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THE SENATE

STANDING COMMITTEE ON LAND AND NATURAL RESOURCES

ELEVENTH PARLIAMENT-SECOND SESSION

REPORT

ON THE PUBLIC HEARING HELD ON 29<sup>TH</sup> OCTOBER 2014 ON THE  
NATURAL RESOURCES (BENEFIT SHARING) BILL, 2014

CLERK'S CHAMBERS  
THE SENATE  
PARLIAMENT OF KENYA  
NAIROBI

NOVEMBER 2014

PAPER LAID  
BY the Vice-Chairperson  
Standing Committee  
Land & Natural Resources  
26/11/2014

Approved  
  
Spears  
26/11/14

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## **ACRONYMS**

KRA.....Kenya Revenue Authority  
KICC.....Kenyatta International Convention Centre  
MEWNR.....Ministry of Environment, Water & Natural Resources  
NEMA.....National Environment Management Authority  
KWS.....Kenya Wildlife Service  
KFS.....Kenya Forest Service  
WRMA.....Water Resources Management Authority  
EITI.....Extractive Industries Transparency Initiative  
KAM.....Kenya Association of Manufacturers  
EMCA.....Environment Management & Coordination Act  
CIDPs.....County Integrated Development Plans

## **PREFACE**

1. The Standing Committee on Land and Natural Resources was constituted on Thursday 27th February 2014 during the Second Session of the Eleventh (11th) Parliament pursuant to the provisions of Senate Standing Order No.208.
2. The Committee is mandated, under the Second Schedule of the Senate Standing Orders, *to consider all matters related to lands and settlement, environment, forestry, water resource management and mining,*
3. In executing its mandate, the Committee oversees the Ministries of:
  - a) Land, Housing and Urban Development,
  - b) Environment, Water and Natural Resources and
  - c) Mining.
4. The Committee comprises the following Members:

Sen. Lenny Kivuti	- Chairman
Sen. George Khaniri	- Vice-Chairman
Sen. Christopher Obure	- Member
Sen. Dawson Mwazo	- Member
Sen. Henry Ndiema	- Member
Sen. Boy Juma Boy	- Member
Sen. Isaac Melly	- Member
Sen. Liza Chelule	- Member
Sen. Martha Wangari	- Member

## EXECUTIVE SUMMARY

Mr. Speaker Sir, the Natural Resources (Benefit Sharing) Bill (Senate Bill No. 34 of 2014) was published in the Kenya Gazette Supplement No. 137 of 12<sup>th</sup> September, 2014 as a Bill originating from the Senate.

Upon publication, the Bill was read a First Time in the Senate on Wednesday 1<sup>st</sup> October 2014 and referred to the Committee on Land and Natural resources as required under Standing Order 130 (1) of the Senate.

Pursuant to Article 118 of the Constitution and Standing Order No. 130 (4), of the Senate Standing Order, the Standing Committee of the Senate on Land and Natural Resources facilitated a public hearing forum that was held on 29<sup>th</sup> October 2014 at Shimba Hills Hall, Kenyatta International Convention Centre to take into account the views and recommendations of the public.

According to the objects and memoranda, the Bill aims to establish a system of benefit sharing in resources exploitation between resource exploiters, the National government, the County governments and the local communities. It also proposes to establish the Natural Resources Benefits Sharing Authority and for connected purposes.

The Committee during its meeting held on Tuesday 18<sup>th</sup> November 2014, considered the submissions from the public hearing and recommended that;-

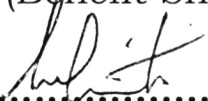
- a) Further consultations be held on the policy issues highlighted on the matrix attached to this Report as *Annex I* and
- b) The Natural Resources (Benefit Sharing) Bill 2014, be adopted subject to the amendments contained in *Annex II* to be moved at the Committee Stage.

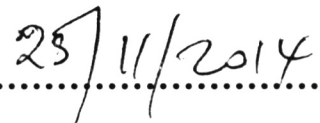
The Bill contains provisions that are expected to address among other issues, the misunderstanding that have been witnessed in the recent past between resources exploiting companies and local communities on the one hand, and between counties over the sharing of natural resources.

**ACKNOWLEDGMENT**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conduct of the public hearings. The Committee also thanks members of the public who made submissions, both orally and in writing.

**Mr. Speaker Sir,** It is my pleasant duty, pursuant to Standing Order 203, to present a Report of the Standing Committee on Land and Natural Resources on public hearing held on 29<sup>th</sup> October 2014, on the Natural Resources (Benefit Sharing) Bill 2014 for consideration by the House.

**SIGNED**.....

**DATE**.....

**SEN. LENNY KIVUTI,  
CHAIRMAN, LAND & NATURAL RESOURCES COMMITTEE**



## 1.0 INTRODUCTION

**Mr. Speaker Sir,**

The Bill was sponsored and published by Senator Agnes Zani, Chairperson of the defunct Senate Ad-hoc Committee on Royalties Accruing from Natural Resources in the Counties.

The Select Committee was formed on 26 June 2013, pursuant to a Resolution of the Senate. The Mandate of the Committee was to initiate legislation to require investors to pay a percentage of their turnover as royalties to the counties where they operate and to determine:-

1. The criteria to be used in payment of a percentage of the Royalties by investors in the counties where the exploitation of natural resources occurs;
2. How the revenue accrued will be utilized by the country and counties ;
3. Any other relevant issue that may arise in regard to other existing legislation.

The Bill has been processed by the Committee and is now ready for presentation to the House for consideration.

## 2.0 OVERVIEW OF THE NATURAL RESOURCES (BENEFIT SHARING) BILL 2014

**Mr. Speaker Sir,**

The Bill is divided into seven **(VII) parts** as follows;

**Part I:** Deals with the preliminaries including the short title, interpretation, application of the act and the guiding principles for benefit sharing.

**Part II:** Establishes the Benefit Sharing Authority and outlines its functions.

**Part III:** Creates the administrative structures and requirements for office holders including qualification for appointment, tenure of office, vacation of office, remuneration and conduct of business among others.

**Part IV:** Explains the procedure for determining and reviewing amounts of royalties and fees payable by affected organizations. It empowers the Kenya Revenue Authority (KRA) to collect royalties from affected organizations and pay monies collected to the fund, and declare the same to the Authority. This part also outlines a revenue sharing ratio.



**Part V:** Provides for county benefits sharing agreements and establishes a county benefit sharing committee responsible for negotiating with affected organizations on behalf of the county Government prior to entering into county benefit sharing agreements, among other responsibilities.

**Part VI:** Contains financial provisions governing funds of the authority including monies and assets accruing to the Authority in the course of its functions, and, - creates a Natural Resources Royalties Fund into which all contributions and other payments required by this act are to be paid to. Under this part, the authority is required to submit annual reports to the Auditor General, the Senate and the President indicating the total sums contributed towards benefit sharing and its distribution.

**Part VII:** Enumerates miscellaneous provisions governing the use of retained funds and lists offenses and transitional provisions in the bill. This part also empowers the Cabinet Secretary responsible for natural resources to make regulations for better enforcement of this Act.

**Schedule:** The Schedule contains provisions for the conduct of the business and affairs of the board of the Authority including the conduct of meetings, quorum requirements, conflict of interest and rules of procedure.

### **3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION.**

**Mr. Speaker Sir,**

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 130 (4), the Committee held a one day public hearing at **KICC** on 29/10/2014 and received the following representations concerning the bill under consideration;-

#### **3.1 Submissions from the Environment Secretary, Ministry of Environment, Water and Natural Resources (MEWNR).**

The Environment Secretary informed the forum that the bill was timely as drafted and was not in conflict with the Constitution and aims to give effect to Articles 69 (1) 71 (1), (2) of the Constitution. The Environment Secretary, however, noted that the Bill does not adequately address all aspects of environment and natural resources as envisaged in the Constitution.

She attributed the inadequacies in the law to the delay in enacting legislation to give effect to Chapter 5, Part 2 of the Constitution, namely: (a) Legislation on agreements relating to Natural resources and (2) Legislation relating to the environment as listed in the Fifth Schedule. She made the following submissions;



## THAT

- a) To be consistent with international standards and best practices, the Bill should be anchored in a national policy on natural resources on benefit sharing. The policy would set out the philosophy, objectives and principles for natural resource management in consonance with the aspirations of the people of Kenya.
- b) The main thrust of the Bill is the creation of a National Benefit Sharing Authority. However, establishing the National Benefit Sharing Authority would create overlaps of roles by centralizing the functions that are currently being performed by lead institutions such as NEMA, KWS, KFS, WRMA. The law should provide clarity to avoid ambiguity and potential conflict and overlap with existing legislations. The duplication can lead to conflict, bureaucratic inertia and high administrative costs,
- c) Various natural resources have different characteristics and standalone policies and legislations. Regulations on benefit sharing should therefore be anchored in the sectoral legislation for ease of implementation and monitoring. The proposed National Benefit Sharing Authority should have linkages with other sectors to ensure harmonization and consultation,
- d) There needs to be a thought given to the possibility of mainstreaming the functions of benefit sharing authority with subsector organizations and lifting the revenue part to the Commission on Revenue Allocation,
- e) There is need to add several definitions to provide clarity on terms used in the body of the Bill, e.g., Natural Resources, Minerals, Wildlife, etc.
- f) There is need to expand definition of royalties to capture the true meaning of the word as related to business transaction in respect to exploitation of natural resources – for example, net income or gross income in terms of revenue,
- g) On clause 24 (1), there is need to ensure that the authority will determine royalties in consultation with lead agencies.
- h) On Part II: 1(i): there is need to expand scope to include incentives and benefit sharing.
- i) On clause 6(i) as part of the authority to include consultation with sector specific organizations in identifying incentives and benefits to promote conservation of natural resources.



- j) On clause 26 (i), there is need to provide clarity in relation to section 25(1) and (2) in respect to which revenue is being referred to or the one referred to section 24(1)
- k) Clause 3 (1) on categories covered by Bill should include specific reference to biodiversity, Enzymes and Bacteria all of which have high potential for industrial exploitation and
- l) The application of the act needed to be extended to other natural resources such as marine and gas

### **3.2 Submissions from Base Titanium**

A representative of the Base Titanium, Mr. J. Schwarz, made the following presentation;-

#### **THAT;-**

- a) In the definition of County Benefit Sharing Agreement (part 1), the parties to the agreement needed to be properly identified. The definition only referred to “affected organizations and County government”;
- b) Clause 3(1) on the application of the act should not include minerals as they were already under the management of the National Land Commission. This in the opinion of Base titanium was a breach of the constitution;
- c) Clause 4 of the bill referred to the guiding principles of benefit sharing, where it mentioned that in performance of their actions, all persons under this Bill would be guided by the principle of transparency and inclusivity. However, Kenya is not compliant to EITI (Extractive Industries Transparency Initiative), which guarantees transparency;
- d) Clause 24(1) which empowers the authority to determine and review the amount of royalties and fees payable by affected organisations in each year in respect of a particular sector where a written law does not prescribe the royalties or fees, should not be in the bill since the mining Act does not provide for the same;
- e) Clause 27 on County Benefit sharing needs to be reviewed to reflect how benefit sharing agreement between affected organisation and a county government would be effected. The Bill needed to be more specific and clearly define the concept of benefit sharing agreements; distinguish between statutory royalty payments and provision of non-monetary benefits and ensure harmony with community development agreements already in place or mandated under the Mining Act;

- f) Clause 34 provides for a natural resources royalties fund and mentions that all fees and other charges levied on affected organisations for the exploitation of natural resources should be paid to the fund. However, there are numerous other license and permit fees paid directly to administering agencies. Base Titanium was therefore of the opinion that only royalties should be paid to the fund since other charges and contributions were already levied elsewhere;
- g) Clause 41 of the bill must be specific on the Cabinet Secretary responsible for the overall administration of this Act since Natural resource overlaps several ministries and departments.

### **3.3 Submissions from the National Environment Civil Society Alliance of Kenya (NECSA)**

A representative of the civil society made the following submissions;-

**THAT;-**

- a) On clause 2, expand the definition of the following words “Affected County, Affected Organization, Benefits, Exploitation, Local Communities,
- b) On clause 2, add the following words to the definitions “Cabinet Secretary and Authority”
- c) On clause 2, define the word “Natural Resources” to provide guidance for the purposes of application of the Bill,
- d) On clause 3, - application of the Act, the section on the application of the Bill should be removed and in its place there be a schedule of natural resources or categories of national resources to which the Bill will apply,
- e) On clause 4 – the Guiding Principles add “Sustainable Natural Resource Management” as a guiding principle,
- f) On clause 4 Revise “Revenue Maximization and Adequacy” to “Benefit Optimization”
- g) On Clause 6 (f) on the Functions of the Authority, the emphasis should be to conduct valuations in order to determine the best viable land use options before the Communities get into agreement
- h) On Clause 6 (h) on Determining Appeals, this should be performed by either a tribunal or environment land court since the authority may not be competent enough to determine appeals arising out of conflicts,



- i) Add clause 6 (i) - to build capacity of local communities to be able to negotiate for benefits as well as implement projects
- j) Add clause 6 (j) – to prepare national guidelines on benefit sharing in consultation with other sectoral leads,
- k) Clause 7 (b) on management of the Authority, revise the “Principal Secretary for the time being responsible for matters of Environment or the Principal Secretary’s alternate” and focus on the Principal Secretary for the time being responsible for matters of Natural Resources,
- l) Clause 7 (g) include – Principal Secretaries of the Ministries responsible for foreign affairs and trade as well as that responsible for Devolution & Planning to enable the Country deal more effectively with multinationals while the ministry responsible for planning would ensure equitable and effective management of the benefits received respectively, and
- m) Clause 24 (1) on Review amount of Royalties & Fees payable – There is a need to review the interval of reviews since the yearly interval for determination of the Royalties may be impractical.

### **3.4 Submissions from the Association of Professional Societies of East Africa.**

#### **THAT;-**

- a) The association had been working on a natural resources management bill and therefore requested to present their draft bill to the committee for review and comparison to avoid duplication and
- b) The committee agreed and requested the society to share its draft bill with the committee at an appropriate time.

### **3.5 Submissions from the Natural Resources Alliances of Kenya (KeNRA)**

The alliance felt that the bill left out land which was an integral part of natural resource management, and asked the Committee to consider linking the Benefit sharing authority with land actors such as the National Land Commission.



### **3.6 Submissions from School of Biological Sciences, University of Nairobi (UoN)**

The university of Nairobi representative implored the committee that there was need to ensure the bill was in harmony with other laws and that there should be put a clear statement that states which Act would take precedence in case of conflict.

### **3.7 Submissions from the Kenya Civil Society Platform on Oil and Gas**

Representatives of the civil society platform felt that there were many complaints from communities at grassroots level and that local community benefits were usually ignored by the exploiting companies that tend to only concentrate on national benefits. To ensure this did not continue, the Benefits Sharing Authority should be included in the process of preparing and signing the contracts. They also proposed that the revenue ratio to be dependent on the natural resource type.

### **3.8 Submissions from the Kenya Chamber of Mines**

The Ag. Chief Executive Officer Kenya Chamber of Mines, Mr. Stephen Mwakesimade the following presentation;-

#### **THAT;-**

- a) Clause 7 (g) on composition of the Board of the Authority, the representative from the Kenya Association of Manufactures (KAM) does not fully represent the private sector interests, instead it should be "One person nominated by an umbrella body representing the interests of the private sector";
- b) Clause 25 – Collection of Royalties – The collection of revenue from Royalties is presently collected by the Ministry of Mining and there could be a complication to allow the Kenya Revenue Authority to undertake the task;
- c) Clause 26 on Revenue Sharing Ratio – The Mining Bill 2014 that has presently undergone the third reading in the National Assembly provides for a clear revenue sharing ratio and this particular provision would therefore be in contention with that particular section should the Mining Bill be assented to into law;
- d) Clause 32 makes reference to the county benefit sharing committee. The modality of how a community would enter into an agreement with a

committee needed to be made clear as the fluidity of the provision gave room for contention,

- e) Clause 39, (4) on offenses – to be removed in the Bill as it could potentially lead to administrative crisis and was overlapping the roles of other bodies with power to cancel licences and
- f) Clause 40 on transitional provisions mandates the Authority to review all existing laws and agreements within one year and submit a report to parliament. The Chamber of mines preferred to have such a report submitted to the Attorney general in his capacity as chief legal advisor of government

### **3.9 Submissions from the Kenya Wildlife Service**

Kenya Wildlife Services (KWS) informed the committee that there was need to define benefits-both direct and indirect and not just the monetary benefits. This would include infrastructure development and corporate social responsibility where the community will directly gain from the venture.

### **3.10 Submissions from Muranga County Assembly**

A representative from Murang'a County Assembly requested the Committee to amend

- a) Clause 6 (3)(b) by adding the words "*county governments*" immediately after the word "*communities*",
- b) Clause 20 (1) (2) and (3) on Common Seal of the Authority. Sub-clause (2) should refer to the Common Seal of the Authority like the other sub clause (1) and (3) for clarity and
- c) Clause 28 (2) (c) to indicate that the county benefit sharing committee shall include five persons nominated by the Governor with the approval of county assembly. They indicated that there was need to categorize National, County Government and Community Resources to avoid conflict especially on matters of size of particular resources in particular jurisdictions.

### **3.11 Submissions from Pelum-Kenya**

The Committee was informed that:-



- a) There is need for clarity on the policies that inform the development of this legislation,
- b) Clause 34 gave discretionary role on the establishment of the Natural Resources Royalties Fund. This needed to be clarified; whether establishment of the fund would be mandatory or discretionary,
- c) The bill failed to lay emphasis on the important aspect of valuation and most importantly on an inventory of the distribution and profile of natural resources which emanates from a National Environment Action Plan Committee in the EMCA Act 1999 and of which the EMCA Amendment bill proposes its revocation and
- d) It was important that the legislation ensures participation and adequate representation of all Kenyans including the indigenous people.

### **3.12 Submissions from the Civil Society Alliance of Kenya National Environment**

A representative of the alliance informed the Committee that Clause 34 (2)(b) was not practical as it placed a blanket requirement for payment of all fees and other charges levied on affected organizations for the exploitation of natural resources. All fees and charges implied that even business licenses and cess for instance shall be paid into this Fund.

### **3.13 Submissions from the Kenya National Commission on Human Rights (KNCHR)**

The KNCHR took cognizance of the fact that, natural resources albeit being a critical facet in the realization of a country's development agenda were also a potential cause for disputes and by extension violent conflicts pitting nations, communities and persons alike.

They implored the committee to ensure that in realizing the objectives of the Act, persons charged with the implementation mandate put sufficient emphasis on the principles of transparency and sustainability in line with existing international best practices of resource sharing for instance, Extractive Industries Transparency Initiative (EITI).

According to the KNCHR therefore, the passing of the Natural Resources Benefit Sharing Act would be significant for Kenya not only in ensuring homogenous development all over the country but also successful implementation of devolved system of governance. The following suggestions were included in the KNCHR presentation:

- a) Clause 2, on Interpretation – The Committee to consider giving sufficient definitions to the following terminologies to avoid ambiguity;-“Affected organisation, exploiter, benefits, royalties, minerals and authority,
- b) Clause 3 on the application of the act, it is important to include geothermal and wind energy since they formed part of the natural resources with great economic impact,
- c) Clause 7 (1) on management of the Authority the Commission recommended the deleting of the words *nominated by the forum of County Assembly Speakers* and replace the thereof with special category of persons i.e. KOGA, chamber of mines and any other relevant body,
- d) Clause 6 (1) on functions of the Authority, the commission noted that the Revenue Sharing Authority would lack clear mandate since the functions set out under the bill were already done by existing statutory bodies including county governments and government ministries and
- e) Clause 26(3) on resources sharing at county level should be revised to make reference to County Integrated Development Plans (CIDPs), and avoid putting conditions on community spending of royalties.


#### **4.0 RECOMMENDATIONS OF THE COMMITTEE**

The Committee at its 23<sup>rd</sup> meeting held on Tuesday 18<sup>th</sup> November 2014, considered the proposed Natural Resources (Benefit Sharing) Bill 2014 and made the following recommendations;-

- a) That further consultations be held on the policy issues highlighted on the matrix attached to this Report as *Annex I* and**
- b) That the Natural Resources (Benefit Sharing) Bill 2014, be adopted subject to the amendments contained in *Annex II* to be moved at the Committee Stage.**

**Natural Resources Benefit Sharing Matrix**



	Subject/Issue	Specific Recommendation (s)	Rationale	Committee's Recommendations
<b>PART I; PRELIMINARY</b>				
	Clause 1			
 Clause 2 (Definitions)	<ul style="list-style-type: none"> <li>Affected county</li> </ul>	Expand the definition of the “affected county” to counties	This will cater for the regions where the resource is found in more than one county	Drafting discretion
	<ul style="list-style-type: none"> <li>Affected organization</li> </ul>	‘Affected organization’ means an organization or agency involved in the exploitation of natural resources to which this Act applies	There is need to expand this meaning to incorporate government agencies such as the Kenya Forestry Service which are or may be involved in exploitation resources e.g. forest resources which should as well benefit the local communities.	<b>Policy Issue</b>
	<ul style="list-style-type: none"> <li>Benefits</li> </ul>	Revise to ‘Benefit sharing’ means the sharing of any benefits <b>accruing</b> from the utilisation of natural resources in a fair and equitable manner		Not Clear/ Drafting Discretion
	<ul style="list-style-type: none"> <li>Benefits</li> </ul>	Benefits should be fees or Royalties provided for and chargeable under sector specific statutes in the course of exploiting Natural Resources.	Gains proceeds/profits is the wrong basis for quantifying the benefits	<b>Policy Issue</b>

	<ul style="list-style-type: none"> <li>• County Benefit Sharing Agreement</li> </ul>	Who are the parties to the agreement? And what purpose does it serve?	Identify the parties to the agreements	<b>Policy Issue</b>
	<ul style="list-style-type: none"> <li>• Exploitation</li> </ul>	Revise to “exploitation “means the extraction and/or use of a natural resources for commercial benefit	This definition needs to extend to natural resources whose use is ex-situ	Not Clear/ Drafting Discretion
	<ul style="list-style-type: none"> <li>• Local communities</li> </ul>	‘Local community’ means persons living or owning property in a ward within which a natural resources is situated and who are affected by the exploitation of that natural resource	There is need to are people who own property in the affected areas but do not reside within the area and they also need to benefit from these resources	Already Provided For
	<ul style="list-style-type: none"> <li>• Local Communities</li> </ul>	The Smallest administrative unit of the County Government is the Ward, thus, indicating sharing of the resources by local community is ambiguous and may lead to abuse of the same. Benefit sharing of the resources should be done at County government level which trickles down Sub - Counties and Wards	<b>THAT;</b> the use the word 'Local Community' should be deleted in every clause.	<b>Policy Issue</b>
		Define ‘natural resources’ to provide guidance for the purposes of application of this Bill.	This definition needs to be functionally distinct from that provided by the Constitution of Kenya which includes even	<b>Re-draft the opening paragraph to Clause 3 (1) as follows;- This Act applies with respect to the</b>

			sunlight	<b>exploitation of the following Natural Resources-</b>
		Add "Cabinet Secretary"	This would give a direction the ministry responsible for execution of this bill when enacted	<b>Insert the following new definition in appropriate alphabetical sequence- Cabinet Secretary Means the Cabinet Secretary for the time being responsible for Environment, Water &amp; Natural Resources.</b>
		Add "Authority" means the Natural Resources Benefit Sharing Authority	The word Authority is repeatedly used and therefore the users of this Bill should understand its meaning from the beginning.	<b>Insert the following new definition in appropriate alphabetical sequence- Authority means the Benefit Sharing Authority established under Section 6</b>
	• Royalties		Expand the definition to capture the true meaning of the word as relates to business transactions. e.g. Net income or gross income in terms of revenue.	<b>Policy Issue</b>
	• Natural Resources	Natural Resources should include specific reference to biodiversity, bacteria and enzymes.	Comprehensive definition of Natural Resources.	<b>Policy Issue</b>
Clause 3-		The Section on the	It is important to have	Drafting Discretion



Application of the act		application of the Act should be removed and in its place there be a Schedule of natural resources or categories of national resources to which this Bill will apply	guidance on what category of feature of natural resource will be subject to this Bill instead of a list.	
Clause 3 (1)	Application of the Act	This may constitute a Constitutional breach in respect of minerals whose administration is vested in the National Land Commission	Water Resources are governed by WRMA and Wildlife by KWS.	<b>Policy Issue</b>
		To the list of Natural Resources add i)Geothermal Energy ii) Wind	They form part of the Natural Resources with great economic impact	<b>Policy Issue</b>
Clause 4- Guiding principles of benefit sharing		Add “sustainable natural resource management” as a guiding principle	This would enhance the protection of ecological rights	<b>Insert the following new paragraph- f) Sustainable Natural Resource Management</b>
		Add “access to information” as a guiding principle	This is in line with the constitutional provision and would enhance transparency in the sector	Already provided for in paragraph (a) of the clause.
	Revenue Maximization and Adequacy	Revise ‘Revenue Maximization and adequacy’ to “Benefit Optimization”	The underpinning principle for any resource whether renewable or non-renewable must be “Sustainability”	Drafting Discretion

			<p>The focus on <b>revenue maximization</b> focuses on cash revenues without due regard to costs and benefits be they economic, social, or environmental.</p> <p>It is not clear what 'adequacy' is as a principle</p>	
		<p>The following is the suggested set of Principles;</p> <ol style="list-style-type: none"> <li>1. Benefits Optimization</li> <li>2. Transparency</li> <li>3. Equity</li> <li>4. Efficiency</li> <li>5. Accountability</li> <li>6. Public Participation</li> <li>7. Rule of Law</li> <li>8. Respect for Human Rights</li> </ol>	<p>It is important to have important principles standing out as opposed to lumping them together e.g efficiency and equity</p>	<p>Already provided for in the clause</p>
	Principals of Benefit Sharing	Kenya to apply for Extractive Industries Transparency Initiative (EITI) Membership	Kenya is not EITI Compliant	<b>Policy Issue</b>
Clause 1 (1)		Change numbering of 1 (1) and 1 (2) to 5 (1) and 5 (2) respectively	Consistency in numbering	<b>Drafting Issue</b>
Clause 1 (1)		There is established an Authority to be known as the Natural Resources Benefit Sharing Authority	There is need to state clearly by Noun the object of the Authority	Drafting Discretion
		Change the marginal notes to		



		Establishment of the Natural Resources Benefit Sharing Authority		
Clause 1 (2) c		Revise c to. Borrowing money	There is need to exclude <b>'lending'</b> from the actions that the Authority is empowered to carry out.	<b>Policy Issue</b>
Clause 6 (f)	Functions of the Authority	The emphasis here should be to conduct valuations in order to determine the best viable land use options before the communities get into agreements with the affected organizations	Research could be beyond the scope of the authority and may be performed by other research institutions in different sub sectors	No Specific Recommendation
		Should also be able to conduct analysis to determine the most viable projects for the communities and advise accordingly		
		Exclude (g) 'make recommendations to the national and County governments on the <b>better</b> exploitation of natural resources in Kenya	The Authority should limit its statutory concern to benefit sharing. The Authority is unlikely to possess the competence to advise on 'Better exploitation' considering there will be a wide variety of natural	<b>Policy Issue</b>

			resources involved	
6 (h)	Determine appeals	This should be performed by either a tribunal or environment and land court.	The authority may not be competent enough to determine the appeals arising out of conflicts	<b>Policy Issue</b>
		Add – to build the capacity of the local communities to be able to negotiate for benefits as well as implement projects	This would allow the communities maximize on the benefits received.	<b>Insert the following new paragraphs in clause 6 (1)</b> <b>(j) to build the capacity of the local communities to be able to negotiate for benefits as well as implement projects.</b> <b>(k) prepare national guidelines on benefit sharing in consultations with other sectoral leaders</b>
Clause 6 (1)	Functions of the Authority	Add extra function of the Authority	To provide for incentives and benefits for conservation of Natural Resources	<b>Insert a new paragraph immediately after paragraph (i);-</b> <b>(j) Identify, in consultation with sector specific organizations, incentives and</b>

				<b>benefits to promote conservation of Natural Resources</b>
		Add- prepare national guidelines on benefit sharing in consultations with other sectorial leads	Will enhance harmony across the sub sectors.	
		Exclude Mining because royalties are set out under the Mining Act.	Legislation on Mining Royalties is in place	Provided for under Clause 6 (3) which requires the Authority to observe all existing laws regulating Natural Resources
Clause 6(3)	This section should correspond with the preamble to avoid the ambiguity of the word “local communities” and reduce assumption of the word local community to also mean County Governments.	at clause b, by addition of the word ‘County governments’ immediately after the word “Communities	This section should correspond with the preamble to avoid the ambiguity of the word “local communities” and reduce assumption of the word local community to also mean County Governments.	<b>Paragraph (b) is amended by inserting the words “County Governments” immediately after the word “Communities”</b>
<b>PART III; THE MANAGEMENT OF THE AUTHORITY</b>				
Clause 7 (1)(b)		Revise to the “Principal Secretary of the Ministry for	The focus is one natural resources and not on the	<b>Delete the word Environment and</b>



		the time being responsible for matters of Natural Resources or the Principal Secretary's alternate"	environment	<b>substitute therefor the words Natural Resources</b>
Clause 7 (1) (d)		Consider deleting the this or replace with anyone in the extractive sector	No justification for singling out on this PS from Mining while there are others in extractive sector such as petroleum and have not been included in the board.	<b>Policy Issue</b>
Clause 7 (1) (e) and (f)		Consider 2 nominees by each of these parties and add another two nominated by NGO council or equivalent under the PBO act. Some of these must be nominated at the county benefit sharing committees	This would ensure adequate representation a wide range of stakeholders	<b>Policy Issue</b>
Clause 7 (1) (f)	Nomination of Community Representative to the Authority	Delete the words " Nominated by the forum of County Assembly Speakers"	The forum of County Assembly Speakers is not the right body to nominate the Community representatives	<b>Policy Issue</b>
Clause 7 (1) (g)		Replace "Kenya Association of Manufacturers" with KEPSA.	KEPSA has more representation and not only manufacturers are involved in exploitation of natural resources- KAM is actually a member of KEPSA	<b>Delete the words " Kenya Association of Manufacturers" and substitute therefor the words " An umbrella Body representing the interests of the private sector"</b>

		Include- Principal Secretaries of the ministries responsible for foreign affairs and trade as well as that responsible for devolution and planning	This will enable the country deal more effectively with multinationals while ministry responsible for planning would ensure equitable and effective management of the benefits received.	<b>Policy Issue</b>
Clause 7 (5)	Nomination of Members of the Board.	Insert “ The requirements of Chapter 6” immediately after the words “ Gender Principle”	Integrity issues are critical in the appointment of Board Members	<b>Insert the words “ And the requirements Chapter six” immediately after the words “Gender Principle”</b>
Clause 10 (a)	Vacation of office of Board Member	Delete paragraph (a) which provides that “ Is unable to perform the functions of his office by reason of mental or physical infirmity”	Paragraph (a) offends article 27 (4) of the Constitution and article 12 of the conventions on the rights of persons with disabilities (CRPD)	<b>Policy Issue</b>
		Delete paragraph (b) which provides that “ Is otherwise unable or unfit to continue serving as the chairperson or member of the Board”	The provision is too broad and ambiguous	<b>Policy Issue</b>
Clause 24 (1)	Imposition of Royalties and Fees.	Need to review the interval of the reviews	The yearly interval for determination of the royalties may be impractical since it is too short and also functionally contradicts section 26 (6) which provides for the Authority to review the	<b>Delete the words “ In each Year” appearing immediately after the word “Organizations”</b>

			<p>revenue sharing ration after every five years</p> <p>In determination of the benefit sharing ratios between different levels, proper justification should be made and the decisions should be informed by the judgment of the experts so that the ratios proposed are fair and equitable</p> <p>The Authority should issue guidelines for benefit sharing for specific sectors in natural resources as the ratios need not be the same for all natural resources.</p>	<p>Already Provided for in the Bill.</p> <p>Already Provided for in the Bill.</p>
		Authority should not impose Royalties in Mining	Mining Act takes precedence	Already Provided for in the Bill.
	Determination of Royalties	It should be determined on international Bench Marking and not perceived affordability.	The methodology prescribed is too subjective	<b>Policy Issue</b>
	Collection of Royalties and Fees	There is need to ensure that the Authority will determine royalties in consultation with lead agencies.		<b>Insert the words “ In consultation with the lead agencies for each Natural Resource”</b>



				<b>immediately after the words “Authority Shall”</b>
Clause 24 (2)		Insert (d) after sub section (c )		<b>Drafting Issue</b>
		Insert (e) –to read as “impacts on people and environment”		Insert the following New Paragraph (e) “impacts on people and environment”
Clause 25	KRA to Collect Royalties	Retain the present collection method by the Ministry of Mining through its account in the Central Bank of Kenya	Use of KRA to collect Royalties may compromise the current efficient mechanism.	<b>Policy Issue</b>
		Kenya should be EITI compliant.	Kenya is not EITI Compliant	<b>Policy Issue</b>
Clause 25 (3)		Delete Sub-Clause 3 which provides that the clause supersedes all other provisions in respect of collection of royalties	Unnecessary restriction of policy and legislative space	<b>Policy Issue</b>
Clause 26 (1)	Revenue Sharing Ratio	There is need to provide clarity in relation to section 25(1) and (2) in respect to which revenue is being referred to or the one referred to in section 24(1)	Provide Clarity on the meaning of the provisions	<b>Insert the words “Under the Act” Immediately after the words “Revenue collected”</b>
		Harmonize the revenue sharing ratio with the Mining Bill 2014	Formula in the Bill may differ from the formula in the Mining Bill passed by the National Assembly in	<b>Policy Issue</b>

			October 2014.	
Clause 26 (3)		Include reference to the County Integrated Development Plans.	The Act should not put conditions in Community spending on Royalties	<b>Policy Issue</b>
	Sovereign Wealth Fund	Set principles and do not prescribe hard numbers	The wisdom of a Sovereign Wealth fund should be revisited. It is unnecessary waste of funds since it entails setting aside savings earning low interest while carrying borrowings incurring high interest charges.	<b>Policy Issue</b>
Clause 27	County Benefit Sharing Agreement	The Bill needs to clearly define the concept of benefit sharing agreements distinguishing between statutory royalty payments and provision of non monetary benefits and ensure harmony with Community Development agreements already in place under the Mining Act.	In the case of Mining, Royalties collected by the National Government and shared with Counties.	<b>Policy Issue</b>
	Conflict between County Benefit Sharing Agreements and Community	The Community Development Agreement under the Mining Bill 2014 should prevail over the County Benefit Sharing agreements	The Mining Act is in place	<b>Policy Issue</b>

	Development agreements prescribed under the Mining Bill 2014			
Clause 28 (2)(b)	County Benefit Sharing Committee	Section 2 have additional section (c ) Section C be further amended to indicate that the five persons shall be nominated by the Governor with the approval of the County Assembly	It would be prudent to recognize the role of the County Assemblies in appointments of part of the membership of the County Benefit Sharing Committee	<b>Delete the words “Elected by the Local Community” and substitute therefor “Nominated by the Governor with the approval of the County Assembly”</b>
Clause 28 (6)	Percentage of a shared resource within the boundary of a County.	<b>THAT;</b> on subsection (6); further clarification is required as to the ratio of the members of the joint committee, if the members should be shared the uniformly by the jointly affected counties or by the ratio of the resource in the individual	Some counties may have a larger percentage of a shared resource within their boundary, this may cause strife with regards to the membership of the joint committee with a county owning a smaller percentage.	<b>Policy Issue</b>



Clause 29 (c)				
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**PART V- COUNTY BENEFIT SHARING**

Clause 30 (1)	Approval of County Benefit Sharing Agreements	Lack of approval should not prevent an organization from continuing to develop a project.	The County Assemblies may delay/reject the approval of the agreement despite investments made.	<b>Policy Issue</b>
	The bill is not clear on how the committee is established and who will be responsible for convening the meetings.			Already Provided for under Clause 28 (5)
		The authority should be able to issue guidelines on how the agreements at the county level should be made In this respect, the	There should be a clear linkages and harmony in the work of the Local community benefit sharing forum, county benefit sharing committee and the	Already Provided for under Clause 28 (5)

		authority should issue guidelines/ bill to provide a list of natural resources which the county government can make agreements on so that there is no conflict with the national government and others.	authority.	
Clause 30 (2)	Deposit of County benefit sharing agreement with the Authority	Prescribe the time frame within which the agreement should be deposited with the Authority		<b>Insert the words “Within 30 days of its execution” immediately after the word “Authority”.</b>
Clause 32	Local Community Benefit Sharing Agreement		Provide modality on how a community will enter into a local community benefit sharing agreement.	<b>Policy Issue</b>
Clause 32	Repeats Clause 27	Delete Clause 32	To rectify a drafting oversight.	<b>Delete Clause 32</b>
Clause 34	Natural Resources Royalties Fund	Revise Clause 34 2(b)	This provision places a blanket requirement for payment of all fees and other charges levied on affected organizations for the exploitation of natural resources. All fees and charges implies that even business licenses and cess for instance shall be paid	<b>Policy Issue</b>

			into this Fund. This is not practical	
	Payment of all fees and other charges to the fund	Only Royalties to be paid to the Fund	Payment of all Royalties to the Fund is contentious since there are numerous license and permit fees that are payable directly to the administering agencies	<b>Policy Issue</b>
Clause 38	Uses of Retained Funds	Who has priority between the <b>County Benefit sharing committee</b> and the <b>Local community benefit sharing forum</b> . Who takes precedence between the two in case of a conflict of the priorities.	This justifies the need to do away with the use of the words <b>local 'Local Community'</b> and to use County Government	<b>Policy Issue</b>
Clause 39 (4)	Cancellation of Licenses for breach of Act.	Delete the sub-clause (4)	Provision would lead to an administrative crisis since there are various other laws providing for the cancellation of licenses.	<b>Policy Issue</b>
Clause 40	Transitional Provisions	Report of the Authority should be submitted to the AG.  Provide a clear mechanism on how the Report will be translated into actionable undertakings within specific timelines.	The AG is the Principal Legal Adviser to the Executive Without actionable undertakings, submission of the Report will be an exercise in futility	<b>Policy Issue</b>  <b>Policy Issue</b>
Clause 41	Cabinet Secretary Power	Specify the Cabinet Secretary responsible for	Certainty of Administration	<b>In Clause 2, insert the following new</b>



	to make Regulations	overall administration of the Act.		<b>definition “Cabinet Secretary Means the Cabinet Secretary for the time being responsible for Environment, Water and Natural Resources”</b>
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**Proposed Committee Stage Amendments**

25<sup>th</sup> November, 2014

The Clerk of the Senate  
Parliament Buildings  
**NAIROBI**

**RE: COMMITTEE STAGE AMENDMENTS TO THE NATURAL RESOURCES  
(BENEFIT SHARING) BILL, 2014, SENATE BILLS NO.34 OF 2014**

**NOTICE** is given that the Chairman of the Committee on Lands and Natural Resources, Sen. Lenny Kivuti, intends to move the following amendments to the Natural Resources (Benefit Sharing) Bill, 2014, Senate Bills No. 34 of 2014, at the Committee Stage-

**CLAUSE 2**

**THAT** Clause 2 of the Bill be amended by inserting the following new definitions in proper alphabetical sequence-

“Authority” means the Benefit Sharing Authority established under section 5;

“Cabinet Secretary” means the cabinet secretary for the time being responsible for matters relating to the environment, water and natural resources;

**CLAUSE 3**

**THAT** Clause 3 of the Bill be amended in sub-clause (1)-

- (a) by inserting the words “the following natural resources’ immediately after the words “exploitation of” appearing in the opening paragraph to sub-clause(1);
- (b) by inserting the following new paragraphs immediately after paragraph (g)-
  - (h) geothermal energy;
  - (i) wind



#### **CLAUSE 4**

**THAT** Clause 4 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (e)-

(f) sustainable natural resources management

#### **CLAUSE 6**

**THAT** Clause 6 of the Bill be amended in sub-clause (1) by inserting the following new paragraphs immediately after paragraph (i)-

(j) build the capacity of local communities in negotiations for benefits and implementation of projects;

(k) prepare national guidelines on benefits sharing in consultation with other sectoral leaders;

(l) identify, in consultation with sector specific organizations, incentives and benefits to promote the conservation of natural resources;

#### **CLAUSE 7**

**THAT** Clause 7 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “environment” appearing in paragraph (b) and substituting therefor the words “environment, water and natural resources”;

(b) in sub-clause (1) by deleting the words “the Kenya Association of Manufacturers” appearing in paragraph (g) and substituting therefor the words “a recognized umbrella body representing the interests of the private sector in Kenya”;

(c) in sub-clause (5) by inserting the words “and the requirements of chapter six”

**CLAUSE 24**

**THAT** Clause 24 of the Bill be amended-

- (a) in sub-clause (1) by deleting the words “in each year” appearing immediately after the words “affected organizations”;
- (b) in sub-clause (2) by inserting the following new paragraph immediately after paragraph (c)-
  - (d) the impacts of the exploitation on the people and the environment

**CLAUSE 26**

**THAT** Clause 26 of the Bill be amended-

- (a) in sub-clause (1) by inserting the words “under this Act” immediately after the words “revenue collected”
- (b) in sub-clause (6) by inserting the words “in consultation with the lead agencies for each natural resource” immediately after the words “Authority shall”;

**CLAUSE 30**

**THAT** Clause 30 of the Bill be amended-

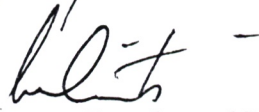
- (a) in sub-clause (2) by inserting the words “within thirty days of its execution” immediately after the word “Authority”

**CLAUSE 32**

**THAT** the Bill be amended by deleting clause 32.

Dated the.....25/11/.....2014

**LENNY KIVUTI,**



*Chairman, Committee on Lands and Natural Resources.*

**Minutes of the Committee dated 18<sup>th</sup> November 2014**



**MINUTES OF THE TWENTY THIRD MEETING OF THE STANDING COMMITTEE OF THE SENATE ON LAND AND NATURAL RESOURCES HELD ON TUESDAY 18<sup>TH</sup> NOVEMBER, 2014 IN THE MAIN PARLIAMENT BUILDING, COMMITTEE ROOM NO. 5 AT 10:30 A.M.**

**PRESENT**

Sen. Dawson Mwazo, M.P.	- Member (session chair)
Sen. George Khaniri, M.P.	- Vice Chair
Sen. Martha Wangari, M.P.	- Member
Sen. Boy Juma Boy, M.P.	- Member
Sen. Isaac Melly, M.P.	- Member

**ABSENT**

Sen. Lenny Kivuti, M.P.	- Chairman
Sen. Christopher M. Obure, M.P.	- Member
Sen. Henry Ndiema, M.P.	- Member
Sen. Liza Chelule, M.P.	- Member

**IN ATTENDANCE**

Sen. (Dr.) Agnes Zani, M.P.	- Sponsor of the Natural Resources Benefit Sharing Bill, 2014.
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**SENATE SECRETARIAT**

Mr. Boniface Lenairoshi	- Principal Clerk Assistant 1
Mr. Denis Abisai	- Principal Legal Officer
Mr. Charles Ngatia	- Clerk Assistant 111
Ms. Lucy Mwaniki	- Serjeant-At-Arms

**MINUTE NO. SEN/SCLNR/127/2014: - PRELIMINARIES**

The Chair called the meeting to order at 10:53 a.m. and there was followed with a word of prayer by the Principal Clerk Assistant 1.

At the start of the meeting, the Chairman and the Vice Chairman were not present and therefore members invoked Standing Order 192 whereby Sen. Dawson Mwazo was elected as the presiding chair for the meeting.

**MINUTE NO. SEN/SCLNR/128/2014: - ADOPTION OF AGENDA**

The agenda of the meeting was adopted with after it was proposed by Sen. Boy Juma Boy, M.P. and seconded by Sen. Martha Wangari, M.P. as follows;-

- i. Prayers,
- ii. Adoption of Agenda

- iii. Confirmation of previous minutes
- iv. Matters arising from previous minutes.
- v. Consideration of Report of the Public Hearing on the Natural Resources (Benefit Sharing) Bill 2014 held on 29<sup>th</sup> October 2014.
- vi. Consideration of proposed dates for the Public Hearing on Community Land Bill.
- vii. Any Other Business;
- viii. Adjournment and Date of the next meeting.

**MINUTE NO. SEN/SCLNR/129/2014: - CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS.**

The Committee confirmed the minutes of the previous meetings after they were proposed by Sen. Boy Juma Boy, M.P. and seconded by Sen. Martha Wangari, M.P.

**MINUTE NO. SEN/SCLNR/130/2014:- MATTERS ARISING FROM THE MINUTES.**

**1) Ex- Min No. Sen/SCLNR/078/2014.**

**Proposed visit to Kenya by CEO Ayala Water Treatment Company.**

The Committee was informed that;-

The State Department of Water in the Ministry of Environment, Water and Natural Resources had responded to the letter requesting them to organize and coordinate the visit by the CEO Ayala, Mr. Eli Cohen; and had extended an invitation to the Committee and Council of Governors to an initial preparatory meeting on 19<sup>th</sup> November 2014 from 10:00 a.m. at the Department offices.

**2) Ex- Min No. Sen/SCLNR/086/2014**

The Committee was informed that;-

- a) The report on the Statement on the demarcation of Konza City boundary was ready for consideration by the Committee.
- b) The other reports that were ready for consideration were that for the visit to Kwale Base Titanium Ltd and the visit to Israel.

Members resolved to consider the three reports in the next meeting.



**3) Ex- Min No. Sen/SCLNR/117/2014.**

**a) Statement by Sen. Joy Gwendo, M.P.**

Members were informed that;-

- i. The response to the Statement had been sought from three Ministries, that is, the Ministry of Lands, Housing and Urban Development, Ministry of Environment, Water and Natural Resources and Ministry of Roads and Transportation.
- ii. The Ministry of Lands, Housing and Urban Development had responded.
- iii. The Ministry of Roads and Transportation and the Ministry of Environment, Water and Natural Resources were to submit responses by the end of business day on 18<sup>th</sup> November 2014.

**b) Invitation to the United Nations Climate Change Conference 1<sup>st</sup> – 12<sup>th</sup> December 2014 Lima Peru**

Members noted that in future, the Chairman and the Vice Chairman should not undertake foreign travel together in order to ensure that Committee business proceeds with the leadership around.

**4) Ex- Min No. Sen/SCLNR/123/2014.**

**Meeting with the Chairman of the National Land Commission on the Proposed Allocation of Land to the National Intelligence Service at Kanyanyooni in Kitui County.**

Members were informed that the National Land Commission had committed to send the documentation requested by the Committee by close of business on 18<sup>th</sup> November 2014.

**MINUTE NO. SEN/SCLNR/131/2014: - CONSIDERATION OF THE REPORT OF THE PUBLIC HEARING ON THE NATURAL RESOURCES BENEFIT SHARING BILL**

The Principal Legal Officer took members through the comments and views made by stakeholders from written memoranda and during the Public Hearing on the Natural Resources Benefit Sharing Bill, 2014.



Sen Agnes Zani, M.P. informed members that then Select Committee on Legislation on Royalties Accruing from National Resources in the Counties had made recommendations on the Bill which could be included with the amendments of members.

## **RECOMMENDATIONS OF THE COMMITTEE**

- a) That further consultations be held on the policy issues highlighted on the matrix presented to the Committee and**
- b) That the Natural Resources (Benefit Sharing) Bill 2014, be adopted as proposed by Sen. Martha Wangari and seconded by Sen. Boy Juma Boy subject to the amendments contained herein to be moved at the Committee Stage.**

### **CLAUSE 2**

**THAT** Clause 2 of the Bill be amended by inserting the following new definitions in proper alphabetical sequence-

“Authority” means the Benefit Sharing Authority established under section 5;

“Cabinet Secretary” means the cabinet secretary for the time being responsible for matters relating to the environment, water and natural resources;

### **CLAUSE 3**

**THAT** Clause 3 of the Bill be amended in sub-clause (1)-

(a) by inserting the words “the following natural resources’ immediately after the words “exploitation of” appearing in the opening paragraph to sub-clause(1);

(b)by inserting the following new paragraphs immediately after paragraph (g)-

(h) geothermal energy;

(i) wind

### **CLAUSE 4**

**THAT** Clause 4 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (e)-

- (f) sustainable natural resources management

## **CLAUSE 6**

**THAT** Clause 6 of the Bill be amended in sub-clause (1) by inserting the following new paragraphs immediately after paragraph (i)-

- (j) build the capacity of local communities in negotiations for benefits and implementation of projects;
- (k) prepare national guidelines on benefits sharing in consultation with other sectoral leaders;
- (l) identify, in consultation with sector specific organizations, incentives and benefits to promote the conservation of natural resources;

## **CLAUSE 7**

**THAT** Clause 7 of the Bill be amended-

- (a) in sub-clause (1) by deleting the words “environment” appearing in paragraph (b) and substituting therefor the words “environment, water and natural resources”;
- (b) in sub-clause (1) by deleting the words “the Kenya Association of Manufacturers” appearing in paragraph (g) and substituting therefor the words “a recognized umbrella body representing the interests of the private sector in Kenya”;
- (c) in sub-clause (5) by inserting the words “and the requirements of chapter six”

## **CLAUSE 24**

**THAT** Clause 24 of the Bill be amended-

- (a) in sub-clause (1) by deleting the words “in each year” appearing immediately after the words “affected organizations”;
- (b) in sub-clause (2) by inserting the following new paragraph immediately after paragraph (c)-
  - (d) the impacts of the exploitation on the people and the environment

## **CLAUSE 26**

**THAT** Clause 26 of the Bill be amended-

(a) in sub-clause (1) by inserting the words “under this Act” immediately after the words “revenue collected”

(b) in sub-clause (6) by inserting the words “in consultation with the lead agencies for each natural resource” immediately after the words “Authority shall”;

**CLAUSE 30**

**THAT** Clause 30 of the Bill be amended-

(a) in sub-clause (2) by inserting the words “within thirty days of its execution” immediately after the word “Authority”

**CLAUSE 32**

**THAT** the Bill be amended by deleting clause 32.

Members adopted the report on the Bill for Tabling in the Senate on Thursday 20<sup>th</sup> November 2014 after it was proposed and seconded by Sen. Boy Juma Boy, M.P. and Sen. Martha Wangari, M.P. respectively.

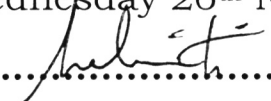
**MINUTE NO. SEN/SCLNR/132/2014: - CONSIDERATION OF PROPOSED DATE FOR PUBLIC HEARING ON THE COMMUNITY LAND BILL**

The Committee resolved to hold a Public Hearing meeting on Thursday 27<sup>th</sup> November 2014 from 10: 00 a.m. to collect views and comments from stakeholders on the Community Land Bill.

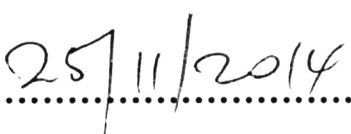
Members also resolved to have a briefing on the contents of the Bill on Wednesday 26<sup>th</sup> November 2014.

**MINUTE NO. SEN/SCLNR/133/2014:- ADJOURNMENT AND DATE OF NEXT MEETING.**

Having concluded the business set out in the agenda, the meeting was adjourned at one minute to noon (11:59 a.m.) The date of the next meeting was set for Wednesday 26<sup>th</sup> November 2014.

**SIGNATURE.....**  .....

**(CHAIRMAN; SEN. LENNY KIVUTI)**

**DATE.....**  .....



**Natural Resources (Benefit Sharing Bill) 2014**

**THE NATURAL RESOURCES (BENEFIT SHARING) BILL, 2014**

**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I – PRELIMINARY**

- 1 — Short title.
- 2 — Interpretation.
- 3 — Application of the Act.
- 4 — Guiding principles of benefit sharing.

**PART II — ESTABLISHMENT OF THE BENEFIT SHARING  
AUTHORITY**

- 5 — Establishment of the Benefit Sharing Authority
- 6 — Functions of the Authority

**PART III – THE MANAGEMENT OF THE AUTHORITY**

- 7 — Board of the Authority.
- 8 — Tenure of office.
- 9 — Qualifications for appointment.
- 10 — Vacation of office.
- 11 — Powers of the Board.
- 12 — Committees of the Board.
- 13 — Power to delegate.
- 14 — Remuneration and Allowances.

- 15 — Conduct of business and affairs of the Board.
- 16 — Director General.
- 17 — Tenure of office of Director-General.
- 18 — Functions of the Director-General
- 19 — Removal of Director-General.
- 20 — Seal of the Authority.
- 21 — Staff of the Authority.
- 22 — Protection from personal liability.
- 23 — Liability of the Authority to damages.

**PART IV – COLLECTION OF ROYALTIES AND FEES**

- 24 — Imposition of Royalties and fees.
- 25 — Kenya Revenue Authority to collect royalties.
- 26— Revenue Sharing Ratio.

**PART V— COUNTY BENEFIT SHARING**

**23 PART VI— COUNTY BENEFIT SHARING**

- 23 — County Benefit Sharing Committee.
- 24 — Local Community Benefit Sharing Forum.
- 25 — Approval of the County Benefit Sharing Agreement.
- 26 — Uses of retained funds.

**PART VI— COUNTY BENEFIT SHARING**

- 23 — County Benefit Sharing Committee.
- 24 — Local Community Benefit Sharing Forum.
- 25 — Approval of the County Benefit Sharing Agreement.
- 26 — Uses of retained funds.



**PART VI— COUNTY BENEFIT SHARING**

- 27 — County benefit sharing agreement.
- 28 — Establishment of a County Benefit Sharing Committee.
- 29 — Functions of a County Benefit Sharing Committee.
- 30 — Approval of the County Benefit Sharing Agreement.
- 31 — Local Community Benefit Sharing Forum.
- 32 — Local community benefit sharing agreement.

**PART VI— FINANCIAL PROVISIONS**

- 33 — Funds of the Authority.
- 34 — Natural Resources Royalties Fund.
- 35 — Financial year.
- 36 — Accounts.
- 37 — Annual Report.

**PART VII — MISCELLANEOUS PROVISIONS**

- 38 — Use of retained funds.
- 39 — Offences.
- 40 — Transitional provisions.
- 41 — Power to make Regulations.

**SCHEDULE: — PROVISIONS AS TO THE CONDUCT OF BUSINESS AND  
AFFAIRS OF THE BOARD OF THE AUTHORITY**

**THE NATURAL RESOURCES (BENEFIT SHARING) BILL, 2014**

A Bill for

**AN ACT of Parliament to establish a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities; to establish the Natural Resources Benefits Sharing Authority; and for connected purposes.**

ENACTED by the Parliament of Kenya, as follows —

**PART I - PRELIMINARY**

Short title.                   1. This Act may be cited as the Natural Resources (Benefit Sharing) Act, 2014.

Interpretation.           2. In this Act, unless the context otherwise requires —

“affected county” means a county in which a natural resource is exploited;

“affected organization” means an organization involved in the exploitation of a natural resource to which this Act applies;

“benefit” mean any gains, proceeds or profits from the exploitation of natural resources;

“benefit sharing” means the sharing of any benefits arising from the utilization of natural resources in a fair and equitable manner;

“County Benefit Sharing Agreement” means an agreement on how to share revenues accruing from natural resources between an affected organization and a county;

“exploiter” means an organization involved in the exploration, appropriation or in any way extraction or use of a

natural resource from the first point of contact for commercial purposes;

“exploitation” means the extraction or use of a natural resource for commercial benefit;

“Fund” means the Natural Resources Royalties and Fees Fund established under section 4;

“local community” means a people living in a ward within which a natural resource is situated and are affected by the exploitation of that natural resource;

“royalties” includes fees or payments by whatever name, paid by an affected organization for the exploitation or exploration of a natural resource in Kenya; and

“sovereign wealth fund” means sums of money set aside from monies that accrue to the national government including royalties collected under any written law for use by the future generations.

Application of  
the Act.

3. (1) This Act applies with respect to the exploitation of—

- (a) petroleum;
- (b) natural gas;
- (c) minerals;
- (d) forest resources;
- (e) water resources;
- (f) wildlife resources; and
- (g) fishery resources.

(2) The Authority may, by notice in the *Gazette*, extend the application of this Act to any other natural resource not specified under subsection (1).



Guiding principles of benefit sharing.

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

- (a) transparency and inclusivity;
- (b) revenue maximization and adequacy;
- (c) efficiency and equity;
- (d) accountability and participation of the people; and
- (e) rule of law and respect for human rights of the people.

#### **PART II — ESTABLISHMENT OF THE BENEFIT SHARING AUTHORITY**

Establishment of the Benefit Sharing Authority.

5. (1) There is established an Authority to be known as the Benefit Sharing Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing such other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

Functions of the Authority.

6. (1) The functions of the Authority shall be to —

- (a) coordinate the preparation of benefit sharing

agreements between local communities and affected organizations;

- (b) review, and where appropriate, determine the royalties payable by an affected organization engaged in natural resource exploitation;
- (c) identify counties that require to enter into a benefit sharing agreement for the commercial exploitation of natural resources within the counties;
- (d) oversee the administration of funds set aside for community projects identified or determined under any benefit sharing agreement;
- (e) monitor the implementation of any benefit sharing agreement entered into between a county government and an affected organization;
- (f) conduct research regarding the exploitation and development of natural resource and benefit sharing in Kenya;
- (g) make recommendations to the national government and county governments on the better exploitation of natural resources in Kenya;
- (h) determine appeals arising out of conflicts regarding the preparation and implementation of county benefit sharing agreements; and
- (i) advise the national government on policy and the enactment of legislation relating to benefit sharing in resource exploitation.

(2) The Authority may, in furtherance of the purpose for which the Authority is established, enter into association with such other bodies or organizations within or outside Kenya as the Authority may consider necessary for the better performance

of the functions of the Authority under this Act.

(3) The Authority shall, in the performance of its functions under this Act, have regard to—

- (a) all existing law regulating the natural resources sector in Kenya;
- (b) all existing arrangements for benefit sharing between local communities and an affected organization under any law in Kenya; and
- (c) obligations imposed on Kenya under any international treaty or agreement relating to the exploitation of natural resources.

### **PART III – THE MANAGEMENT OF THE AUTHORITY**

Board of the  
Authority.

7. (1) The management of the Authority shall vest in a Board which shall consist of—

- (a) a chairperson appointed by the President with the approval of the Senate;
- (b) the Principal Secretary responsible for environment or the Principal Secretary's alternate;
- (c) the Principal Secretary responsible for finance or the Principal Secretary's alternate;
- (d) the Principal Secretary responsible for mining or the Principal Secretary's alternate;
- (e) three persons representing communities nominated by the Council of Governors and who shall represent the regional diversity of the people of Kenya including minorities;
- (f) three persons representing communities nominated by the Forum of County Assembly Speakers and who shall represent the regional diversity of the people of Kenya and minorities;



(g) one person nominated by the Kenya Association of Manufacturers; and

(h) the Director-General appointed by the Board, who shall be an *ex officio* member of the Board and the secretary to the Board.

(2) The appointment of the chairperson under subsection (1)(a) shall be by notice in the Gazette.

(3) The persons nominated under subsection (1)(e), (f) and (g) shall, subject to subsection 4, be appointed by the Cabinet Secretary by notice in the *Gazette*.

(4) The Cabinet Secretary shall not appoint the persons nominated under subsection (1)(e), (f) and (g) unless their appointment has been approved by the Senate.

(5) In nominating appointing persons as members of the Board, the nominating authorities and the Cabinet Secretary shall have regard to the gender principle under the Constitution.

Tenure of office.

8. (1) The chairperson and members of the Board other than the ex-officio members shall hold office for a term of three years and shall be eligible to be reappointed for one further term of three years.

(2) The members of the Board other than the Director-General shall serve on a part-time basis.

Qualifications for appointment

9. A person shall be qualified for appointment as the chairperson or a member of the Board under section 7(1) (1)(e), (f) and (g) if that person —

(a) holds a degree from a university recognised in Kenya; and

(b) has knowledge and at least ten years experience in any of the following fields —

(i) law;

(ii) environmental management;

- (iii) economics;
  - (iv) public finance;
  - (v) mining; or
  - (vi) community development; or
- any other related field.

Vacation of  
office.

**10.** The office of the chairperson or a member of the Board appointed under section 7(1) (1)(e), (f) and (g) shall become vacant if the chairperson or member —

- (a) is unable to perform the functions of his office by reason of mental or physical infirmity;
- (b) is otherwise unable or unfit to continue serving as the chairperson or member of the Board;
- (c) is adjudged bankrupt;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is absent, without reasonable cause, from three consecutive meetings of the Board;
- (f) resigns in writing addressed, in the case of the chairperson, to the President and in the case of a member appointed under section 7(1)(e), (f) and (g) to the Cabinet Secretary;
- (g) fails to declare his interest in any matter being considered or to be considered by the Board; or
- (h) dies.

Powers of the  
Board.

**11.** The Board shall have all the powers necessary for the performance of the functions of the Authority under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Authority in such manner and for such purposes as best promote the purposes for which the Authority is established;
- (c) receive any gifts, grants, donations or endowments made to the Authority or any other monies in respect of the Authority and make disbursements therefrom in accordance with the provisions of this Act;
- (d) to require from any person, such information as it considers necessary for the performance of its functions under this Act; and
- (e) open a bank account for the funds of the Authority into which all moneys received by the Authority shall be paid in the first instance and out of which all payments made by the Authority shall be made.

Committees of the Board.

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

(2) The Board may co-opt any person to sit in any committee established under subsection (1), whose knowledge and skills are found necessary for the performance of the functions of the Board.

Power to delegate.

13. The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Authority the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act

Remuneration and allowances.

14. The remuneration, allowances, expenses and other emoluments of members and staff of the Authority shall be determined by the Salaries and Remuneration Commission.

Conduct of

15. The Board shall conduct its affairs in accordance



business and  
affairs of the  
Board.

with the provisions of the Schedule.

Director  
General.

16. (1) There shall be a Director-General of the Authority who shall be competitively recruited and appointed by the Board, on such terms and conditions as the Board shall determine.

(2) A person shall not be qualified for appointment as a Director-General under subsection (1) unless the person —

(a) holds a degree from a university recognized in Kenya;  
and

(b) has knowledge and at least ten years experience in any of the following fields —

(i) law;

(ii) environmental management;

(iii) economics;

(iv) public finance;

(v) mining; or

(vi) community development;

or in any other related field.

(3) The Director-General shall be an *ex-officio* member of the Board and shall have no right to vote at any meeting of the Board.

Tenure of  
office of  
Director-  
General.

17. The Director-General shall be appointed for a term of four years and shall be eligible for reappointment for one further term.

Functions of  
the Director  
General.

18. (1) The Director-General shall be the chief executive officer of the Authority and secretary to the Board.

(2) In exercise of his or her functions under this Act, the Director-General shall, subject to the direction of the Board —

- (a) be responsible for the day-to-day management of the Authority;
- (b) manage the funds, property and affairs of the Authority;
- (c) be responsible for the management of the staff of the Authority;
- (d) cause to be prepared for the approval of the Board-
  - (i) the strategic plan and annual plan of the Authority; and
  - (ii) the annual budget and audited accounts of the Authority; and
- (e) perform such other duties as may be assigned by the Board.

Removal of  
Director  
General.

**19.** The Board may terminate the appointment of the Director-General in accordance with his or her terms and conditions of service for —

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify removal from office under the terms and conditions of service.

Seal of the  
Authority.

**20.** (1) The common seal of the Authority shall be kept in the custody of the Director-General or such other person as the Board may direct, and shall not be used except upon the order of the Board.

(2) The common seal of the Board shall, when affixed to a document and authenticated, be judicially and officially noticed and unless the contrary is proved, any order or authorization by the Board under this section shall be presumed to have been duly given.

(3) The seal of the Authority shall be authenticated by the signature of the chairperson and the Director-General of the Board or in the absence of either person, such other member of the Board who shall be designated by the Board for that purpose on his behalf.

Staff of the Authority.

21. (1) The Board may appoint such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

Protection from personal liability.

22. No matter or thing done by a member of the Board or by any officer, employee or agent of the Authority shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

Liability of the Authority to damages.

23. The provisions of section 22 shall not relieve the Authority of liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

#### **PART IV – COLLECTION OF ROYALTIES AND FEES**

Imposition of Royalties and fees.

24. (1) The Authority shall have the power to determine and review the amount of royalties and fees payable by affected organizations in each year in respect of a particular sector where a written law does not prescribe the royalties or fees.



(2) In making a determination under subsection (1), the Authority shall take into account—

- (a) the overall capital investment of the affected organization;
- (b) the prevailing international market value of the commodity from which royalty is payable;
- (c) the commercial viability of the natural resource being exploited; and
- (d) obligations of the affected organization under any existing County Benefit Sharing Agreement with the local community.

(3) Where a written law prescribes the royalty, fees, payments or benefit sharing in a particular natural resource sector, the relevant written law shall apply with respect to that sector.

(4) The Authority shall monitor compliance with the written law and the implementation of any benefit sharing agreement entered into pursuant to this Act or any other written law.

Kenya Revenue  
Authority to  
collect  
royalties.

25. (1) The Kenya Revenue Authority shall collect royalties imposed by the Authority from affected organizations and any other payment of royalties from natural resource exploitation undertaken under any other written law.

(2) The monies collected pursuant to this section shall be paid into the Fund.

(3) This section shall supersede the provisions of any law with respect to the collection of royalties and fees charged for the exploitation of natural resources in Kenya.

(4) The Kenya Revenue Authority shall declare and account to the Authority the total sum collected from affected organizations and with respect to each natural resource as provided for under this Act

Revenue  
sharing ratio.

26. (1) The revenue collected shall be shared as follows—

- (a) twenty per cent of the revenue collected shall be set aside and shall, subject to subsection (2), be paid into a sovereign wealth fund established by the National government; and
- (b) eighty per cent of the revenue collected shall, subject to subsection (3), be shared between the national government and the county governments in the ratio of sixty per cent to the national government and forty per cent to the county governments.

(2) The monies paid into the sovereign wealth fund under subsection (1)(a) shall be paid into the following funds constituting the sovereign wealth fund as follows —

- (a) sixty per cent of the monies shall be paid into a futures fund; and
- (b) forty per cent of the monies shall be paid into a natural resources fund.

(3) At least forty per cent revenue assigned to the county governments under subsection (1)(b) shall be assigned to local community projects and sixty per cent of that revenue shall be utilised in the entire county.

(4) Where natural resources bestride two or more counties, the Authority shall determine the ratio of sharing the retained revenue amongst the affected counties.

(5) In determining the revenue sharing ratio of retained revenue amongst counties sharing a resource as prescribed under subsection (4), the Authority shall take into account —

- (a) the contribution of each affected county in relation to the resource;
- (b) the inconvenience caused to the county in the

exploitation of the natural resource; and

- (c) any existing benefit sharing agreement with an affected organization.

(4) The Authority shall review the revenue sharing ratio after every five years and present its recommendations to Parliament for approval.

#### **PART V— COUNTY BENEFIT SHARING**

County benefit sharing agreement.

27. (1) Every affected organization shall enter into a county benefit sharing agreement with the respective county government.

(2) The county benefit sharing agreement shall include non monetary benefits that may accrue to the county and the contribution of the affected organization in realizing the same.

Establishment of a County Benefit Sharing Committee.

28. (1) There shall be established in each county that has a natural resource to which this Act applies, a County Benefit Sharing Committee.

(2) A County Benefit Sharing Committee shall consist of—

- (a) the County Executive Committee Member responsible for finance;
- (b) the chairperson of the committee of the respective County Assembly responsible for matters relating to natural resources; and
- (c) five persons elected by the local community where the resource bestride representing the diversity of the local community.

(3) The members of the county benefit sharing committee shall be paid such allowances as shall be determined by the County Public Service Board in consultation with the Salaries and Remuneration Commission.

(4) The members of the Committee shall elect a



chairperson from amongst the members elected under subsection (2)(c).

(5) The Authority shall make Regulations for the conduct of the affairs of the County Benefit Sharing Committees.

(6) Where a resource bestrides two or more counties, the affected counties shall constitute a joint committee to oversee the negotiation of a joint county benefit sharing agreement with an affected organization

Functions of a  
County Benefit  
Sharing  
Committee.

29. The functions of each county benefit sharing committee shall be to—

- (a) negotiate with an affected organization on behalf of the County Government prior to entering into a county benefit sharing agreement;
- (b) monitor the implementation of projects required to be undertaken in the county pursuant to a benefit sharing agreement;
- (c) determine the amount of money to be allocated to each local community from sums devolved under this Act;
- (d) convene public forums to facilitate public participation with regard to proposed county benefit sharing agreements prior to execution by the county government;
- (e) convene public forums for the purpose of facilitating public participation with regard to community projects proposed to be undertaken using monies that accrue to a county government pursuant to this Act; and
- (f) make recommendations to the county government on projects to be funded using monies which accrue to the county government pursuant to this Act

Approval of the  
county benefit  
sharing  
agreement.

30. (1) Every county benefit sharing agreement shall be approved by the County Assembly of the respective county prior to the execution of the agreement by the County Government.

(2) Each county and local community benefit sharing agreement shall be deposited with the Authority and a copy shall be submitted to the Senate.

Local  
Community  
Benefit Sharing  
Forum.

31. (1) There shall be established by each affected local community a Local Benefit Sharing Forum comprising of five persons elected by the residents of the local community.

(2) The county government shall facilitate meetings and the election of the members of the Local Community Benefit Sharing Forum.

(3) The functions of a Local Community Benefit Sharing Forum shall be to—

- (a) negotiate with the county benefit sharing committee for the purpose of entering into a local community benefit sharing agreement on behalf of the community;
- (b) identify local community projects to be supported by money allocated to the local community by the county benefit sharing committee under this Act; and
- (c) oversee the implementation of projects undertaken at the local community using money devolved under this Act

(4) The members of a local community benefit sharing forum shall be paid such allowances as shall be determined by the County Public Service Board in consultation with the Salaries and Remuneration Commission

(5) Elected public or state officers are not eligible for election as officials of a local community benefit sharing forum.

(6) The members of a local community benefit sharing forum shall serve as members of the forum for a single term of five years.

Local  
Community  
benefit sharing  
agreement.

32. (1) Every affected local community shall enter into a local community benefit sharing agreement with the respective county benefit sharing committee.

(2) The local community benefit sharing agreement shall include non monetary benefits that may accrue to the local community and the contribution of the affected organization in realizing the same.

#### **PART VI— FINANCIAL PROVISIONS**

Funds of the  
Authority.

33. (1) The funds of the Authority shall consist of—

- (a) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) such money as may in future be provided by the National Assembly for defraying expenses incurred in the implementation of this Act;
- (c) such monies as may be provided by Parliament for the purposes of the Authority;
- (d) all monies from any other source provided for or donated or lent to the Authority; and
- (e) such other monies that may lawfully accrue in the discharge of functions of the Authority under this Act not being money accruing pursuant to Article 114 of the Constitution.

(2) For the avoidance of doubt, nothing in this Act may be construed as providing for or dealing with —

- (a) taxes;



- (b) the imposition of charges on a public fund; or
- (c) the variation or repeal of any of those charges, the appropriation, receipt, custody, investment or issue of public money; or
- (d) the raising or guaranteeing of any loan or repayment; or
- (e) matters incidental to any of those matters.

Natural  
Resources  
Royalties Fund.

34. (1) There may be established a Natural Resources Royalties Fund which shall vest in the Benefits Sharing Authority.

(2) There shall be paid into the Fund —

- (a) all royalties collected as a result of exploitation of natural resources in the country;
- (b) all fees and other charges levied on affected organizations for the exploitation of natural resources; and
- (c) all contributions and other payments required by this Act to be paid into the Fund

(3) Where any written law provides for the payment of royalties or fees from exploitation of a natural resource in a particular sector, such royalties and fees shall be paid into the Fund.

(4) The Authority shall make Regulations prescribing the administration of the Fund.

\* Parliament may delegate power to any body it wishes

Financial year.

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

Accounts.

36. (1) The Authority shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Authority.

(2) Within a period of three months after the end of each financial year, the Authority shall submit to the Auditor-General, the accounts of the Authority together with—

- (a) a statement of the income and expenditure of the Authority during that year; and
- (b) a statement of the assets and liabilities of the Authority on the last day of that year

No.12 of 2003. (3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2003.

(4) The Authority may establish, control, manage, maintain and contribute to pension and provident funds for the benefit of employees of the Authority and may grant pensions and gratuities from any such fund to the said officers upon their resignation, retirement or separation from the service of the Authority or, as the case may be, to the dependants of any such officer upon such officer's death.

Annual Report. 37. (1) Within three months after the end of each financial year, the Authority shall submit —

- (a) to the Auditor-General, the accounts of the Authority in respect of that year together with —
  - (i) a statement of the income and expenditure of the Authority during that year; and
  - (ii) a statement of the assets and liabilities of the Authority on the last day of that financial year; and
- (b) to the President and the Senate, an annual report in respect of that year containing —
  - (a) the financial statements of the Authority;
  - (b) a list of institutions contributing to benefit sharing under this Act, the proportion of benefit and the local community that benefitted;

- (c) the total sums contributed towards benefit sharing and its distribution;
- (d) the progress made in the implementation of the Authority's functions; and
- (e) any other information that the Authority may consider necessary

(3) The Authority shall publish the annual report in the Gazette and in at least one newspaper of national circulation.

#### **PART VII — MISCELLANEOUS PROVISIONS**

Uses of  
retained funds.

38. (1) Monies distributed to counties under this Act shall be utilized for projects that—

- (a) are prioritized by the county benefit sharing committee;
- (b) are prioritized by the local community benefit sharing forums;
- (c) meet the socio-economic needs of the residents of the County or local community; and
- (d) are of public interest and are community-based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.

(2) The County Benefit Sharing Committee shall prioritize projects to be supported by funds received under this Act.

Offences.

39. (1) An affected organization which—

- (a) fails to furnish particulars or information required to be furnished to the Authority under this Act; or
- (b) makes a statement which the organization

knows to be false or which the organization has no reason to believe to be true; or

- (c) recklessly makes a false statement under this Act;

commits an offence.

(2) Where an affected organization commits an offence under this Act, every principal officer of that organization shall also be deemed to have committed the offence.

(3) An affected organization that is convicted of an offence under this section shall be liable to a fine of not less than five million shillings.

*- Given Minimum Sentence and the maximum*

(4) An affected organization that continues to be in breach of the Act may be liable to cancellation of its licence.

(5) A person liable for an offence under this Act shall be liable to three years imprisonment or a fine of not less than two million shillings or to both such fine and imprisonment.

Transitional provisions.

40. (1) The Authority shall, within one year of being constituted, review all existing laws and agreements prescribing the ratio of natural resource sharing, taking into account the provisions of this Act and international best practice in revenue sharing.

(2) The Authority shall submit a report to the National Assembly and the Senate and the Cabinet Secretary responsible for natural resources on the outcome of the review within three months of the conclusion of the review.

(3) The report submitted under subsection (2) shall, in addition to the requirements set out under subsection (1), set out proposals on legislative and policy amendments required to fully implement this Act.

Power to make Regulations.

41. (1) The Cabinet Secretary responsible for matters relating to natural resources may make Regulations for the better carrying out of the provisions of this Act.



(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), the Cabinet Secretary may make Regulations—

- (a) prescribing the procedure for the nomination of representatives from the Council of Governors and the Forum of County Assembly Speakers as members of the Authority under section 7;
- (b) prescribing and for the review the revenue sharing formula under this Act;
- (c) prescribing the fees in respect of anything required to be done under this Act;
- (d) prescribing the administration of the Fund;
- (e) prescribing mode for the payment of royalties under this Act;
- (f) prescribing the revenue sharing formula between counties that share a natural resource; and
- (g) prescribing anything which is required to be prescribed or is necessary to give effect to this Act.

**SCHEDULE**

(s. 15)

**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND  
AFFAIRS OF THE BOARD OF THE AUTHORITY**

Meeting of the  
Board.

1. (1) The Board shall meet at least once in every three months to conduct the business of the Board of Authority.

(2) The first meeting of the Board shall be convened by the chairperson and the Board shall meet subsequently at such a time and place as it shall determine.

(3) Notwithstanding the provisions of sub-paragraph (1), the chairperson shall, upon a written request by at least five members of the Board, convene a special meeting of the Board at any time where he considers it expedient for the transaction of the business of the Authority.

(4) The members of the Board shall elect a vice-chairman from among themselves-

(a) at the first sitting of the Board; and

(b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.

(5) A meeting shall be presided over by the chairperson or in his absence by the vice-chairman.

(6) Unless three quarters of the total number of the members of the Board otherwise agree, at least five days written notice of every meeting of the Board shall be given to every member of the Board by the Director-General.

(7) The Commission may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Commission

(8) The proceedings of the Board shall not be invalidated by reason of a vacancy within its membership.

Quorum.

2. (1) Subject to sub-paragraph (2), the quorum of a meeting the Board shall not be less than half of the appointed members.

(2) Where there is a vacancy in the Board, the quorum of the meeting shall not be less than three appointed members.

3. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a simple majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson or person presiding over the meeting shall have a casting vote.

Conflict of  
interest.

4. (1) A member of the Board who has a direct or indirect personal interest in any matter being considered or to be considered by the Board shall, upon the relevant facts concerning the matter having come to his knowledge, disclose the nature of his interest to the Board.

(2) A disclosure of interest made by a member of the Board under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the member shall not, unless the Board otherwise determines-

(a) be present during the deliberation on the matter by the Board; or

(b) take part in the decision of the Board on the matter

(3) A member of the Board who makes a disclosure under sub-section (1) shall not-

(a) be present in the meeting of the Board held to determine whether or not the member should take part in the deliberations or decision of the Board in relation to the matter; or

(b) influence any other member of the Board in arriving at a particular decision in relation to the matter.

(4) No member or staff of the Authority shall transact any business or trade with the Authority.

Rules of  
Procedure and  
minutes.

5. (1) Subject to provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board.

(2) The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Board at the next meeting of the Board and signed by the chairperson or the person presiding at the meeting.

**MEMORANDUM OF OBJECTS AND REASONS**

**Statement of the Objects and Reasons for the Bill**

The principal purpose of this Bill is to provide a legislative framework for the establishment and enforcement of a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities and to establish the Natural Resources Benefits Sharing Authority

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

This Bill once enacted would confer on the Authority the power to make regulations for the purpose of bringing into effect the provisions contained in the Bill including the nomination of persons into the membership of the Board of the Authority. does not delegate any legislative powers nor does it limit fundamental rights and freedoms.

**Statement on how the Bill concerns county governments**

The Bill concerns county governments in terms of Articles 110(1)(a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

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

Clause 33 of the Bill specifically removes the Bill from the ambit of the matters listed under Article 114 of the Constitution. The Bill also provides that a fund, to be known as the natural resources royalties fund may be established for the purposes of the custody of such funds. The Bill does not therefore appropriate funds for the implementation of the Act; any appropriation would be effected through separate legislation which would be introduced and enacted in terms of Article 114 of the Constitution. This Bill is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the ..... 2014.



.....  
*AGNES ZANI,*  
*Chairperson,*  
*Select Committee on Legislation Royalties on*  
*Accruing from National Resources in the Counties*



**Newspaper Advertisement on Public Hearing**





REPUBLIC OF KENYA



**ELEVENTH PARLIAMENT**

**THE SENATE**

**STANDING COMMITTEE ON LAND AND NATURAL RESOURCES**

**The Natural Resources (Benefit Sharing) Bill, 2014**

**PUBLIC HEARINGS/ RECEIPT OF MEMORANDA**

Following the introduction of the Natural Resources (Benefit Sharing) Bill, 2014 in the Senate, on Wednesday 1<sup>st</sup> October, 2014, the Bill was committed to the Standing Committee on Land and Natural Resources for consideration pursuant to Standing Order 130 of the Senate.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 130 (4), the Standing Committee on Land and Natural Resources now invites interested members of the public and organizations to submit any representations that they may have on the Natural Resources (Benefit Sharing) Bill, 2014. The representations may be made orally or by submission of written memoranda in the following manner:-

1. Public Hearings shall be held on Wednesday **29<sup>th</sup> October, 2014 at 9:00 a.m. to 1:00 p.m. at Shimba Hills Hall, KICC, Nairobi**; or
2. Written Memoranda may be forwarded to the **Clerk of the Senate, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk, First Floor, Main Parliament Building, Nairobi** or emailed to [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke), to be received **on or before 5.00 p.m., 29<sup>th</sup> October, 2014**.

**C. W. MUNGA, (Mrs)**  
**FOR:- CLERK OF THE SENATE**

