and provision of other social amenities or assistance;
  - (i) Lack of information on the activities of the company;
  - (j) The company has been in Nyatike for long mining;
  - (k) In some instances, the locals believe that the company is doing mining instead of prospecting or exploration;
  - (l) In some instances, the company has been defrauding the locals of their lands without due regard to procedure and law;
  - (m) In some instance, The company has failed honour leases or agreement on land rent for private land; and
  - (n) In some instance, the company has been invading into people's land conducting mining, exploration and extracting activities without consent.


## RECOMMENDATIONS

15. From the foregoing and based on evidence adduced, the Committee recommends, that:-
- a.) the Commissioner of Mines and Geology, should re-evaluate and assess the need for grant of a Special exploration/prospecting license to Mid Migori Mining Company Limited with a view to revoking one of the two Special exploration/prospecting license;
  - b.) The Ministry of Environment and Mineral Resources in conjunction with the Ministry of Lands should with immediate effect investigate the land disputes and alleged fraudulent acquisition of title deeds by Mid Migori Mining Company Limited. The matter should be resolved and necessary action taken including revoking the licenses held by Mid Migori Mining Company Limited if culpability is established.

- c.) The Director General, National Management Environment Authority, should with immediate effect carry out an Environmental Impact Assessment audit on Mid Migori Mining Company Limited, and subject it to public scrutiny and consultations pursuant to the provisions of Environment Management & Coordination Act, 1999. *should*
- d.) The Minister for Environment & Mineral Resources, without further delay cause the proposed Mining Bill, to be tabled in Parliament for consideration by end of September 2012;

**ACKNOWLEDGMENT**

- 16. The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate;
- 17. The Chairperson takes this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period.
- 18. The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.
- 19. Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Lands and Natural Resources, to present and recommend this report to the House pursuant to the provisions of Standing Orders of the National Assembly.
- 20. On behalf of the Committee, I request the house to adopt the report.

SIGNED:..........

**HON. MUTAVA MUSYIMI, MP  
CHAIRMAN  
DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES**

DATE:..... AUGUST 14, 2012.....

## **CHAPTER II - BACKGROUND INFORMATION**

21. The Member for Nyatike, Hon. Edick Omondi Anyanga, MP through a Question by Private Notice, asked the Minister for Environment & Mineral Resources the licensing of Mid Migori Mining Company Limited. The Member sought to know from the Minister:-

- (e) The criteria and official requirements for mineral prospecting rights and license for gold mining;
- (f) Criteria used to award Mid Migori Mining Company Limited an exclusive prospecting rights and license for gold mining in Nyatike Constituency and for how long has the company been operating;
- (g) How much the company has spent on corporate social responsibility for the benefit of the local community; and
- (h) The member cited tension between the company and the local residents

### **STATUS OF MINING INDUSTRY**

22. Kenya is well endowed with Mineral resources, some of which are already being explored and exploited by Private companies. A good percentage of the country's mineral resources are yet to be explored and exploited. The Mineral sub sector contributes only about 1% to the GDP which is rather low compared to the available potential.
23. Minerals in Kenya include soda ash, fluorite, diatomite, carbon dioxide gold, iron ore, vermiculite, kyanite, manganese, titanium, silica, sands, gemstones, gypsum and limestone.
24. In a report dated July 2012 for the Mineral export (soda ash, fluorspar, refined soda, salt, carbon dioxide, diatomite and gold) period 2006 – 2009, the value in Kshs of the Mineral export was Kshs.78,870,886,124.
25. Exploration and development of minerals in Kenya is governed by the Mining Act, Cap 306 of the Laws of Kenya which came into effect in 1940.

### **LICENSING REGIMES IN KENYA**

26. There are a number of licenses which include:-
- a) Mining location – which bestows mining rights (upto 0.5 km<sup>2</sup>) and only 8 locations are allowed per district. Each location can have a maximum of 10 smaller portions called claims – measuring either 50,000m<sup>2</sup> (for gemstones) or 20,000m<sup>2</sup> (for gold, silver and platinum);
  - b) Exclusive prospecting License – this is a large scale exploration license in areas that are open to prospecting and mining. up to 1000 km<sup>2</sup>

- c) Special Prospecting License- this is a large scale exploration license in areas that were previously closed to prospecting and mining. up to 1000 km<sup>2</sup>
  - d) Mining Lease – bestows mining rights over an exploration area; and
  - e) Special Mining license – bestows Mining rights over an exploration area in areas that were previously closed to Mining.
  - f) Other laws in the Mineral and Mining industry are – the Trading in Unwrought precious Metal Act, Cap 309 and the Diamond Industry Protection Act, Cap 310( Kimberly Certification Scheme Regulations have been prepared to enable Kenya participate in the International trade in rough Diamonds)
27. An Exclusive Prospecting License is renewed every year for up to a maximum of 5 years, while a Special Prospecting License has no specific time limit. Both licenses are, however, subject to annual reductions of the one half of the exploration area or payment of a penalty equivalent to one quarter of the license fee.

#### **EXPLORATION ACTIVITIES IN MIGORI COUNTY AND ADJACENT AREAS**

28. Exploration activities in the Nyanza region dates back to the colonial times but have gained momentum in the past two decades since 2000. Parts of Western and Nyanza region were closed in the early seventies and eighties to allow scheduled exploration activities to be undertaken such as the UNDP exploration program for base metals, BRGM Revolving fund for exploration of phosphates and the Finish (Finland) Exploration project.
29. Licenses within the Nyanza region include:-

##### **A) SPL LICENSES HELD BY LOCAL INVESTORS**

No.	holder	Area(Km <sup>2</sup> )	District	Mineral sought
1	Mid Migori Mining Company Ltd	310.8	Migori	Gold ,Base Metals
24	Ngira Exploration & Mining Works Ltd	297.75	Migori, Homa Bay	Precious Metals
57	Pomo Enterprises	18	Rachuonyo	Iron Ore

B) SPL LICENSES HELD BY FOREIGN INVESTORS

no.	holder	nationality	area( km <sup>2</sup> )	district	mineral sought
3	Sebimu enterprises & Mining company limited	Swedish	326 128 105	Migori Transmara Turkana	Precious metals Gemstones Base metals
4	Afri Ore Ltd	Barbados	2833	Kakamega Kisumu Bondo Siaya	Gold
5	Kenya Discovery Ltd	Kenyan and Americans	1154	Busia Siaya Kakamega	Precious Metals
6	Covenant Mining CO. Ltd	Kenyan and Americans	36	Migori	All minerals
7	East African Pure Gold Ltd	Kenyan and Americans	200	Migori Kisii Rachuony o	Gold
11	ABBA Mining Company Ltd	Kenyan and Americans	112	Homa Bay	All minerals

## CHAPTER III - INVESTIGATION –

30. Mid Migori Mining Company Limited is locally incorporated fully owned by company of Canadian based Kansai Mining Corporation and directors were initially Mr. J.S. Mathenge and Mr. E.J. Harnel.
31. Mid Migori Mining Company Limited (formally Migori Mining Company) are holders of Special prospecting Licenses (S.P. L.) No. 122 and No.202 over 126 Km<sup>2</sup> and 184.8 km<sup>2</sup> respectively in the larger Migori and Kuria Districts. Initially, the Company was granted for exploration areas, under S.L. 122 and 202 (158) from 1<sup>st</sup> April, 1988 and 1<sup>st</sup> November 1989 respectively. The licenses were re-granted (read renewed) to the company from February 1995.
32. Exploration work by the company on the two concession areas has been carried out by their various joint ventures namely:-
- St. Barbara Mining Ltd – 1988
  - Auvista Minerals N.L. – wholly owned subsidiary of Panorama Resources N.L. of Perth, Australia in 1995.
  - Kansai Mining Corporation – Canadian Company since April, 2002; and now;
  - Red Rock Resource PLC, a London based mining exploration company – since 2010 to date.
33. In 2007, Kansai Corporation indicated Gold resources of approximately 1.2 million ounces. In their work programme for Macalder, Migori Area under Special Prospecting Licence No.122 for February 2009 to January 2010, the company alleges that its operations were hampered in its endeavours to complete drilling programme due to local unrest in the first quarters of 2008.
34. In 2004, the Company started facing problems where local artisanal miners, members of the Lake Side Mining Co-operative Society wanted the management of Kansai Corporation to keep off the Gor Maria Site. This culminated in the lack of activities by the company on the ground in 2007, resulting in more anxiety hence the relationship has never fully improved.
35. Recently, Mid Migori Mining Company Ltd entered a joint Venture with Red Rock Resource PLC of United Kingdom to undertake exploration in Special Prospecting Licences No.122 (126 km<sup>2</sup>) and 202 (184.5 km<sup>2</sup>) which do not have a mandatory maximum duration and are subject to renewals after every two years.



## **CHRONOLOGICAL HISTORY OF LICENSING OF MID MIGORI MINING COMPANY LIMITED - LICENSE NOS.122 & 201**

36. In 1988/89 Migori Gold Mining Company Limited acquired Special Prospecting Licences No.122 covering 245km<sup>2</sup>, later in November 1989 acquired S.P.L. No.202 (158) covering 440km<sup>2</sup> in Migori District, South Nyanza among other adjacent area in Nyanza, Rift Valley and Western Provinces. The company entered a joint venture with Santa Barbara Mining Ltd of UK.
37. The company changed its name from Migori Gold Mining Company to Mid Migori Mining Company Ltd.
38. In the Mid 1990, Panorama Resources NL of Australia acquired Mid Migori Mining Company Ltd through its subsidiary Auvista Minerals NL. In 1999, Panorama Resources NL and Tanganyika Gold NL merged and formed Tanganyika Gold NL and joint venture of Tanganyika (60%) and Mid Migori Mining Co. Ltd of Kenya (40%).
39. From 1990 to 1998, prospecting for Gold was very active in Kenya but with the slump in gold prices then, led to considerable decline in prospecting. There were reported 1.6 million tons at an average grade of 4.3g of Gold per ton. Auvista NL was progressively earning 100% interest in the prospect from Mid Migori Mining Co. Ltd of Kenya.
40. In 2002, Kansai Mining Corporation of Canada acquired Mid Migori Mining Co. Ltd. A share purchase agreement made and dated March 1, 2002 among the company, the shareholders of Migori Mining Company Limited ('MMM') are – Eugene Joseph Charnel, James Stanley Mathenge, Achates Services Limited and Achates Trust Limited. Directors of MMM Ltd were Eugene J. Charnel, James Mathenge, Chief Executive Officer of Kansai Mining Corporation was Bruce T. Walsham.
41. In mid of 2009, Red Rock Resources of UK acquired up to 60% of Kansai operating subsidiary, through Mid Migori Mining Co. Ltd. Therefore Red Rock Resources are the Managers of Mining tenements and related information - intellectual property rights and responsible for cost of exploration.
42. In December 2009, Red Rock increased its stake in Kansai Mining Corporation to become the largest shareholder with 35.2%. Kansai was suspended in 2009 after failing to file accounts for its years ended 30 September, 2008.

43. In 1999, Mid Migori Mining Co. Ltd was penalized for non-reduction of the areas and reduced the License areas – for S.P.L. No.122 from 245km<sup>2</sup> to 126km<sup>2</sup>.
44. The two licenses – SPL. No. 122 and 202, issued to Mid Migori Mining Company Limited had specific special license conditions, which include:-
- a) Submission of progress reports on a quarterly basis;
  - b) Transfer or assignment of the special license requires the Commissioner's consent;
  - c) The company to rehabilitate any degraded areas by exploration activities;
  - d) Progressive reduction of the license areas or payment of four times the license fees; and
  - e) Renewal of the special license on application by the licensee and subject to satisfactory performance on the work programme and fulfillment of the license conditions.
45. In fulfillment of the license conditions, the Mid Migori Mining Company Limited has encountered the following:-
- d.) undertook exploration work under joint ventures;
  - e.) was penalized for non reduction of the areas;
  - f.) in 1999, the company reduced the license areas for SPL No. 122 from 245km<sup>2</sup> to 126Km<sup>2</sup>
  - g.) In 2009, the Commissioner of Mines, after it became evident that the Company has held the license areas for quite a long time without concluding exploration work, ordered for a fast tracking and completion of activities vide letter Ref.SPL/232/IV/(49) dated May 14, 2009.

#### **TAX AND CUSTOM COMPLIANCE**

46. On May 23<sup>rd</sup> 2011, The Committee vide letter Ref.No.PLL/GFM (PMSF) 2011 inquired from the Commissioner General, Kenya Revenue Authority on Tax and custom compliance of Mid Migori Mining Company Ltd. The Committee was informed that as per the records, the Authority (KRA) has nothing adverse against the Company and that the Company has complied with the importation requirements.

#### **DIRECTORS/SHAREHOLDER OF MID MIGORI MINING COMPANY LTD**

47. The Committee on May 23, 2011 vide letter PIC/GFM) PMSF (2011) requested for the names of directors/shareholder of Mid Migori Mining Company

Limited from the Registrar General. Department of Registrar of Companies/Societies. The Committee vide was informed through letter Ref.CR 12 C.33840 dated May 24, 2011 that:-

(a) Mid-Migori Mining Company Limited had been issued with a certificate of change of name on 24<sup>th</sup> January, 1992 under registration number C. 33840;

(b) The Directors/Shareholders are:-

DIRECTOR	NATIONALITY	SHARES (Y/1000)
Eugene Joseph Charnel	Kenyan	nil
James Stanley Mathenge	Kenyan	1
Bruce Taylor Walsham	British	nil
Thomas John Ian Wright	British	nil
Joseph Andrew Crummy	British	nil
Henri Frelinx – Belgium	Belgium	nil
Andrew Bell	British	Nil
Kansai Mining Corporation	Canada	999

(c) The total number of share is 1000 and that the company is registered in Nairobi, Kenya.

**HON. EDICK OMONDI ANYANGA, MP – MEMBER OF PARLIAMENT**

48. On June 2, 2011, the Committee met with the Member of Parliament for Nyatike on the licensing of Mid Migori Mining Company Ltd and informed the Committee that:-

(a) Mining in Kenya accounts for less than 1% of GDP and gold is primarily produced by artisanal workers in the West and South Western parts of Kenya.

(b) Surveys done by the Mines and Geology Department since the year 2000 have resulted in the identification of gold and copper minerals in Nyatike Area in Migori County.

(c) Reports indicate that approximately 2 million ounces or 62 ton gold valued at Kshs.186 billion have been discovered in Migori.

(d) There exist a bad relationship between the locals of Nyatike and the Mid Migori Mining Co. Ltd and is as a result of:-

(i) Lack of corporate social responsibility by the company in form of employment and provision of other social amenities or assistance.

- (ii) Lack of information on the activities of the company.
- (iii) The company has been in Nyatike for long without any mining.
- (iv) The locals believe that the company is doing mining instead of prospecting or exploration.
- (v) The company has been defrauding the locals of their lands through illegal and unprocedural ways.
- (vi) The company has been operating without consent of locals and Local County Council.
- (vii) The Company has not been rehabilitating and restoring back dug out or excavated areas as required.
- (viii) The company has not been honouring lease agreement on land rent for private land.
- (ix) The company has been entering into peoples land wrongfully and conducting mining, exploration and extracting activities.

49. On October 25 and November 04, 2011, the Member further informed the Committee that:-

- a) An inspection carried out in September 2011, by environment inspectors from NEMA, established that Mid-Migori Mining Company Limited commenced gold mining and exploration activities without Environmental Impact Assessment being carried out pursuant to section 58(1) of Environment Management Coordination Act(EMCA), 1999 as required for the licensing of exploration. Therefore, the company has not complied with EMCA Act, 1999 by not undertaking an environmental Impact Assessment (EIA) as required. Therefore were requested to cease exploration by NEMA.
- b) Through its Press Release, by Red Rock Resources PLC dated August 30, 2011 cited the order dated August 5, 2011 from the County Council of Migori to cease operation until they get consent as illegal and unprocedurally.
- c) The Company has moved to the High Court to seek prohibition orders against the Council.
- d) The Company committed a fraud on the following grounds:-
  - (i) Land owned by Alwalo's families was leased to Mid-Migori Mining Company Limited on 28<sup>th</sup> January 2007 but the contract was terminated on 28<sup>th</sup> January 2009 on the basis of breach of contract on the lease. The company failed to pay rent;

- (ii) the company behind the backs of the Alwalo's family, acquired full ownership of the plot No. 157 and was granted a title deed;
  - (iii) sub divide the Alwalo's plot into 4 portions - No. 660, 661, 662 and 559;
  - (iv) The Company converted plot. No.660 and 662 their property; however, they continued to sign contracts with the original plot No. 157;
  - (v) The said fraud was reported to the concerned Ministry however instead of resolving the disputes as raised by the Alwalo's, the Ministry through vide Ref. No. SPL/232/VI/(29) dated February 10, 2009 by One Mr. E. S. Osumo on behalf of the Commissioner of Mines and Geology, reprimanded the family instead of arbitrating on the matter.
- e) Mid-Migori Mining Company Limited was involved in fraud against Alwalo with disregard of section 61(2) (b) of the Mining act Cap 306 laws of Kenya.
  - f) Mid-Migori Mining Company Limited was involved in unlawful sub-division of land;
  - g) County Council of Migori had not issued any consent to Mid-Migori Mining Company Limited;
  - h) A purported order of the Migori County Council dated 5<sup>th</sup> August 2011 was served to the Mid-Migori Mining Company Limited ("MMM") requiring the company to cease gold exploration in the council's area of jurisdictions.
  - i) Surveys carried out by the Mines and Geology Department since 2000 revealed indications of Gold and mineral resources in Migori.

#### **THE CLERK, MIGORI COUNTY COUNCIL**

50. Submission by the Clerk County Council. He informed the Committee that:-

- a) The Parcel No. 498, Migori County Council (formerly South Nyanza County Council) was referred to as trustland gazetted in 1970;
- b) Macalder Nyanza Ltd was granted a mining lease in 1951 by the colonial Mines Department for a period of 21 years. Upon expiry of the lease

- period, the parcel of land including the properties and infrastructure therein reverted back to the community through the local authority;
- c) Other government organs were enjoined therein in ensuring that all the developments in the land in question were secure;
  - d) In 1973, the government deemed it fit to use part of the land for ranching under the Livestock Marketing Development programme, due to the inability of the government to finance adequately the above project, the operations ceased in 1979;
  - e) In 1985, a company, UNIAFRO ORES wished to continue with stalled mining activities but their inability to meet set rules by the government and local authority could not allow them;
  - f) Artisanal Mining was ongoing with the knowledge of the local authority and government as they are not required to adhere to a set of rules and that the community has been benefiting out of their meager activities;
  - g) In 1987, M/s.SBM Exploration Mining Company operated within the trustland by surface sampling and later changed name to M/s. SEBIMU and undertook extensive surface sampling both within the trustland and outside, with consent of the land owners. The sampling did not require the council consent since most of the operations were outside the trustland;
  - h) In early 1990's, SANTA BARBARA LTD, in partnership with a local Company MIGORI MINING COMPANY LTD later to be known as MID MIGORI MINING COMPANY LTD, set up a camp adjacent to the trustland boundary at a place known as Mikay Camp; therefore operated from a private farm owned by the Alwalo's. In which, their operations led to construction and digging of a 500 metres long tunnel with a view of undertaking mining activities for a period of 3 years i.e. upto 1993;
  - i) The extraction of gold continued without any royalties either to the local council or national government or department of geology and mines;
  - j) The Mikay Camp is situated on the late Mzee Ongalo's land in which the Company leased under an agreement between the Ongalo Family and MID MIGORI MINING COMPANY LIMITED;

- k) In 1993, Migori County Council was carved out of the larger South Nyanza County Council which prompted the direct custody of the trustland to the new County Council of Migori;
- l) In 1995, MID MIGORI MINING COMPANY re-emerged as Australian registered company name AUVISTA MINERALS/PANORAMA RESOURCES LTD with intentions to conduct explorations and continue with previous mining activities in the tunnel;
- m) Their activities were within privately owned pieces of land but they occasional forayed into the trustland where they drilled and conducted other operations , without the express consent or authority of the Council and the Community;
- n) In 2000, MID MIGORI MINING COMPANY re-emerged with a new partner, KANSAI MINING CORPORATION registered in United Kingdom; and began conducting exploration in new land parcels for period of two years where their activities stopped until 2009, when MID MIGORI MINING COMPANY partnered with Red Rock Resources of United Kingdom under the patronage of Mr. Andrew Bell as President and Mr. James Mathenge of Mid Migori;
- o) Red Rock Resources acquired 85% of the Mid Migori Mining Company Limited making it the Principle shareholders;
- p) During the merging of the above two, the Council formally engaged the companies on the following:-
  - (i) Their activities within the Trustland in an effort to know their benefits to the Council and community;
  - (ii) The large mobilization of drilling machines for mining activities;
  - (iii) Community involvement in the activities of the companies in areas of mining;
  - (iv) To establish whether there was consent granted by either the previous or current Council on the activities of the company;
  - (v) Whether the company adhered to council rules and regulations on the operations of commercial activities within their area of jurisdictions;

- q) On November 20, 2011, pursuant to powers conferred by the Local Government Act; the council order to cessation of activities of the company until proper consent is formally requested. They have since obtained court orders;
- r) The company presented a consent letter dated 5<sup>th</sup> November 1987 signed by the then Chairman of the South Nyanza County Council, Mr. Elisha Aketch Chieng. Therefore, making the consent fraudulent on the following grounds:-
  - (i) It was signed by non-executive, unauthorized officer of the council;
  - (ii) According to Local Government Act, the Chairman is not a gazetted officer;
  - (iii) The consent was granted to Migori Gold Mining Company not Mid Migori Mining Company Limited. Consent is non-transferable;
  - (iv) No other letter or consent was issued prior to the one issued in 1987 contrary to section 86A of the Local Government Act, Cap 265, Laws of Kenya;
- s) On June 20, 2011, he informed the Permanent Secretary, Ministry of Environment & Mineral Resources and has not received reply or response;
- t) The company should apply as stipulated in the law;
- u) on September 30, 2011, NEMA having previously written to Mid-Migori Mining Company Limited to stop any activities because they did not comply with environmental regulations;
- v) Was surprised that on November 10, 2011, the company presented its Environmental Impact Assessment report to the Council for comments. The Environmental Impact Assessment report presented to the Council for Comments by the Company was never published in the media or in the newspapers or gazetted for public participation as required by law
- w) On February 1, 2011, the Commissioner of Mines and Geology, renewed SPL No. 122 and 202 without any recourse to the laid down procedures, rules and regulations i.e. no license should be granted without the consent of NEMA and the County Council;



51. Comments on documents provided:-

- a) For how long should a company explore;
- b) Mid-Migori Mining Company Limited leased land from the Alwalo family on 28<sup>th</sup> January 2007. On that basis of breach of contract, the Alwalo's terminated the contract when the company failed to pay the Kshs.5000 installment;
- c) Without the consent of Alwalo's family, the company acquired Titles Deed to the land illegally, but still continued to sign contracts with Alwalo's.
- d) Mid-Migori Mining Company Limited had not applied for consent to mine.
- e) Mid-Migori Mining Company limited allegedly sub-divided the land into 4 parts or plots or pieces and took titles of 2 plots;
- f) Mid-Migori Mining Company Limited has been operating illegally since it has no license.

#### **M/S. MID-MIGORI MINING COMPANY LIMITED**

52. Submission by Red Rock Resources , a subsidiary and principal shareholder of Mid-Migori Mining Company Limited, through the Directors – Mr. Andrew Bell and James Mathenge, informed the Committee that:-

- i) the company is carrying out exploration activities which was mostly characterized by drilling instead of mining, drilling is use of a drill bit to drive down into the rock a narrow hole that enables it to extract samples of the rock whereas mining produces large footprint that is impossible to hide;
- ii) The company could not produce since the amount of gold in the samples were too small i.e. 1.1g/ton only 20% of the sample size.
- iii) Commercially the sample sent would not produce any gold and would require a big processing plant, a huge quantity of ore and dumping of the processed material;
- iv) According to the Mineral Resources of Canadian government, it defines different mineral resources development work as follows
  - a) **Exploration work phase:** the search for, discovery and first delimitation of a previously unknown mineral deposit or the re-

evaluation of a sub-marginal mineral deposit in order to enhance its potential economic interest on tonnage, grade, and other characteristics.

- b) **Deposit appraisal work phase:** the steps undertaken to bring a delimited deposit by definition drilling, comprehensive tests and planning to the stage of detailed knowledge required for an exhaustive and complete feasibility study that will fully justify and support a production decision and the investment requirement.
- c) **Mine complex development work phase:** all work and support activities carried out on a mine site to define, block out and gain access to the ore and prepare it for production.
- d) Mining: mostly mineral production.
- v) The first 2 are exploration; the 3<sup>rd</sup> is mining development. Before the 3<sup>rd</sup> is undertaken the operator in all mining countries has to move from an exploration license to a mining license.
- vi) The Company employs 180 staffs, of which 28 are permanent and the rest are casuals (152 – all locals). Of the 28 staff on permanent basis, only 5 are locals;
- vii) Give quarterly reports to the Commissioner of Mines and Geology, for the Ministry of Environment and Mineral Resources;
- viii) Artisanal miners are illegal and they try to assist the local community as the license does not allow for development of Big projects;
- ix) The legislative regimes governing the mining sub sector require revision to attract more investors and open up the industry.
- x) The company acquired the consent from the South Nyanza County Council; and
- xi) They are licensed to undertake exploration.

#### **PUBLIC HEARING IN NYATIKE (MACALDER) ON SEPTEMBER 26, 2011**

53. Submission during the public hearing:-

##### **a. District commissioner, Nyatike**

- (i) Welcomed the Committee and informed that mining took place in Nyatike and the larger Migori since 1930s and not until 1960 when miners left the site;

- (ii) Artisanal miners have been within the area and now number about 2000. they are faced by a number of challenges which include:-
  - The method of mining are crude and obsolete, giving less result on a lot of work;
  - Mining and land tenure systems in the region are conflicting. Therefore not clear on how to carry out mining and relate it to land ownership;
  - 99% of the land there is trustland and 1% is privately owned;
- (iii) Artisanal miners express a lot of enthusiasms on the proposed Mining Bill and requested hastening of the review of the old law;

**b. Migori County Council**

- (i) Permits are issued at the national level without consulting the county council as per the law requires;
- (ii) No environmental impact assessment was carried out by any of the companies undertaking mining and or exploration are required by law;
- (iii) The Mid Migori Mining Company limited has been around for some time now and no results has ever been shared with the local authority on the exploration;
- (iv) The Company Mid Migori Mining Company limited has not rehabilitated any degraded areas or mines or trenches dug as required by the licenses;
- (v) The Company Mid Migori Mining Company limited has not carried out any Corporate Social Responsibility activity in the area;
- (vi) On March 29, 2011, Mid Migori Mining Company limited applied for consent from the council and which appears not to be proper for a company to be within the area since 1980 and operating without the consent of the local Council;

**c. Commissioner of Mines and Geology**

- (i) Mid Migori Mining Company was granted special license for exploration only because the areas were previously closed after the colonialist left;
- (ii) The license owners, Mid Migori Mining Company Limited and its shareholders have mining and exploration interest;

- (iii) The company is licensed to undertake exploration but may be clandestinely doing mining;
- (iv) The company also appears not to be completing the work they were licensed to undertake yet they are not complaining;

**d. District Land Office, Ministry of Lands - Nyatike.**

- (i) The land tenure system in Nyatike is predominantly Trustland and it is being adjudicated;
- (ii) Mining and exploration is being undertaken in both private and public land. The land in question was surveyed in 1941 – Macalder Mining Area No. 498; the said piece of land was set apart in 1941 – as No. 17977 (2500ha);
- (iii) The Macalder Mining Area, Nyatike land mass constitute about 5%;

**54. The General Public**

- i) There is a lot of gold in Nyatike and that Government should intervene to have foreign companies licensed to prospect to stop mining and also ensure that the Minerals being mined benefit the locals;
- ii) Gold was discovered in Nyatike in 1932 and actual mining began in 1938. However, mining stopped for almost two decades where the then senior civil servants took away the Gold;
- iii) Legal Notice No. 20 of June 1964, closed mining in Nyanza region therefore creating a loophole for licensing to be done under Special licensing. This is therefore to request that the notice be degazetted.
- iv) Proper legislation be put in place to manage the industry properly;
- v) The colonialist did a lot of exploration and mining in Migori County and a lot of the precious minerals were extracted;
- vi) Due to poor mining policy during the colonial times, companies like Macalder Nyanza Mines through their subsidiary Commonwealth Development Corporation acquired large mining areas, where they were fenced off to keep Africans away; the oppressiveness was further aggravated by the old Mining Act, Cap 306, Laws of Kenya;

- vii) The first companies to undertake mining were foreign and were only licensed to mine copper but in the course extracting copper, they did mine gold.
- viii) After independence, the government closed mining in Macalder Nyanza Mines and the companies left four valuable assets – buildings, tailings, Machinery/equipments and steel structures;. However, the steel structures and equipment were taken away;
- ix) The Chairman of Mid Migori Mining Company limited and former Permanent secretary, may have been one of the person involved in the taking away of the equipments and that he has been operating the exploration in the name of partnerships;
- x) The companies licensed to explore in Migori are done by the Commissioner of Mines and Geology without consulting or meeting the locals;
- xi) The foreign companies come and used documents of the local established companies to get licenses and does not involved the locals;
- xii) Mid Migori Mining Company Limited is the sole holder of the special license for exploration only not mining and has entered into joint venture with a number of companies. They include – Uniafro, Santa Barbara, Auvista Minerals, Panorama Resources, Kansai, Tanganyika Gold and Red Rock;
- xiii) They have explore for over 25 years but they use all means to process gold from rich reef from different points and shafts with very good assay results. They collect rich gold infested reefs; grind using mills for instance Santa Barbara Stamp Mills;
- xiv) Mid-Migori mining company limited acquired Alwalo's property in 2004 only for it to surface with a fraudulent document purporting it to have been signed by the late Alwalo in 2007;
- xv) Mid-Migori Mining Company Limited is the same company Macalder Nyanza Mines Operation under another name because all the companies it has partnered with is related in one way or another.
- xvi) Mid-Migori mining company limited has all along presented a purported document signed by the then South Nyanza county council chairman

Mr. Akech Chieng on which the geology department has considered it a valid consent.

- xvii) Mid-Migori Mining Company Limited dubiously acquired mining license SPL NO. 122 (1995) and SPL NO. 202 (2010) through JENSZ Limited.
- xviii) Red Rock Resources and Gold Rims signed with the local companies' agreement that they use their documents to obtain funds all over the world. On getting the money they do not invest in the local companies;
- xix) Mid-Migori Mining Company Limited drills rigs by planting them at points having thousand of kilos of gold reef underground. They remove them as core and put them in core boxes as samples without value and export them overseas for assaying in laboratories;
- xx) Mid-Migori mining company limited has improved the welfare of the people as agreed upon on Feb. 2010 because the company has;
  - a) Created employments to the locals hence reducing crime in the area;
  - b) Provided water supply to the community;
  - c) Improved roads; and
  - d) Educated the local miners on health and safety;
- xxi) There is no compensation to workers injured at work by the company;
- xxii) Red Rock Resources are undertaking mining not prospecting and have employed 200 casuals. And the casual are from one clan;
- xxiii) Government officials are colluding with the Mining Companies to exploit resources;
- xxiv) The government to open closed areas in Nyatike and in the lager Nyanza region;
- xxv) There is no rehabilitation of mines or degraded areas and also the material may have a health hazard to the community; and
- xxvi) The mining companies have been smuggling Gold out of the country through Lolgorian and Sirare by concealing them in spares tyres of vehicles.

**RESPONSES FROM THE MINISTRY OF ENVIRONMENT AND MINERAL RESOURCES – informed the Committee that:-**

55. Messrs Mid Migori Company Limited are holders of special licenses No. 12 and no. 126 km<sup>2</sup> squared and 184.8 km<sup>2</sup> respectively in the larger Migori and Kuria Districts;
56. The company was initially granted the two exploration areas under Special licence No. 122 and 202 (formerly 158) with effect from April 1, 1988 and November 1, 1989. The licenses were re-granted to the company effective February 1, 1995.
57. Mid Migori Mining Company is locally incorporated fully owned company of Canadian Based Kansai Mining Corporation and the Directors were initially Mr. J. S. Mathenge and Mr. E. J. Charnel;
58. The Company recently entered a joint venture in Mid 2009 with Red Rock Resources of the United Kingdom to undertake exploration in Special Prospecting Licences No. 122 (126 km<sup>2</sup>) and 202 (184.5 km<sup>2</sup>) which do not have a mandatory maximum duration and are subject to renewals after every two years;
59. Mid Migori Mining Company limited applied for a Special Prospecting Licence on November 11, 1988 on form 8 by company agent Mr. Eugene J. Charnel who held prospecting right No. 3041 as required by the Mining Act Cap 306 Laws of Kenya. The Company obtained consent from the South Nyanza County Council on January 6, 1989;
60. By then it was common practice that after the **County Council consent** had been granted, individual land owner's consent was sought progressively during the operations where agreements were made on compensation for any damage to land and property;
61. The **dispute between the local community and the company** is based on a number of issues, which include
  - a) **Local Artisanal Miners** - In 2004, the local artisanal miners who are members of the Lake Side Mining Co-operatives Society wanted the company to leave gold prospecting at Gor Maria Site for them;

- b) **Prolonged period of Exploration activities** - Local community complained the company has held the license area for an unreasonably long period of time;
- c) **Allegations of fraudulent land agreements /purchases** – the company was alleged to have grabbed land from one of the families and specifically, the Alwalo family complained that whereas they had entered into a lease agreement with the company over Kadem/Macalder/157 parcel of land, the company went ahead and obtained a title over the said land without the family’s knowledge.
- d) **Complaints from the Local Member of Parliament**

62. The Department of Mines & Geology, had intervened on two occasion, that is;-

- a) To try and **improve the relationship between the** locals, land owners and the company, however this has never improved;
- b) On **delays in conclusion of exploration programme**, the Commission wrote on May 14, 2009 to impress upon the company to undertake the exploration programmes seriously by ensuring that it executes its agreed performance targets, identifying the mineralized areas and surrendering the rest of the licences areas within a year. The company opted to pay penalties and continue working in the entire licence area claiming that its work was yet to be completed in all areas under investigation.

63. The Mining Act cap 306, Laws of Kenya, **allows for the transfer of mineral rights** to new entity upon acquisition subject to consent from the commissioner of mines and geology. And that section 21 specially provides for transfer of exclusive prospecting licences;

64. **Legality of the consent issued** by the South Nyanza County Council – the consents by County Councils are required under section 7(1)(i) of the mining Act, Cap 306 Laws of Kenya if the interest is or is partly under trust land as is the case with Mid Migori Mining Company limited which obtained a signed copy from the then Chairman of the County Council;

65. The consent was granted to Migori Gold Mining Company not Mid Migori Mining Company Limited. **Consent is non-transferable.** No other consent



was issued prior to the one issued in 1987 contrary to section 86A of the Local Government Act, Cap 265, Laws of Kenya;

66. Section 163A of the Local Government Act, Cap 265 provides that a local authority may on receipt of the application under the Act; grant a business permit to allow the conduct of a business or trade within its area.
67. According to the Commissioner of Mines and Geology, the consent presented by Mid Migori Mining Company Limited **APPEARS** to be authentic;
68. The Company was **seeking the land owners consent as they progressively** advanced exploration from one parcel of land to another by entering into agreements on compensation for any damage to land and property.
69. Procedures for renewals of Special Prospecting Licences – issued under section 17 of the Mining Act on areas that have been previously excluded or closed from prospecting and mining. The licence period or term is specified in the licence document and the practice has been a term of two (2) years.
70. On expiry of the specified term, the owner applies for an extension to renew the licence to enable conclusion of exploration activities. Renewal is provided only on conditions that a progress reports of previous works, genuine reasons for requesting the additional time is to conclude exploration and the area is reduced by half or applicant pays four times the annual fee for not reducing the area, are all met;
71. Mid Migori Mining Company limited has worked under various partners and had requested for renewal of their licences before, with an intention to concluding the exploration work. Request for renewal had been granted and had been paying four times the annual rent for not reducing the area in subsequent renewals;

# CHAPTER IV – FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

**PART I: OBSERVATIONS** - The Committee found out that:-

## **THE LICENSE**

72. A Special Prospecting License is a large scale exploration license in areas that were previously closed to prospecting and mining. up to 1000 km<sup>2</sup> Special Prospecting License has no specific time limit, however, it is subject to annual reductions of the one half of the exploration area or payment of a penalty equivalent to one quarter of the license fee.
73. Mid Migori Mining Company Limited (formally Migori Mining Company) holds Special prospecting Licences (S.P. L.) No. 122 and No.202 over 126 Km<sup>2</sup> and 184.8 km<sup>2</sup> respectively in the larger Migori.
74. Initially, the Company was granted for exploration areas, under S.L. 122 and 202 (158) from 1<sup>st</sup> April, 1988 and 1<sup>st</sup> November 1989 respectively. The licenses were re-granted (read renewed) to the company from February 1995.
75. Mid Migori Mining Company Ltd entered into joint Venture with Red Rock Resource PLC of United Kingdom to undertake exploration in Special Prospecting Licences No.122 (126 km<sup>2</sup>) and 202 (184.5 km<sup>2</sup>) which do not have a mandatory maximum duration and are subject to renewals after every two years.

From the above 48 – 51, the Committee observed that, the Special Prospecting License:-

- a.) has no specific time limit, however is subject to annual reductions of the one half of the exploration area or payment of a penalty equivalent to one quarter of the license fee;
- b.) Company was granted Special Prospecting License under S.L. 122 and 202 (158) from 1<sup>st</sup> April, 1988 and 1<sup>st</sup> November 1989 respectively. The licenses were re-granted (read renewed) to the company from February 1995. Therefore Renewable;
- c.) Special Prospecting Licences No.122 (126 km<sup>2</sup>) and 202 (184.5 km<sup>2</sup>) which do not have a mandatory maximum duration and are subject to renewals after every two years; and
- d.) From evidence adduced before the committee, the same SPL licenses were renewed again on February 1, 2011.

76. The two licenses – SPL. No. 122 and 202, issued to Mid Migori Mining Company Limited had specific special license conditions, which include:-
- f) Submission of progress reports on a quarterly basis;
  - g) Transfer or assignment of the special license requires the Commissioner's consent;
  - h) The company to rehabilitate any degraded areas by exploration activities;
  - i) Progressive reduction of the license areas or payment of four times the license fees; and
  - j) Renewal of the special license on application by the licensee and subject to satisfactory performance on the work programme and fulfillment of the license conditions.

77. From the above 52, In fulfillment of the license conditions, The Committee observed that:-

- a) The Company gave quarterly reports to the Commissioner of Mines and Geology, for the Ministry of Environment and Mineral Resources;
- b) No evidence has been provided to show that there was transfer of assignment of the special license requiring the Commissioner's consent
- c) On the site visit, company has not rehabilitated any degraded areas by exploration activities. There is no rehabilitation of mines or degraded areas and also the material may have a health hazard to the community;
- d) Renewal of the special license on application by the licensee was not provided or done and that performance on the work programme and fulfillment of the license conditions was not fulfilled as per the Commissioners letter ordering fast tracking and completion of activities and the various warnings b the Commissioner of Mines & Geology;
- e) undertook exploration work under joint ventures;
- f) was penalized for non reduction of the areas - in 1999, the company reduced the license areas for SPL No. 122 from 245km<sup>2</sup> to 126Km<sup>2</sup>
- g) In 2009, the Commissioner of Mines, after it became evident that the Company has held the license areas for quite a long time without concluding exploration work, ordered for a fast tracking and completion of activities vide letter Ref.SPL/232/IV/(49) dated May 14, 2009.

## **REQUIREMENTS FOR LICENSE**

**78.**The requirements for exclusive prospecting license/special prospecting licenses are:-

- a) The name of the prospecting right holder;
- b) A receipt for deposit with the Provincial Commissioner of the Province in which mineral resource is to be prospected;
- c) A written consent from the land owner;
- d) A written consent from the County Council of the mineral prospecting area;
- e) A map showing the proposed mineral prospecting area;
- f) A schedule description of the area based on a map scale of 1:50,000 where possible;
- g) A detailed work programme;
- h) An expenditure proposal for implementing the work programme;
- i) Name of the company represented by the applicant;
- j) Certificate of registration of the company/partnership;
- k) A copy of the Memorandum and Articles of Association of the company (if liability);
- l) Name and nationality of the director(s)/partner(s) of the company;
- m) Position of applicants in relation to or under the company;
- n) A statement of Technical Capability and experience in previous similar work/programme;
- o) Financial capability of the applicant, giving supporting bank statements; and
- p) The name and the qualifications of the supervisor/manager who will be responsible for the programme.

**79.**From the above 54, In meeting the criteria for the requirements for exclusive prospecting license/special prospecting licenses, the Committee Observed as follows:-

- a.) That the Company may have not complied with providing the written consent by the council and land owners and receipt for deposit with the Provincial Commissioner of the Province in which mineral resource is to be prospected. County Council of Migori had not issued any consent to Mid-Migori Mining Company Limited. The company presented a consent letter dated 5<sup>th</sup> November 1987 signed by the then Chairman of the

South Nyanza County Council, Mr. Elisha Aketch Chieng. Therefore, making the consent fraudulent on the following grounds:-

- (i) It was signed by non-executive, unauthorized officer of the council, According to Local Government Act, Cap 265, the Chairman is not a gazetted officer, therefore not authorized to sign documents on behalf of the Council;
  - (ii) The consent was granted to Migori Gold Mining Company not Mid Migori Mining Company Limited. The Committee observed that is the consent is transferable?;
  - (iii) No other letter or consent was issued prior to the one issued in 1987 contrary to section 86A of the Local Government Act, Cap 265, Laws of Kenya;
- b.) Following the enactment of the EMCA Act, 1999, the Company should also comply with environment regulations as per the Act. The Act stipulates that there should be an Environmental Impact Assessment report to be prepared by the proponent (company) for it to be allowed to undertake such activities. An inspection by NEMA established that Mid-Migori Mining Company Limited commenced gold mining and exploration activities without Environmental Impact Assessment being carried out pursuant to section 58(1) of Environment Management & Coordination Act(EMCA), 1999 as required for the licensing of exploration. Therefore, the company has not complied with EMCA Act, 1999;
- c.) The company is licensed to undertake exploration but may be clandestinely doing mining;
- d.) The company appears not to be completing the work they were licensed to undertake, yet they are not complaining.
- e.) As late as November 2010, the company was still requesting the Commissioner of Mines to assist to get consents from land owners and county councils inn Migori, Kuria West and Nyatike;

#### **TAX AND CUSTOM COMPLIANCE**

80. The Committee found that on **Tax and custom compliance** of Mid Migori Mining Company Ltd, the Kenya Revenue Authority has nothing adverse

against the Company and that the Company has complied with the importation requirements.

### **CORPORATE SOCIAL RESPONSIBILITY**

- 81.** The Company **employs** 180 staffs, of which 28 are permanent and the rest are casuals (152 – all locals). Of the 28 staff on permanent basis, only 5 are locals;
- 82.** Artisanal miners are illegal and they try to assist the local community as the license does not allow for development of Big projects;
- 83.** There exist a bad relationship between the locals of Nyatike and the Mid Migori Mining Company Limited and is as a result of:-
- a) Lack of corporate social responsibility by the company in form of employment and provision of other social amenities or assistance;
  - b) Lack of information on the activities of the company;
  - c) The company has been in Nyatike for long without any mining;
  - d) The locals believe that the company is doing mining instead of prospecting or exploration;
  - e) The company has been defrauding the locals of their lands through illegal and unprocedural ways;
  - f) The company has been operating without consent of locals and Local County Council;
  - g) The Company has not been rehabilitating and restoring back dug out or excavated areas as required;
  - h) The company has not been honouring lease agreement on land rent for private land; and
  - i) The company has been entering into people's land wrongfully and conducting mining, exploration and extracting activities.
- 84.** From the above 57 -59, , the Committee Observed as follows, That:-
- a.) the Company apart from employing locals as casual and a few on permanent basis, the employment is skewed on clan basis;
  - b.) Has not undertaken any major corporate social responsibility in the area and this has created a bad relationship between the company and the locals, among many other issues.

## PART II - SUMMARY OF FINDINGS

85. The Committee therefore found out that:-

- (a) **Consent from the County Council** - Mid Migori Mining Company Limited has been undertaking exploration without the consent of the Migori County Council and or the former South Nyanza County Council, as the consent provide was irregularly signed;
- (b) **A written consent from the land owner** - Mid Migori Mining Company Limited has been undertaking exploration within privately-owned pieces of land, with the help of the Provincial Administration and Department of Mines & Geology, without the consent of land owners in some instances;
- (c) **Consent is non-transferable** - Mid Migori Mining Company Limited did change the name once from Migori Gold Mining Limited to Mid Migori Mining Company Limited and there is no evidence to show that the consent granted by the Commissioner of Mines & Geology was noted pursuant to the provision of the Mining Act;
- (d) **Environmental Impact Assessment Report** – following the enactment of the Environment Management Coordinating Act, 1999 (the company was licensed in 1989); the Company should have complied with the rules and regulations under the Environment Management Coordinating Act, 1999 and prepared an Environmental Impact Assessment report.
- (e) Following the Committee inspection, the Company appears not to have been **rehabilitating and restoring back dug out or excavated areas** as required;
- (f) Mid Migori Mining Company Limited, appears to have a **frosty relationship with the locals** as a result of:-
  - i. Lack of corporate social responsibility by the company in form of employment and provision of other social amenities or assistance;
  - ii. Lack of information on the activities of the company;
  - iii. The company has been in Nyatike for long mining;
  - iv. In some instances, the locals believe that the company is doing mining instead of prospecting or exploration;
  - v. In some instances, the company has been defrauding the locals of their lands without due regard to procedure and law;
  - vi. In some instance, The company has failed honour leases or agreement on land rent for private land; and
  - vii. In some instance, the company has been invading into people's land conducting mining, exploration and extracting activities without consent.

- (g) **Renewal of Licenses** – Based on evidence adduced by the Commissioner of mines & Geology, licenses granted to the Company have been renewed several times. This is because Company was granted Special Prospecting License under S.L. 122 and 202 (158) from 1<sup>st</sup> April, 1988 and 1<sup>st</sup> November 1989 respectively. The licenses were re-granted (read renewed) to the company from February 1995; and the same SPL licenses were renewed again on February 1, 2011.
- (h) **Consents from land owners** - As late as November 2010, the company was still requesting the Commissioner of Mines to assist to get consents from land owners and County Councils in Migori, Kuria West and Nyatike. Contrary to claims by mid Migori Mining Company Limited to have consents from Land owners, for them to be granted a special prospecting license by the Commissioner of Mines & Geology and thus satisfying the criteria for grant of a license.
- (i) Despite Mid Migori Mining Company Limited being in Migori, Kuria West and Nyatike for about 30 years, it's intriguing to note, that there no results to show, have not raised or voiced any challenges or grievances or complaining but appear to be undertaking mining activities beyond prospecting or exploration with different ventures;
- (j) Mid Migori Mining Company Limited has not met the following requirements for grant of exclusive prospecting license/special prospecting licenses, these are:-
- i. A receipt for deposit with the Provincial Commissioner of the Province in which mineral resource is to be prospected;
  - ii. A written consent from the land owner;
  - iii. A properly acquired written consent from the County Council of the mineral prospecting area;
  - iv. A detailed work programme;
  - v. An expenditure proposal for implementing the work programme;
  - vi. A statement of Technical Capability and experience in previous similar work/programme; and
  - vii. Financial capability of the applicant, giving supporting bank statements.
- (k) According to the evidence adduced by the Commissioner of Mines & geology, In 2009, the Commissioner of Mines & geology, after it became evident that the Company has held the license areas for quite a long time without concluding exploration work, ordered for a fast tracking and completion of activities vide letter Ref.SPL/232/IV/(49) dated May 14,



2009. In the letter, the Commissioner noted that Mid Migori Mining Company Limited has not met the following specific special license conditions:-

- i. Transfer or assignment of the special license requires the Commissioner's consent;
  - ii. The company to rehabilitate any degraded areas by exploration activities; and
  - iii. Renewal of the special license on application by the licensee and subject to satisfactory performance on the work programme and fulfillment of the license conditions.
- (l) Mid Migori Mining Company was penalized by the Commissioner of Mines & Geology for holding the license area for long without completion of exploration works; and
- (m) Lack of transparency and accountability in their declaration of samples meant for export to Tanzania - Mid Migori Mining Company Limited has been taking mineral samples to Tanzania for laboratory testing and from the records availed to the Committee, there is no customs declaration and appear incomplete. Consequently, the results of the testing undertaken in Tanzania are not availed.
- (n) Mid Migori Mining Company Limited was granted a special prospecting rights through his applicant, one Mr. James Mathenge, a former government employee and Permanent Secretary while still services contrary to section 81 of the mining Act, Cap 306 Laws of Kenya;

## **CONCLUSION**

86. Following the Question by private notice by the Member for Nyatike, Hon. Anyanga, MP, Committee makes the following conclusion, that:-

- a.) Mid Migori Mining Company Limited has not met the following requirements for grant of exclusive prospecting license/special prospecting licenses, these are:-
  - i. A receipt for deposit with the Provincial Commissioner of the Province in which mineral resource is to be prospected;
  - ii. A written consent from the land owner;
  - iii. A properly acquired written consent from the County Council of the mineral prospecting area;
  - iv. A detailed work programme;
  - v. An expenditure proposal for implementing the work programme;

- vi. A statement of Technical Capability and experience in previous similar work/programme; and
- vii. Financial capability of the applicant, giving supporting bank statements

b.) Mid Migori Mining Company Limited has not met the following specific special license conditions:-

- i. Transfer or assignment of the special license requires the Commissioner's consent;
- ii. The company to rehabilitate any degraded areas by exploration activities; and
- iii. Renewal of the special license on application by the licensee and subject to satisfactory performance on the work programme and fulfillment of the license conditions.

c.) Mid Migori Mining Company Limited, appears to have a **frosty relationship with the locals** as a result of:-

- i. Lack of corporate social responsibility by the company in form of employment and provision of other social amenities or assistance;
- ii. Lack of information on the activities of the company;
- iii. The company has been in Nyatike for long mining;
- iv. In some instances, the locals believe that the company is doing mining instead of prospecting or exploration;
- v. In some instances, the company has been defrauding the locals of their lands without due regard to procedure and law;
- vi. In some instance, The company has failed honour leases or agreement on land rent for private land; and
- vii. In some instance, the company has been invading into people's land conducting mining, exploration and extracting activities without consent.

## RECOMMENDATIONS

87. From the foregoing, and based on evidence adduced before the Committee, the Committee recommends, that:-

- 1. the Commissioner of Mines and Geology, should re-evaluate and assess the need for grant of a Special exploration/prospecting license to Mid Migori Mining Company Limited with a view to revoking one of the two Special exploration/prospecting license;

2. The Ministry of Environment and Mineral Resources in conjunction with the Ministry of Lands should with immediate effect investigate the land disputes and alleged fraudulent acquisition of title deeds by Mid Migori Mining Company Limited. The matter should be resolved and necessary action taken including revoking the licenses held by Mid Migori Mining Company Limited if culpability is established.
3. The Director General, National Management Environment Authority, should with immediate effect carry out an Environmental Impact Assessment audit on Mid Migori Mining Company Limited, and subject it to public scrutiny and consultations pursuant to the provisions of Environment Management & Coordination Act, 1999.
4. The Minister for Environment & Mineral Resources, should without further delay cause the proposed Mining Bill, to be tabled in Parliament for consideration by end of September 2012;