

REPUBLIC OF KENYA



THE SENATE



TWELFTH PARLIAMENT

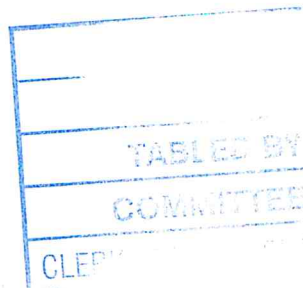
FIFTH SESSION

2021

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

REPORT ON THE NATURAL RESOURCES (BENEFIT SHARING) BILL,
SENATE BILLS NO. 25 OF 2020

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



23/9/2021
Sen. Poghiso - Majority Leader
hands over to Sen. E. Ngunjiri
Baraka M. Nyika.

SEPTEMBER 2021

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ACKNOWLEDGEMENT

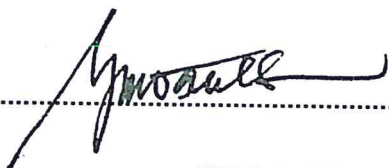
The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat comprised of Ms. Veronicah Kibati, Mr. Victor Bett, Mr. Mitchell Otoro, Ms. Clare Kidombo, Mr. Erick Njogu, Mr. James Kimiti and Ms. Lucianne Limo for the support extended to it in the conduct of the public hearings and in fulfilling its mandate.

Further, the Committee wishes to thank members of the public and stakeholders who sent written submissions including the ABS Capacity Development Initiative, Catholic Justice and Peace Commission (CJPC), Kenya Conference of Catholic Bishops (KCCB), Global NDC Implementation Partners (GNIplus), Inter-sectoral Forum on Agrobiodiversity & Agroecology (ISFAA), Kenya Oil and Gas Working Group (KOGWG), Nature Kenya (The East Africa Natural History Society), State Department for Culture and Heritage, Ministry of Sports, Culture and Heritage and the Kenya Private Sector Alliance (KEPSA)

Mr. Speaker,

It is now my pleasant duty, pursuant to standing order 143 of the Senate Standing Orders, to present the Report of the Standing Committee on Land, Environment and Natural Resources on the Natural Resources (Benefit Sharing) Bill, Senate Bills No. 25 of 2020.

Signed



Date

19/08/2021

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES**

CHAPTER ONE

INTRODUCTION

1.0 Background

1. The Natural Resources (Benefit Sharing) Bill, Senate Bills No. 25 of 2020 is sponsored by Sen. (Dr.) Agnes P. Zani, MP. The purpose of the Bill is to provide a legislative framework for the establishment and enforcement of a system of the sharing of benefits that accrue from the exploitation of natural resources between natural resource exploiters, the national government, county governments and local communities.
2. The Bill was published on 19th November, 2020, and read a First Time in the Senate on 11th May, 2021. Following the First Reading in the Senate, the Bill stood committed, pursuant to standing order 140(1) of the Senate Standing Orders, to the Standing Committee on Land, Environment and Natural Resources for facilitation of public participation.
3. Subsequently, the Committee, pursuant to Article 118(1)(b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement in the Standard and the Daily Nation Newspapers on 13th May, 2021.

1.1. The Object of the Bill

4. Article 69(1)(a) & (h) of the Constitution states that—

69. (1) The State shall—

- (a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits; and*
- (h) utilise the environment and natural resources for the benefit of the people of Kenya.*

5. Article 174(g) of the Constitution further states that, *“the objects of the devolution of government are to ensure equitable sharing of national and local resources throughout Kenya.”*
6. The Natural Resources (Benefit Sharing) Bill seeks to operationalize the above constitutional provisions with respect to the equitable sharing of resources by

providing a framework for the establishment and enforcement of a system of sharing of benefits that accrue from the exploitation of natural resources between natural resource exploiters, the national government, county governments and local communities. This will ensure that natural resources are equitably shared, especially taking into account county governments and affected local communities.

1.2.Overview of the Bill

PART I— PRELIMINARY I

Short title

7. The Act may be cited as the Natural Resources (Benefit Sharing) Act, 2020.

Clause 2- Interpretation

8. Section 2 defines various terms used in the Bill.

Clause 3- Application of the Act

9. Clause 3 of the Bill provides that the natural resources covered under it are—

- (a) sunlight;
- (b) water resources;
- (c) forests, biodiversity and genetic resources;
- (d) wildlife resources;
- (e) industrial fishing; and
- (f) wind.

Clause 4- Guiding principles of benefit sharing

10. Clause 4 of the Bill provides that all persons shall be guided by the following principles in the performance of their functions under this Act—

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

PART II- FUNCTIONS OF THE COMMISSION ON REVENUE ALLOCATION

Clause 5- Functions of the Commission

11. The Bill confers on the Commission on Revenue Allocation the authority to oversee its implementation once enacted. The Commission will be responsible for, among others-

- (a) coordinating the preparation of benefit sharing agreements between an affected county and an effected entity;
- (b) reviewing and determining royalties payable by natural resource exploiters;
- (c) overseeing the administration of funds set aside for community projects;
- (d) facilitating and monitoring implementation of benefit sharing agreements;
- (e) conduct research regarding the exploitation and development of natural resource and benefit sharing in Kenya;
- (f) determine appeals arising out of conflicts regarding the preparation and implementation of benefit sharing agreements;
- (g) advising the National Government on policy and legislation regarding natural resource benefit sharing;
- (h) ensuring the proper and timely payment of funds to counties and local communities as provided under the Bill once enacted;
- (i) build the capacity of local communities in negotiations for benefit sharing and implementation of related projects;
- (j) preparing national guidelines on benefit sharing in consultation with the relevant sectoral leaders;
- (k) promoting local content initiatives and environmental restoration;
- (l) reviewing and determining royalties and fees payable by resource exploiters in sectors where no written law prescribes; and
- (m) determining the ratio for sharing revenue allocated to counties where the relevant natural resource lies in more than one county.

PART III — COLLECTION OF ROYALTIES AND FEES

Clause 6- Imposition of royalties and fees

12. Clause 6 (1) of the Bill provides that the Commission on Revenue Allocation shall, in consultation with the Council of County Governors and relevant national government entities, determine and review the amount of royalties and fees payable by affected entities in respect of a particular sector where it is not prescribed in law. It also provides for the parameters that the Commission should take into account on royalties and fees.

Clause 7- Kenya Revenue Authority to collect royalties

13. Clause 7 of the Bill provides that the Kenya Revenue Authority will be responsible for collecting all royalties from the natural resources specified under the Bill. The Authority will be required to pay the revenue collected into a Natural Resources

Royalties Fund and declare and account to the Commission on Revenue Allocation the total sum collected with respect to each natural resource.

Clause 8- Revenue sharing ratio

14. Clause 8 of the Bill provides that the revenue collected from natural resource exploiters be shared as follows—

- (a) 20 percent paid into a sovereign wealth fund established by the National Government where 60 percent of the amount would be paid into a futures fund and 40 percent would be paid into a natural resources fund; and
- (b) 80 percent shared between the National Government and county governments as follows—
 - (i) 60 percent to the National Government; and
 - (ii) 40 percent to the respective county government(s) where 40 percent of the amount would be utilised to implement the respective local community projects and 60 percent utilised for the benefit of the entire county.

15. Clause 8 (4) provides that where natural resources bestride two or more counties, the Commission on Revenue Allocation shall determine the ratio of sharing the retained revenue amongst the affected counties in consultation with the affected counties. Clause 8(5) further the parameters that the Commission on Revenue Allocation shall take into consideration in determining the ration of sharing of the retained revenue among counties.

PART IV— BENEFIT SHARING AGREEMENT

Clause 9- Benefit sharing agreement

16. Clause 9 of the Bill mandates all entities intending to exploit a natural resource to enter into a benefit sharing agreement with the respective county government(s) before starting the exploitation. Under clause 9 (2), the benefit sharing agreement shall include non-monetary benefits that may accrue to the county and the contribution of the affected entity in realizing the same.

Clause 10- Establishment of a County Benefit Sharing Committee

17. Clause 10 of the Bill establishes the County Benefit Sharing Committees in each county whose key functions would be to negotiate the terms of benefit sharing agreements, to determine the amount of money allocated to local communities under benefit sharing agreements and to monitor implementation of projects undertaken under benefit sharing agreements.

18. Clause 10 (2) of the Bill provides that a County Benefit Sharing Committee will consist of-
- (a) the county executive committee member responsible for finance;
 - (b) the chairperson of the respective county assembly committee responsible for natural resources;
 - (c) two technical officers of the county departments responsible for the relevant natural resource; and
 - (d) five elected representatives, two of whom shall be of the opposite gender, from the local community where the natural resource is found and representing the areas with the main natural resources in the country.
19. Clause 10(3) further provides that the allowances of the County Benefit Sharing Committee shall be determined by the County Public Service Board in consultation with the Salaries and Remuneration Commission.
20. Under Clause 10 (6), (6) where a resource bestrides two or more counties, the affected counties' Benefit Sharing Committees shall constitute a joint committee with equivalent membership to oversee the negotiation of a joint benefit sharing agreement with an affected entity.

Clause 11- Functions of a County Benefit Sharing Committee

21. Clause 11 of the Bill sets out the functions of each County Benefit Sharing Committee which shall include -
- (a) negotiate the terms of a benefit sharing agreement with an affected entity on behalf of the county government;
 - (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 monies that accrue under a benefit sharing agreement under this Act;
 - (d) convene public forums to facilitate public participation with regard to proposed benefit sharing agreements during negotiations 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.

Clause 12- Approval of a Benefit Sharing Agreement

22. Clause 12(1) of the Bill provides that every benefit sharing agreement shall be approved by the respective county assembly. Clause 12(2) further provides that each county and local community benefit sharing agreement shall be deposited with the Commission on Revenue Allocation within thirty (30) days of its execution and a copy shall simultaneously be submitted to the Senate.

Clause 13- Local Community Benefit Sharing Forum

23. Clause 13 of the Bill also provides for the establishment of Local Community Benefit Sharing Forums in each community where a relevant natural resource is being exploited. The forums will consist of five elected representatives. Public Officers are not eligible for election as members of a local community benefit sharing forum. Additionally, the members shall serve for a single term of five (5) years. The Bill further sets a limit the Forum can hold to not more than eight (8) meetings in one (1) year.

24. Clause 13 (6) of the Bill sets out the functions of the Local Community Benefit Sharing Forums which 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.

PART V— FINANCIAL PROVISIONS

Clause 14- Natural Resources Royalties Fund

25. Clause 14 of the Bill provides for the establishment of a Natural Resources Fund where all revenue collected in relation to natural resources shall be deposited. The fund will be vested in the Commission on Revenue Allocation and the Commission will be mandated to make regulations prescribing the fund's administration.

PART VI — MISCELLANEOUS PROVISIONS

Clause 15- Use of retained funds

26. Clause 15 of the Bill prescribes the uses of retained funds. 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.

Clause 16- Offences

27. Clause 16 of the Bill creates various offences, including failing to provide information to the Commission and making false statements, prescribing a punishment of a maximum fine of Kshs. 2,000,000/- or imprisonment for a maximum of 3 years or both. Companies that commit the offences created will be punishable with a maximum fine of Kshs.5,000,000/-. The Bill further provides that a company that continues to breach its provisions may be punished by the cancellation of its licence.

Clause 17- Transitional provisions

28. Clause 17 of the Bill mandates the Commission on Revenue Allocation to, within two years, review all laws and agreements prescribing relevant natural resource sharing ratios and report to Parliament and to the Cabinet Secretary responsible for Finance. When reporting to Parliament, the Commission will be required to propose policy and legislative amendments necessary to implement the provisions of the proposed Bill.

Clause 18- Power to make Regulations

29. Clause 18 of the Bill gives the Cabinet Secretary responsible for matters relating to finance the authority to make regulations for the better carrying out of the provisions once enacted.

Clause 19-Amendment to Act No. 12 of 2016.

30. Clause 19 of the Bill proposed amendments to the Section 183 of the Mining Act, No.12 of 2016.

1.3.Consequences of the Bill

31. The Bill provides a legislative framework for the establishment and enforcement of a system of the sharing of benefits that accrue from the exploitation of natural resources between natural resource exploiters, the national government, county governments and local communities. Relevant parties will therefore benefit from the exploitation of natural resources in their areas, including the local community who have hitherto never adequately benefited from the same.

32. The Bill will also ensure local communities in particular and the public in general are involved and their input taken into account prior to the exploitation of a relevant natural resource. This will be done through the consultative processes that will precede any benefit sharing agreement as the Bill requires an exploiter of a natural resource to enter into a benefit sharing agreement before commencing its exploitation.

CHAPTER TWO

PUBLIC PARTICIPATION

2.0 Attendance by Stakeholders

33. The Committee, pursuant to Article 118 of the Constitution and standing order 140 (5) of the Senate Standing Orders, invited submissions from members of the public on the Bill via an advertisement in the Standard and Daily Nation Newspapers on 13th May, 2021.
34. The Committee received submissions from the following stakeholders—
- (1) ABS Capacity Development Initiative
 - (2) Catholic Justice and Peace Commission (CJPC), Kenya Conference of Catholic Bishops (KCCB)
 - (3) Global NDC Implementation Partners (GNIplus)
 - (4) Inter-sectoral Forum on Agrobiodiversity & Agroecology (ISFAA)
 - (5) Kenya Oil and Gas Working Group (KOGWG)
 - (6) Nature Kenya (The East Africa Natural History Society)
 - (7) State Department for Culture and Heritage, Ministry of Sports, Culture and Heritage
 - (8) The Kenya Private Sector Alliance (KEPSA)

2.1. Submissions from Stakeholders and Committee Observations and Determinations on stakeholder proposals

35. The Committee received submissions on specific clauses of the Bill and made various observations and determinations on each proposal as follows-

PART I— PRELIMINARY

Long Title

36. The Kenya Oil and Gas Working Group proposed to amend the Long Title of the Bill to read as follows—

AN ACT of Parliament to give effect to the provisions of Article 61(1)(a) of the Constitution of Kenya, establish a system of benefit sharing in natural resource exploitation between resource exploiters, the national government, county governments and local communities; to harmonise... and for connected purposes.

37. In their view, Article 69(1)(a) of the Constitution provides the basis for benefit sharing and provides that “the state shall ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits. This Bills should also aim at harmonizing all existing sector specific laws that make provision for benefit sharing as well.

38. **Committee Observation/ Determination:** The Committee disagreed with the proposal. The Committee observed that the proposed amendment is not necessary. The Long Title contained in the Bill sufficiently espouses the key objectives of the Bill and in any event its provisions are a mere guide and are not enforceable.

39. The Kenya Private Sector Alliance proposed to mend the Long Title to read as follows—

AN ACT of Parliament to establish a system of benefit sharing in resource utilization between resource utilizers, the national government, county governments and local communities; and for connected purposes.

40. The rationale for the proposed amendment was that the kind of activities described in the Bill entail making use of natural resources, as opposed to ‘exploitation’. This aligns with environmental law concept of ‘sustainable development’ i.e sustainable use.

41. **Committee Observations/ Determination:** The Committee disagreed with the proposal on the grounds that the Black’s Law Dictionary (9th Edition) defines the term ‘exploitation’ as the *act of taking advantage of something*. The Cambridge Dictionary, on the other hand, defines the term as the use of something in order to get an advantage from it. The term ‘exploitation’ is therefore a general term that takes into account all processes taken in the natural resource value chain and is therefore the most appropriate term to use.

CLAUSE 2 OF THE BILL-INTERPRETATION

42. Under Clause 2 of the Bill, the Global NDC Implementation Partners (GNIplus) proposed as follows-

- (1) Delete current definition and amend to read as: “local community” means people, including marginalized communities in accordance with the provisions of Article 260 of the Constitution, living within or nearby an area where a

natural resource is situated, who are displaced to make way for the exploitation of a natural resource or whose livelihood is directly or indirectly affected by the exploitation of that natural resource.

The rationale for proposal was that the proposed definition of local community should be expanded to reference marginalized communities and the effect of natural resource exploitation should be broadened to cover more than just displacement of a local community

- (2) Amend the concept of “benefit sharing agreement” by inserting the word exploitation:

“benefit sharing agreement” means an agreement on the manner in which revenue accruing from natural resources exploitation shall be shared out between an affected entity and a county;

The rationale for the proposal was that the definition of “benefit sharing agreement” should be consistent with the definition of “benefit sharing”, which, according to the Bill, means the sharing of any benefits and arising from the exploitation of natural resources in a fair and equitable manner.

- (3) Affected entity definition needs to be clarified.

Overall it is not clear who the parties to any benefit sharing agreement are. We recommend that the range of persons or organizations should be spelled out. Does this include project proponents, investors, holders, land owners, communities with customary rights to use resources?

43. Committee Observations/Determination: The Committee noted the proposal and determined as follows-

Proposal 1 and 3 be Rejected

The definition of the term “local community” in the Bill properly addresses the intention of the Bill. Marginalized communities falling under the areas specified will automatically fall within the definition. It is not necessary to define the term affected entity.

Proposal 2 be Adopted

The Bill be amended to insert the word ‘exploitation’ in the definition of the term “benefit sharing agreement”.

44. The Kenya Oil and Gas Working Group proposed as follows under clause 2-

- (1) Review the definition of the term “Natural resources” to be similar to the one provided in the Constitution. The definition needs to have the meaning assigned to it in Article 260 of the Constitution in order to incorporate hydrocarbons and mineral resources.
- (2) Insert the following new definition—
“Genetic resources” has the meaning assigned to it under Section 2 of the Environmental Management and Coordination Act No. 8 of 1999. This is in line with the need to ensure consistency between this Bill and other sector specific laws as alluded to in Clause 6(3) of the Bill.

45. Committee Observations/Determination: The Committee disagreed with the proposals on the grounds that the object of the Bill is not to cover all Natural Resources. The intention is to directly cover the resources listed under clause 3. The Bill also amends the Mining Act to comply with the provisions of the Bill in matters benefit sharing. The Bill cannot therefore be amended to cover all natural resources in Kenya.

The use of the term “genetic resource” under the Bill does not necessitate its definition within the Bill. The definition contained in the referenced Environmental Management and Coordination Act is sufficient.

46. The Kenya Private Sector Alliance proposed to delete the definition of the term ‘exploitation’ and replace with the definition of the term ‘utilisation’ to read as follows—

“utilization” means the extraction or use of a natural resource for commercial benefit, for the avoidance of doubt utilization does not include access to a natural resource for non-commercial purposes;

47. The rationale for the proposed amendment was that sunlight and wind resources are utilized to generate electricity. The definition should capture the fact that the commercial benefit only accrues when there is actual generation, and not before i.e. where feasibility studies are being carried out.

48. Committee Observations/ Determination: The Committee disagreed with the proposal on the grounds that the Black’s Law Dictionary (9th Edition) defines the term ‘exploitation’ as the act of taking advantage of something. The Cambridge Dictionary, on the other hand, defines the term as the use of something in order

to get an advantage from it. The term ‘exploitation’ is therefore a general term that takes into account all processes taken in the natural resource value chain and is therefore the most appropriate term to use.

49. The Kenya Private Sector Alliance further proposed to amend the definition of the term ‘Cabinet Secretary’ to take into account the natural resources that do not fall under the ambit of the Cabinet Secretary responsible for mining. It was noted that wind, sunlight, water resources (for energy production) fall under the CS Energy. There is also biomass and cogeneration.

50. **Committee Observations/Determination:** The Committee disagreed with the proposal noting that the Bill covers various natural resources that are not overseen by a single Cabinet Secretary. Further, the Bill relates more to the sharing of natural resources than it does to the resource itself. The most appropriate Cabinet Secretary to oversee the implementation of the Bill is therefore the Cabinet Secretary responsible for Finance.

51. The Kenya Private Sector Alliance also proposed to amend the definition of the term ‘benefit sharing’ to read as follows—

“benefit sharing agreement” means an agreement on the manner in which a royalty accruing from natural resources shall be shared out between an affected entity and a county”

52. The Alliance was of the view that there is ambiguity and that the law should be specific it is the royalty that is paid out by the affected entity, the revenue obtained from utilization of a natural resource belongs to the affected entity.

53. **Committee Observations/ Determination:** The Committee disagreed with the proposal noting that the Bill specifically intends to cover more than royalties paid by natural resource exploiters. It covers all monies, including fees and levies, that accrue from the exploitation of natural resources.

54. Under Clause 3 of the Bill, the State Department for Culture and Heritage, Ministry of Sports, Culture and Heritage proposed that the Bill be amended to ensure that a provision to the Senate Bill is introduced exempting application of the Act to matters relating to genetics resources under cultural heritage since there are existing laws governing the sector.

55. The rationale for the proposal was that Clause 3 (c) on Application of the Act in the Senate Bill provides that the Act will apply to forests, biodiversity and genetic resources. The application of the Act forms the basis of our concern in the Senate Bill. Under Section 2 of the Protection of Traditional Knowledge and Cultural Expressions Act, 2016 "genetic resources" is defined as *microorganisms, plant and animal material including indigenous seeds, genetic plant varieties and traditional animal breeds that contain functional hereditary units and whose management shall also be subject of other relevant legislations.*
56. The Protection of Traditional Knowledge and Cultural Expressions Act, 2016 is currently domiciled under the State Department for Culture and Heritage, which provides for a framework on protection, management and promotion of traditional knowledge and cultural expressions. There is therefore need to clarify-
- (a) the scope of application under genetic resources, which relates to cultural heritage matters; and
 - (b) devoid of the definition of genetic resources in the Senate Bill, whether other existing laws are exempt from provisions of the Senate Bill
57. **Committee Observations/ Determination:** The Committee disagreed with the proposal on the grounds that the Bill does not make general provisions on the natural resources covered under the Bill, including genetic resources. The Bill only makes provision for the sharing of benefits accruing from the exploitation of the stated natural resources. The Bill does not therefore contradict or affect the provisions of the Protection of Traditional Knowledge and Cultural Expressions Act.
58. The Global NDC Implementation Partners (GNIplus) proposed that Clause 3 be amended to specify that the Act applies where the exploitation is on land defined as public land under Article 62 of the Constitution. It was proposed that Clause 3 be amended to read as below-

This Act shall apply to the following natural resources where the exploitation is on land defined as public land under Article 62 of the Constitution:

- (a) sunlight;*
- (b) water resources;*
- (c) forests, biodiversity and genetic resources;*
- (d) wildlife resources;*
- (e) industrial fishing; and*

(f) wind.

59. The rationale for the proposed amendment was that under the Bill the use of a natural resource for commercial benefit is deemed exploitation and an organization or person involved in the exploitation of the natural resource must enter into a benefit sharing agreement with the County within which the natural resource is exploited. However, the Bill does not take cognisance of the fact that some exploitation may be on privately held or community held land as allowed under Kenya's land tenure system. It may act as a disincentive to require investors to mandatorily enter benefit-sharing arrangements with the County as currently required under Part IV of the Bill, where land is not public.

60. Further, that Section 6(3) of the Bill allows for benefits sharing to be legislated in another written law and where this is done, the relevant written law shall apply in respect of that particular natural resource. We envision aspects of REDD+ and other carbon projects on private land to be legislated in a more specific law.

61. **Committee Observations/Determination:** The Committee disagreed with the proposal on the grounds that the Bill cannot be restricted to public land. All Natural resources in Kenya are owned by the people of Kenya irrespective of the land ownership. Royalties, fees and other charges payable in the exploitation of natural resources in Kenya apply to all land, including private and communal land. The sharing of the benefits accruing to the government from such royalties, fees and other charges should also apply to all land in Kenya.

62. The Kenya Oil and Gas Working Group proposed that Clause 3 of the Bill be amended as follows-

This Act shall apply to the following natural resources -

- (a) Sunlight;
- (b) Water resources;
- (c) Forests, biodiversity and genetic resources;
- (d) Wildlife resources;
- (e) Industrial fishing; and
- (f) Wind; and
- (g) Rocks, minerals, fossil fuels and other sources of energy.

63. Given that the purpose of this Bill is to provide a legislative framework for the establishment and enforcement of a system of benefit sharing in natural resource

exploitation as well as harmonize existing fragmented frameworks, it should adopt an all-inclusive definition of natural resources as defined under Article 260 of the Constitution of Kenya, 2010. Excluding some natural resources from the Bill's application will lead to fragmentation of and conflict in the benefit sharing legal framework in Kenya.

64. **Committee Observations/Determination:** The Committee disagreed with the proposal on the grounds that the object of the Bill is not to cover all natural resources. The intention is to directly cover the resources listed under clause 3. The Bill also amends the Mining Act to comply with the provisions of the Bill in matters benefit sharing. The Bill cannot therefore be amended to cover all natural resources in Kenya. The Committee is satisfied that other natural resources not covered under the Bill have legislation that is adequate for purposes of the provisions contemplated under the Bill.
65. The Catholic Justice and Peace Commission (CJPC) and the Kenya Conference of Catholic Bishops (KCCB) proposed that Clause 3 of the Bill should be amended to add on the list petroleum and natural gas and other natural resources. The application of the bill should be comprehensive.
66. **Committee Observations/Determination:** The Committee disagreed with the proposal on the grounds that the object of the Bill is not to cover all natural resources. The intention is to directly cover the resources listed under clause 3. The Bill also amends the Mining Act to comply with the provisions of the Bill in matters benefit sharing. The Bill cannot therefore be amended to cover all natural resources in Kenya. The Committee was satisfied that other natural resources not covered under the Bill have legislation that is adequate for purposes of the provisions contemplated under the Bill.
67. The Kenya Private Sector Alliance proposed an amendment to delete subclause 3 (a) (sunlight) and 3 (f) (wind). The rationale for the proposed deletion was that access and benefit sharing agreements are a norm for extraction and utilisation of biological diversity (i.e. genetic resources), under the Convention on Biological Diversity (CBD), FAO Commission on Genetic Resources for Food and Agriculture (CGRFA) and the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS). However, there is no basis in international law or Kenyan law for benefit sharing in wind and solar energy utilization. This proposal may increase the cost of power

generation in terms of higher tariffs to end consumers (yet the intention is to lower electricity tariffs).

68. **Committee Observations/Determination:** The Committee disagreed with the proposal on the grounds that the Bill's key objective is to cover the benefit sharing of all relevant natural resources. This includes sunlight and wind. The Bill also amends the Mining Act to align it to its provisions on benefit sharing.
69. ABS Capacity Development Initiative proposed to amend Clause 3 of the Bill to remove reference to wildlife, forests, biological diversity and genetic resources. The Bill should exempt genetic resources from its application and only deal with abiotic resources while matters relating to wildlife, forests, biological diversity and genetic resources be directed to the relevant institutions which have been working in the sector to come up with their own Biological and Genetic Resource Sector Benefit Sharing Bill.
70. **Committee Observations/Determination:** The Committee disagreed with the proposal on the grounds that the Bill does not make general provisions on the natural resources covered under the Bill, including wildlife, forests, biological diversity and genetic resources. The Committee further noted that the Bill only makes provision for the sharing of benefits accruing from the exploitation of the stated natural resources.

CLAUSE 4-GUIDING PRINCIPLES OF BENEFIT SHARING

71. The Kenya Oil and Gas Working Group proposed that Clause 4 of the Bill be amended to include sustainable utilization of Natural Resource Revenues as one of the Bill's guiding principles. Sustainable use of natural resource revenue is critical towards sustainable development and intergenerational equity, both of which are natural resource exploitation principles contained in the Constitution of Kenya, and in various international law instruments to which Kenya is party.
72. **Committee Observations/Determination:** The Committee disagreed with the proposal noting that it was not relevant. The Committee observed that the object of the Bill is to make provision for the sharing of benefits accruing from the exploitation of the natural resources. It cannot therefore make provision for utilization of natural resources as such provision can only be contained in the sector specific legislation providing for the framework for the exploitation of the natural resource.

PART II -FUNCTIONS OF THE COMMISSION ON REVENUE ALLOCATION

CLAUSE 5-FUNCTIONS OF THE COMMISSION

73. The State Department for Culture and Heritage, Ministry of Sports, Culture and Heritage proposed that clause 5 of the Bill be reviewed. The Ministry was of the view that provisions under Parts II, III, IV, V and VI of the Bill envisages proposed functions and implementation of the Act in benefit sharing of natural resources exploitation between resource exploiters, the national government, county governments and local communities.

74. The prevailing laws sufficiently provide for mechanisms for fair distribution of benefits derived from usage of traditional knowledge and cultural expressions including genetic resources.

Clause 5(3) proposes that;

(3) The Commission shall have regard to the following in the performance of its functions—

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

There is need for guidance on how to address areas of conflict of laws that may arise in cognizance of existing laws relating to common interests.

75. **Committee Observations/Determination:** The Committee disagreed with the proposal on grounds that the current law does not adequately address itself to the sharing of benefits accruing from the exploitation of natural resources by all parties, especially counties and local communities.

76. Global NDC Implementation Partners (GNIplus) proposed to delete clause 5(1)(g) and amend to read as follows: *Ensure access to a culturally appropriate grievance redress procedure during the preparation and implementation of benefit sharing agreements.* The rationale for the proposal was that there is need for a culturally appropriate grievance mechanism to determine appeals arising out of conflicts regarding the preparation and implementation of benefit sharing agreements.

77. Committee Observations/Determination: The Committee disagreed with the proposal noting that the addition is not necessary. The Committee held the view that grievance redress and dispute resolution mechanisms are adequately provided under the multitude of existing laws on dispute resolution and judicial action.

78. Global NDC Implementation Partners (GNIplus) further proposed that the Bill be amended to add more clarity under a new-sub-section d) under clause 5(3) to state as follows:

The Commission shall have regard to the following in the performance of its function-

d) principles of good faith negotiation and respect for the rights all parties in the negotiation of benefit sharing agreements including the provision of technical, legal and financial resources and support necessary to achieve equality in negotiation.

79. The rationale for the proposal was to guarantee minimum standards of good faith negotiation in any engagement between affected entities and the County and community are adhered to in their dealings with entities exploiting the resource.

80. Committee Observations/Determination: The Committee disagreed with the proposal noting that the proposed addition would be superfluous and unnecessary.

81. The Kenya Private Sector Alliance (KEPSA) proposed to insert the following new paragraphs under subclause 5(1)—

(q) grant administrative support and guidance to obtain the necessary permits required for the exploitation of the natural resource.

(r) Identify and grant incentives and subsidies for affected entities exploiting natural resources.

82. KEPSA was of the view that the proposed insertion would encourage investment. It is only when the licensing process is successful and the project comes into operation that the affected entity can draw an income from the exploitation of a natural resource.

83. **Committee Observations/Determination:** The Committee disagreed with the proposal on the basis that the key objective is to make provision for equitable benefit sharing of all relevant natural resources. The Committee further noted that administrative support and incentives can be addressed in resource specific legislation.

84. The Kenya Oil and Gas Working Group proposed to delete clause 5(1) and include a separate provision in the Bill which provides that appeals arising out of conflicts be heard and determined by the Cabinet Secretary. Further appeals from decisions of the Cabinet Secretary can be made to the High Court and thereafter to the Court of Appeal whose decision shall be final.

85. The rationale for the proposal was that the body responsible for overseeing the implementation of the provisions of this Bill, appeals arising out of conflicts relating to benefit sharing agreements should be lodged with and determined by a different independent body. This is because, it is likely that such conflicts may not only arise between parties to the benefit sharing agreement but also arise out of certain actions and decisions of the Commission.

86. **Committee Observations/Determination:** The Committee disagreed with the proposal and noted that the addition was not necessary. Dispute resolution mechanisms are adequately provided under the multitude of existing laws on dispute resolution and judicial action. Persons aggrieved should take their grievances to court.

87. The Kenya Oil and Gas Working Group further proposed that clause 5(3)(c) of the Bill be amended to include obligations created by international treaties and agreements on sharing of benefits accruing from natural resource exploitation. There are specific international agreements relating to benefit sharing to which Kenya is party, such as the Nagoya Protocol to the Convention on Biological Diversity on Access to Genetic Resources and Benefit Sharing.

88. **Committee Observations/Determination:** The Committee observed that the proposed addition is not necessary. The text of clause 5(3)(c) includes the treaties and agreements on sharing of benefits accruing from natural resource exploitation.

89. The Kenya Oil and Gas Working Group also proposed that the review clause 5(1)(o), and include regulations under section 18 on monitoring and enforcement of local content. The rationale for the proposal was that due to lack of an existing law on Local Content, affected entities may take advantage hence the Commission should oversee, coordinate and manage development of local content. Affected entities should be mandated to submit to the Commission local content plans.

90. **Committee Observations/Determination:** The Committee observed that the proposed addition is not necessary. The text of clause 5(1)(o) appropriately and sufficiently provides for the promotion of local content initiatives.

PART III- COLLECTION OF ROYALTIES AND FEES

CLAUSE 6-IMPOSITION OF ROYALTIES AND FEES

91. The Kenya Oil and Gas Working Group proposed to amend clause 6(3) of the Bill to state as follows—

6(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.

Provided that, where the terms under the provisions of this Act conflict with terms under the relevant written law referred to above, the provisions of the law with terms that best promotes local content and the trickling down of benefits to local communities shall prevail.

92. Alternatively, this part be amended to make the Bill the primary statutory framework on benefit sharing. The rationale for the amendment was that although there are provisions regarding benefit sharing under other sector specific laws, these provisions are not necessarily suitable and favourable to communities. Therefore, where the specific laws conflict with the provisions of this Bill, the provisions of this Bill or the law with favourable terms should prevail.

93. The rationale for the proposal was that this will promote local content. Further, where the aim of the Bill is to supersede existing legislative frameworks governing benefit sharing in other sectors, it can be to harmonize various fragmented sectoral provisions on benefit sharing into a single and authoritative benefit sharing framework applicable across sectors.

94. **Committee Observations/Determination:** The Committee disagreed with the proposal on the basis that the object of the Bill is not to cover all natural resources. The intention is to directly cover the resources listed under clause 3. The Bill also amends the Mining Act to comply with the provisions of the Bill in matters benefit sharing. The Bill cannot therefore be amended to cover all natural resources in Kenya. The Committee was satisfied that other natural resources not covered under the Bill have legislation that is adequate for purposes of the provisions contemplated under the Bill.
95. The Kenya Oil and Gas Working Group also proposed to amend clause 6(4) to include a clause providing for the mechanism of entering a benefit sharing agreement. The Commission needs to provide a mechanism that they will monitor compliance thus avoiding the loophole of it being open ended.
96. **Committee Observations/Determination:** The Committee observed that the proposal was not necessary noting that the provisions on entering benefit sharing agreements are adequately provided under PART IV of the Bill.
97. The Global NDC Implementation Partners (GNIplus) proposed to delete clause 6(2)(d) by inserting the words 'direct and indirect' to read as follows—
(e) the direct and indirect impacts of the exploitation on the local community, the affected county and the environment;
98. The rationale for the proposal was to ensure comprehensiveness with respect to the different impacts that the exploitation can have on local communities, both direct impacts (e.g., employment) and indirect impacts (e.g., law enforcement) should be expressly stated in this Clause.
99. **Committee Observations/Determination:** The Committee was of the view that the proposal adds no value and would be superfluous and unnecessary.
100. Kenya Private Sector Alliance proposed to insert the following new paragraphs under subclause 6(2)-
(f) the contributions given by the affected entity pursuant to local content regulations and policies.
(g) other taxes payable by the affected entity.
(h) local shared value projects and opportunities created by the affected entity in the project area.

The law should take into account other contributions that the affected entity is required to make pursuant to other legislation. Otherwise, it may raise operational costs and reduce the rate of return for the investment, discouraging further investment.

101. **Committee Observations/Determination:** The Committee disagreed with the proposal on the grounds that subclause 6(2) was sufficient.

102. Kenya Private Sector Alliance proposed to insert the following new subclause 6(2)(5)—

The Commission, in consultation with the Cabinet Secretary in charge of energy, may waive, suspend or reduce the royalty for any affected entity for energy production in the interest of encouraging the greatest utilization of natural resources, if it is determined that this is necessary to promote development or that the affected entity cannot successfully operate under the terms of the benefit sharing agreement.

103. The rationale for the proposal was that a similar provision exists for geothermal energy licensees under the Energy Act (2019), where the CS Energy can waive, suspend or reduce payment of royalties. Equal treatment should be granted for other players in the energy sector.

104. **Committee Observations/Determination:** The Committee disagreed with the proposal noting that the key objective is to make provision for equitable benefit sharing of all relevant natural resources. Waiver, suspension and reduction of royalties may be addressed in resource specific legislation.

105. Nature Kenya proposed that clause 6(1) of the Bill be amended to read as follows—

The commission shall in consultation with the Council of County Governors and relevant national government entities, and through Public Participation, determine and review the amount of royalties and fees payable by affected entities in respect of a particular sector where the written law does not prescribe the royalties or fees.

106. **Committee Observations/Determination:** The Committee held the view that the proposal was not necessary. Public participation is a Constitutional requirement and it adds no value to restate it in the Bill.

CLAUSE 7- KENYA REVENUE AUTHORITY TO COLLECT ROYALTIES

107. Kenya Private Sector Alliance proposed to insert the following new subclauses—
- 7(6) The Commission shall publish reports on disbursement and utilization of the monies paid to the Fund by the affected Entity.*
- 7(7) The County Benefit Sharing Committee and Local Benefit Sharing Committee shall prepare and disseminate annual reports on how funds paid pursuant to benefit sharing agreements are spent.*
108. The rationale for the proposal was to ensure that the Commission and County avail the information, to the public, for greater transparency, and as required by Art.35 of Constitution, section 93 of the County Governments Act.
109. **Committee Observations/Determination:** The Committee observed that the proposed new subclauses were not necessary. Reporting on disbursement of funds under the Bill shall adhere to the Public Finance Management Act and any other relevant law.

CLAUSE 8- REVENUE SHARING RATIO

110. The Catholic Justice and Peace Commission (CJPC), Kenya Conference of Catholic Bishops (KCCB) proposed to amend clause 8(1) and (2) to harmonize it with the Sovereign Wealth Fund Bill. Further, that the ratio of sharing the benefits should be harmonized with the one in the Mining Act 2016. It was also proposed that clause 8(6) be amended to ensure that the communities are consulted.
111. The rationale for the proposal was that the Sovereign Wealth Fund Bill proposes that the fund will get resources from governments share of profits from upstream petroleum operations, royalties, mining royalties, payments and bonus payments on grants, licenses etc. The Sovereign Wealth Fund Bill has created three components: stabilization, infrastructure and development and urithi. The Mining Act has a different benefit sharing ratio. There is no provision for consultation of the communities in areas where the natural resources are found or exploited.
112. **Committee Observation:** The Committee disagreed with the proposal on the grounds that the Sovereign Wealth Fund Bill is not law. It is still a draft legislation and its provisions cannot therefore supersede the provisions of the Bill. The Committee concurs with the provisions of subclause (1) and (2) of the Bill as they are.

113. The Committee further noted that Clause 19 of the Bill amends section 183 of the Mining Act to bring the provisions of the Act in compliance with the provisions of the Bill. The proposed addition was not necessary. Constitutional requirement for public participation will ensure that all relevant stakeholders are consulted, including local communities.

PART IV— BENEFIT SHARING AGREEMENT

CLAUSE 9- BENEFIT SHARING AGREEMENT

114. The Global NDC Implementation Partners (GNIplus) proposed that the Bill be amended in clause 9(1) to read as follows—
- (1) Every affected entity shall enter into a benefit sharing agreement with the relevant county government before the exploitation of a natural resource in the affected county and the benefit sharing agreement shall be in the form of agreement set out in the First Schedule*
115. The rationale for the Bill was to provide in its First Schedule a standard template for all benefit sharing agreements that outlines minimum provisions for a fair and equitable benefit sharing agreement.
116. **Committee Observation:** The Committee disagreed with the proposal on the grounds that each community and County has its own priority areas and it may not be proper to force a uniform benefit sharing agreement on all of them. In any event, if a form is needed such a form will be provided by the Cabinet Secretary under clause 18 of the Bill.
117. The Kenya Private Sector Alliance proposed to amend subclause 9(1) to read as follows—
- (1) Every affected entity shall enter into a benefit sharing agreement with the affected county before the exploitation of a natural resource in an affected county and upon mutually agreed terms.*
118. KEPSA was of the view that the clause is vague. It could be interpreted to mean during feasibility study or prior to operation. The definition should be clearer as to when the benefit sharing mechanisms begin to apply, so as to give investors a clear picture of anticipated capital expenditure. It should also be clear that the agreement, and royalty is mutually agreed between the parties.

119. **Committee Observation:** The Committee disagreed with the proposal on the grounds that the proposed addition would be superfluous and unnecessary. The Committee observed that an “Agreement” entails a mutual agreement.
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120. KEPSA also proposed to insert a new subclause 9(3) to read as follows—
(3) The commencement date of royalty payment under a benefit sharing agreement shall be at least one year after the commercial operating date of the affected entity. This clause is vague. It could mean during feasibility study or prior to operation. The definition should be clearer as to when the benefit sharing mechanisms begin to apply, so as to give investors a clear picture of anticipated capital expenditure. It should also be clear that the agreement and royalty is mutually agreed between the parties.
121. **Committee Observation:** The Committee disagreed with the proposal on the grounds that the Bill’s key objective is to make provision for equitable benefit sharing of all relevant natural resources. Amendment of the commencement date for the payment of royalties may be addressed in resource specific legislation.
122. The Kenya Oil and Gas Working Group proposed to amend clause 9(1) to include a clause making provisions for all existing affected entities mandating them to enter into a benefit sharing agreement upon enactment of the Bill. Merge the provisions with those under clause 17(4). The rationale for the proposal was for purposes of clarity in order to avoid the assumption by affected entities.
123. **Committee Observation/ Determination:** The Committee disagreed with the proposal on the grounds that the proposed addition was unnecessary. The provision clearly states that all entities would be required to enter into a benefit sharing agreement. Whether they existed before or after the commencement of the Bill when enacted is immaterial.
124. KEPSA further proposed that the clause 9(1) should be amended to make a benefit sharing agreement a precondition for issuance of natural resource exploitation licences across sectors. This will give weight to the benefit sharing agreement, especially when the terms of the Agreement form part of the licence conditions for natural resource exploitation, which is likely to increase accountability and foster compliance by the affected entity.

125. **Committee Observations/Determination:** The Committee disagreed with the proposal on the grounds that the proposed addition was unnecessary. The provision as stated already creates a mandatory condition before the exploitation of natural resources.

CLAUSE 10 - ESTABLISHMENT OF A COUNTY BENEFIT SHARING COMMITTEE

126. The Global NDC Implementation Partners (GNIplus) proposed that clause 10 (d) be amended to provide that a member of the County Benefit Sharing Committee be elected and shall serve for a single term of five years. The rationale for the amendment was that term limits ensure accountability and good governance in institutions. They also promote new ideas reduces opportunities for corruption and empower members of the community. As currently stated, there is no term limit for the elected members which could essentially make them life-time members of the committee.
127. Committee Observed: The Committee adopted the proposal that Clause 10 of the Bill be amended by inserting the following new subclause immediately after subclause (2) as follows—
- (3) The members of the County Benefit Sharing Committee elected under subsection (2)(d) shall serve for one single term of five years.*

Further Amendment

Clause 10 of the Bill be amended in subclause (4) by deleting the expression “(2)(c)” and replacing thefor the expression “(2)(d)”.

128. The further amendment will ensure that the Chairperson of the County Benefit Sharing Committee is among members of the public elected by local communities.
129. KEPSA proposed that the Bill be amended in clause 10(5) to read as follows —
- (5) The Cabinet Secretary in consultation with the Cabinet Secretary in charge of Energy shall make Regulations for the conduct for the affairs of the County Benefit Sharing Committees.*
130. The rationale for the proposal was that the Cabinet Secretary for Mining oversteps his jurisdiction over renewable energy (solar, wind, biomass) as section 93(2)(d) of the Energy Act (2019) gives the CS Energy power to make regulations under Part

IV- Renewable Energy Act: on fees, rents and royalties are to be payable and the amount of fees and rents, and persons liable to pay them.

131. **Committee Observations/Determination:** The Committee disagreed with the proposal on the grounds that the addition of the Cabinet Secretary in charge of Energy was unnecessary. An act of one Cabinet Secretary construes consultation with other members of the Cabinet. In any event, Constitutional obligations for public participation will ensure that the Cabinet Secretary is consulted.

CLAUSE 12- APPROVAL OF A BENEFIT SHARING AGREEMENT

132. The Global NDC Implementation Partners (GNIplus) proposed to amend the clause to insert the following new subclause:

The Affected Entity and Commission shall publish on their websites and avail all deposited benefit sharing agreements for perusal by the public, at no charge, within normal working hours.

133. The rationale for the proposal was to facilitate informed decision making by local communities, access to information and transparency ought to be codified into the Bill.

134. **Committee Observations/Determination:** The Committee observed that the proposed addition was unnecessary. Documents submitted to county assemblies and to the Senate are accessible to the public.

135. Kenya Private Sector Alliance Bill be amended in clause 12(2) to read as follows —
(5) Each benefit sharing agreement shall be deposited with the Commission within thirty days of its execution and a copy shall simultaneously be submitted to the Senate.

136. KEPSA was of the view that the provision presumes that there are two separate agreements; at the county level and the local level, and yet the Bill prescribes one agreement between the County and affected entity. If it is only one agreement, the Benefit Sharing Agreement then should be a tripartite agreement between the County, Affected Entity and Local Community. If there are separate agreements then provision should be made for the county and local sharing agreements under section 9.

137. **Committee Observations/Determination:** The Committee agreed with the proposals and resolved to adopt it. The Committee therefore proposed that the Bill be amended to remove reference to county and local community benefit sharing agreement and only retain the term benefit sharing agreement as proposed.

CLAUSE 13- LOCAL COMMUNITY BENEFIT SHARING FORUM

138. The Kenya Oil and Gas Working Group proposed to amend the Bill to include either an additional clause or Schedule outlining the key provisions or contents that should be included in a Local Community Benefit Sharing Agreement. Further, it was proposed that the functions of the local community benefit sharing forums have been listed to include negotiating for a local community benefit sharing agreement. This kind of agreement has however not been provided for elsewhere in the Bill. The Bill to make provisions for a local community benefit sharing agreement.
139. The rationale for the proposal was that it will enhance uniformity in the way agreements are developed and ensure that the bare minimum requirements are met. As much as resource exploitation will affect the entire concerned county, the local community hosting the resource will suffer more specific burdens of the exploitation, necessitating a benefit sharing agreement specific to the community, over and above the county benefit sharing agreement.
140. **Committee Observations/Determination:** The Committee disagreed with the proposal and further proposed an amendment that clause 13(6)(a) of the Bill be amended to remove reference to a local community benefit sharing agreement. The Committee further observed that the local community benefit sharing agreement is redundant as its intentions are spelled out under clause 13(6)(b).
141. The Committee therefore proposed that Clause 13(6)(a) be replaced with an obligation of the local community benefit sharing forums to “present the interests of the local community to the respective County Benefit Sharing Committee in the negotiations of a Benefit Sharing Agreement”.
142. The Kenya Oil and Gas Working Group also proposed to amend the Bill to provide for the composition in terms of diversity and the tenure of the members of the local community benefit sharing forums. It was noted that the proposal would promote inclusivity of marginalised populations.

143. **Committee Observations/Determination:** The Committee partially adopted the proposal and further proposed that Clause 13 of the Bill be amended in subclause (1) by inserting the words “two of whom shall be of the opposite gender” immediately after the words “of five persons”.

PART V— FINANCIAL PROVISIONS

CLAUSE 14- NATURAL RESOURCES ROYALTIES FUND

144. The Kenya Private Sector Alliance proposed that Clause 14 of the Bill be reviewed on the basis that the Bill is silent on how the 60% funds due to the County are administered by the County. The Bill also does not provide on how the 40% funds due to the local community where project site is situated will be administered.
145. Explicit provision needs to be made for whether a separate Trust Fund will be created, or whether the County will administer on behalf of the local community. Specific provision also required on administration of the 60% funds that are to be spent for the rest of the county.
146. **Committee Observations/Determination:** The Committee held the view that the proposed additions were unnecessary. The utilization of funds accrued to county governments under the Bill shall be in accordance with the respective County Allocation of Revenue Act and the relevant county budget.

PART VI-MISCELLANEOUS PROVISIONS

CLAUSE 15- USE OF RETAINED FUNDS

147. The Kenya Private Sector Alliance proposed to review clause 15(1)(a) and (b) and 15(2) on the basis that Clause 15(1)(a) and (b) gives a hierarchy of use of the retained funds, but then in subclause 15(2) the County Benefit Sharing Committee sets the priorities. The two provisions are inconsistent.
148. **Committee Observations/Determination:** The Committee agreed with the proposal and proposed that the Bill be amended to delete subclause (2). The provision is redundant and unnecessary noting the provisions under subclause 15(a) and (b).

CLAUSE 16- OFFENCES

149. The Kenya Private Sector Alliance proposed that clause 16 be review by inserting the following additional paragraphs—
- 16(1)(d) who misappropriates funds paid or assets created pursuant to a benefit sharing Agreement;*
 - (e) takes possession of funds or assets under a benefit sharing agreement without lawful authority;*
 - (f) conceals information on finances to obtain a financial benefit either;*
 - (g) engages in a corrupt act (including soliciting or receiving and inducement); commits an offence.*
150. The rationale for the proposals was that the Bill does not set out responsibilities for any party to give information to the Commission. The Bill should establish controls to deal with misappropriation of funds and assets by the Commission, County and local community. The funds once paid out by affected entity become public revenue and liabilities similar to those under the Public Finance Management Act (2012).
151. **Committee Observation/Determination:** The Committee disagreed with the proposal noting that the additions were unnecessary. Offences are sufficiently provided under the Bill, the Pena Code, the Public Finance Management Act, the Anti-Corruption and Economic Crimes Act and other relevant laws and regulations.
152. The Kenya Private Sector Alliance further proposed to review the clause to insert paragraph 16(2)(c) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.
153. The rationale for the proposal was the restitution of stolen funds through an additional ‘mandatory fine’ is a remedy under the Bribery Act (2016) and the Anti-corruption and Economic Crimes Act (2003).
154. **Committee Observations/Determination:** The Committee disagreed with the proposal noting that the proposed additions were unnecessary. Offences are sufficiently provided under the Bill, the Penal Code, the Public Finance Management Act, the Anti-Corruption and Economic Crimes Act, the Bribery Act and other relevant laws and regulations.

CLAUSE 17- TRANSITIONAL PROVISIONS

155. The Global NDC Implementation Partners (GNIplus) proposed to amend the clause to insert the following new subclause 17(6):

Where an affected entity has prior to the commencement of the Act already entered into a benefit sharing agreement with a relevant county government for an ongoing project, the terms agreed on shall continue to apply between the parties and shall be considered to have been entered into in accordance with this Act.

156. The rationale for the proposed amendment was that the implication of Section 17(5) is for a current project proponent to have to negotiate benefit sharing anew with the County Benefit Sharing Committee once it is established, and then submit the agreement to the County Assembly for approval prior to its execution. The proposed amendment was aimed to prevent the reopening of negotiations on the commercial and non-commercial terms already agreed in benefit sharing agreements.

157. **Committee Observation/Determination:** The Committee disagreed with the proposal on the grounds that all benefit sharing agreements will have to adhere to the provisions of the Bill once enacted.

CLAUSE 19- AMENDMENT TO ACT NO. 12 OF 2016.

158. The Kenya Oil and Gas Working Group proposed to review clause 19 on the basis that the clause purports to amend the Mining Act, while section 3 excludes minerals from the list of mineral resources. The stakeholder was of the view that Clause 19 of the Bill is contradictory to the rest of the Bill. If the proposed amendment is an attempt to harmonize the benefit sharing framework across section, then the amendment should have affected the benefit sharing mechanism under the Petroleum Act as well. In any case, the proposed amendment waters down the spirit and text and intention of the Mining Act Provision on benefit sharing.

159. **Committee Observation/Determination:** The Committee disagreed with the proposal noting that clause 19 does not contradict other provisions of the Bill. It amends a separate legislation, that is, the Mining Act. The provision merely brings the Mining Act in conformity with the provisions of the Bill on revenue sharing.

PROPOSED NEW CLAUSES

160. The Kenya Oil and Gas Working Group proposed to include either an additional clause or Schedule outlining the key provisions or contents that should be included in a Benefit Sharing Agreement, joint or otherwise. This could include aspects such as—
- (a) definition of the material;
 - (b) manners of its utilisation that are legal under the contract;
 - (c) stipulate the exact manner in which benefit;
 - (d) sharing obligations will be discharged;
 - (e) definition of what acts are not allowed;
 - (f) clear stipulation of consequences of breaches and enforcement;
 - (g) conflict resolution; and
 - (h) applicable laws that will govern the contract (especially where the agreement is being entered into with multinational companies.
161. The rationale for the proposal was that this will enhance uniformity in the way agreements are developed and ensure that the bare minimum requirements are met.
162. **Committee Observation/ Determination:** The Committee disagreed with the proposal on the grounds that each community and County has its own priority areas and it may not be proper to force a uniform benefit sharing agreement on all of them. In any event, if a form is needed such a form will be provided by the Cabinet Secretary by regulation under as provided under clause 18 of the Bill.
163. The Kenya Oil and Gas Working Group further proposed that the Bill should be amended to ensure that public participation is a precondition to the approval of benefit sharing agreements. Public participation, is a core constitutional principle, which is even more crucial in promoting equitable benefit sharing as required of the State under Article 69 (1) of the Constitution.
164. **Committee Observation/ Determination:** The Committee disagreed with the proposal on the grounds that the amendment was not necessary. Constitutional requirements for public participation will ensure that it is effected before the execution of benefit sharing agreements.

165. The Kenya Private Sector Alliance proposed that a new clause 20 on dispute resolution be inserted in the Bill as follows—

The Commission shall take appropriate steps to resolve any disputes or differences in connection with negotiation and performance of benefit sharing agreements.

The County and Affected Entity shall explore options for alternative dispute resolution such as mediation and arbitration before reverting to the High Court. The Bill should create a dispute resolution mechanism for benefit sharing contracts.

166. **Committee Observation/Determination:** The Committee disagreed with the proposal on the grounds that the proposed additions were unnecessary. Dispute resolution is sufficiently covered by the multitude of existing laws on dispute resolution and judicial action.

167. The Intersectoral Forum on Agrobiodiversity and Agroecology were of the view that the entire Bill should be overhauled and rewritten by either-

(a) developing two Bills, one specifically dedicated to biodiversity and genetic resources and aligned to the Convention on Biological Diversity and Nagoya Protocol, and the second focused on abiotic natural resources such as sunlight and wind; or

(b) develop one Bill but with two clearly distinguished sections as highlighted above.

168. The Forums were also of the view that the Bill should incorporate procedures for Access and Traditional Knowledge in addition to Benefit Sharing as these are inseparable and clearly stipulate the prior informed consent (PIC) and mutually agreed terms (MAT) procedures for all access and benefit sharing agreements.

169. Further, that the Committee should consider the existing sectoral legislations, regulations, institutions, and administrative procedures that have been developed and/or established to realize equitable access and sharing of the benefits arising from utilization of biological resources, including domestication of the Nagoya Protocol, and ensure the proposed Bill address rather than contribute to the existing challenges. Additionally, that the Committee should work closely with and get the opinion and experiences of government agencies that have been implementing various provisions on access and benefit sharing of genetic resources such as NEMA, NACOSTI, NMK, KWS, National Gene Bank, etc.

170. The rationale for the proposals was that the Bill was in conflict with the Nagoya Protocol of the Convention on Biological Diversity (CBD) as follows—
- (a) by focusing only on Benefit Sharing, the Bill leaves out crucial aspects of Access and Traditional Knowledge related to the utilization of natural resources;
 - (b) it does not include the requirement for or make clear provisions and procedures for prior informed consent (PIC) and mutually agreed terms (MATs) as part of negotiating benefit sharing agreements (Art. 15-19 of the Nagoya Protocol);
 - (c) it does not take into consideration or clarify the roles and functions of the Competent National Authority (CAN), National Focal Point, and Checkpoints as outlined under the Nagoya Protocol; and
 - (d) use of the term “exploitation” is rejected under the Nagoya Protocol and many other international conventions dealing with natural resources as it is considered synonymous with misappropriation.
171. Further, that the Bill was in conflict with various laws and regulations as follows-
- (a) it does not consider benefits arising from the utilization of traditional knowledge related to the natural resources nor align with the established definition of terms and several provisions of the Protection of Traditional Knowledge and Cultural Expressions Act 2016;
 - (b) it uses the term “exploitation” which is rejected under the Protection of Traditional Knowledge and Cultural Expressions Act 2016 as it is synonymous with ‘misappropriation.’ Many other terms such as "community" and "affected entity” are contrary to existing laws;
 - (c) it bestows upon the Commission on Revenue Allocation (CRA) functions and mandates that are clearly the responsibilities of other existing agencies e.g. counties (Section 5(1)d), other government research agencies (Section 5(1)f), etc. which creates potential institutional conflicts of mandate;
 - (d) it confers on a non-existent Cabinet Secretary responsible for matters relating to natural resources the power to make regulations for the purpose of bringing into effect the provisions of the Bill; and
 - (e) it contradicts the benefit sharing arrangements outlined under Articles 18-36 of the Protection of Traditional Knowledge and Cultural Expressions Act 2016.
172. **Committee Observation/ Determination:** The Committee disagreed with the proposal on the basis that a very comprehensive participatory exercise was undertaken in the development of the Bill and its consideration in the Senate.

173. ABS Capacity Development Initiative were of the view that the entire Bill should be review and/or reconsidered. The rationale for the proposal was that a benefit sharing policy that addresses different clusters of natural resources should have been discussed prior to the making of the Bill to allow all stakeholders to demonstrate their roles and to harmonize all policy and legal frameworks before seeking to establish a law that is going to conflict with other statutes. All the sector frameworks must however be harmonized to ensure they are all operating within the same principles, values and guidelines.
174. **Committee Observation/ Determination:** The Committee disagreed with the proposal on the grounds that a very comprehensive participatory exercise was undertaken in the development of the Bill and its consideration in the Senate. There was need for “dialogue” to come to an end and implementation to commence.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.0 OBSERVATIONS

175. Taking into account the submissions by stakeholders, the Committee made the following observations -

- (1) **Object of the Bill**-This Bill operationalizes Articles 69(1)(a) & (h) and 174(g) of the Constitution with respect to the equitable sharing of resources by providing a framework for the establishment and enforcement of a system of sharing of benefits that accrue from the exploitation of natural resources between natural resource exploiters, the national government, county governments and local communities. This will ensure that natural resources are equitably shared, especially taking into account county governments and affected local communities.
- (2) **Impact of the Bill**- This Bill provides a legislative framework for the establishment and enforcement of a system of the sharing of benefits that accrue from the exploitation of natural resources between natural resource exploiters, the national government, county governments and local communities. All interested parties will therefore benefit from the exploitation of natural resources in their areas, including the local community in the area of exploitation who have hitherto never adequately benefited from the same.
- (3) **Benefit to Local Communities**-The Bill will also ensure local communities in particular and the public in general are involved and their input taken into account prior to the exploitation of a relevant natural resource. This will be done through the consultative processes that will precede any benefit sharing agreement as the Bill requires an exploiter of a natural resource to enter into a benefit sharing agreement before commencing its exploitation.
- (4) **Definition of the term “benefit sharing agreement”**- The Committee observed that the definition of the term “benefit sharing agreement” should be consistent with the definition of the term “benefit sharing” which,

according to the Bill, means the sharing of any benefits arising from the exploitation of natural resources in a fair and equitable manner.

- (5) **Composition and term of the County Benefit Sharing Committee-** The Committee observed that the Chairperson of the County Benefit Sharing Committee should be one of the members of the Committee elected by local communities. Further, members of the Committee elected by local communities should have a five (5) years term limit.
- (6) **Representation of Community Interests through the County Benefit Sharing Agreement under Clause 13(6)(a)-** The Committee observed that under Clause 13(6)(a) Local community benefit sharing forums should be obligated to present the interests of the local community to the respective County Benefit Sharing Committee in the negotiations of a Benefit Sharing Agreement.
- (7) **Deletion of clauses on the local community benefit sharing agreement which is covered under clause 13 (6) (b)-** The Committee observed that Clauses 12(2) and 13(6)(a) make reference to a local community benefit sharing agreement. The local community benefit sharing agreement is however redundant as its intentions are already spelled out under clause 13(6)(b). Reference to a local community benefit sharing agreement should therefore be deleted.
- (8) **Gender representation in Benefit Sharing Forums-**The Committee observed that the Local community benefit sharing forums ought to have gender balance. The Bill should therefore be amended to provide for sufficient gender representation in the forums.
- (9) **Deletion of Clause 15(2) on prioritization of projects by the County Benefit Sharing Committee-** The Committee observed that Clause 15(2) is redundant and unnecessary as the provisions under paragraphs 15(a) and (b) give a hierarchy of use of the retained funds. Subclause (2) should therefore be deleted.

3.1.RECOMMENDATIONS

176. Based on the foregoing observations, the Committee proposes to make the following amendments to the Bill—

- (1) **Clause 2- Interpretation-** Clause 2 be amended by inserting the words ‘the exploitation of’ in the definition of the term “benefit sharing agreement” to make it consistent with other provisions of the Bill.
- (2) **Clause 10- Establishment of a County Benefit Sharing Committee-** Clause 10 be amended by inserting the following new subclause immediately after subclause (2) to provide that the members of the County Benefit Sharing Committee elected by local communities shall serve for one single term of five years.
- (3) **Clause 10- Establishment of a County Benefit Sharing Committee-** Clause 10 be further amended in subclause (4) to provide that the Chairperson of the County Benefit Sharing Committee be elected by the Committee from among the members of the Committee elected by local communities.
- (4) **Clause 12- Approval of a Benefit Sharing Agreement-** Clause 12(2) be amended to remove reference to county and local community benefit sharing agreement and only retain the term benefit sharing agreement as proposed.
- (5) **Clause 13- Local Community Benefit Sharing Forum-** Clause 13 be amended in subclause (1) by inserting the words “two of whom shall be of the opposite gender” immediately after the words “of five persons” to provide for sufficient gender representation in local community benefit sharing forums.
- (6) **Clause 13- Local Community Benefit Sharing Forum-** Clause 13(6)(a) be deleted and replaced with an obligation of the local community benefit sharing forums to *“collect and collate the interests of the local community and present them to the respective County Benefit Sharing Committee in the negotiations of a Benefit Sharing Agreement”*.
- (7) **Deletion of Clause 15(2) on prioritization of projects by the County Benefit Sharing Committee-**The Bill be amended to delete subclause 15(2) as it is redundant and unnecessary noting the provisions under subclause 15(a) and (b).

APPENDICES

Annex I: Minutes of the meetings

Annex II: Amendments

Annex III: Newspaper Advert

ANNEX I

MINUTES

MINUTES OF THE 56TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 19TH AUGUST, 2021 AT SAROVA WHITESANDS HOTEL, MOMBASA AT 2.00 PM.

MEMBERS

PRESENT

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Mwangi Paul Githiomi, MP | - Chairperson |
| 2. Sen. Philip Mpaayei, MP | - Vice Chairperson |
| 3. Sen. Mwaruma Johnes, MP | - Member |
| 4. Sen. Ndwiga Peter Njeru, EGH, MP | - Member |
| 5. Sen. (Dr.) Lelegwe Ltumbesi, MP | - Member |
| 6. Sen. Boy Issa Juma, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------|----------|
| 1. Sen. George Khaniri, MGH, MP | - Member |
| 2. Sen. Gideon Moi, CBS, MP | - Member |
| 3. Sen. Sylvia Kasanga, MP | - Member |

IN ATTENDANCE

SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Mr. Victor Bett | - Clerk Assistant |
| 2. Mr. Crispus Njogu | - Clerk Assistant |
| 3. Ms. Mitchell Otoro | - Legal Counsel |
| 4. Ms. Lucianne Limo | - Media Relations Officer |
| 5. Ms. Farida Kinyua | - Personal Secretary |
| 6. Mr. Erick Njogu | - Clerk Assistant |
| 7. Mr. John Pere | - Sergeant-At-Arms |
| 8. Mr. James Kimiti | - Audio Recording |
| 9. Mr. Naftali Ondiba | - Finance Officer |

MINUTE SEN/SCLN/321/2021: PRELIMINARIES

The meeting was called to order at 2:00 pm by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/322/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. (Dr.) Lelegwe Ltumbesi, MP and seconded by Sen. Boy Issa Juma, MP as follows –

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Adoption of the following Petition Reports;**
 - (a) Draft Report of the Committee on the Natural Resources (Benefit Sharing) Bill, Senate Bill No. 25 of 2020
 - (b) Draft Report of the Committee on Climate Change and Approaches: Roles and Responsibilities of the Legislature Training, which was held in ESAMI, Dubai, U.A.E.
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLENR/323/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Committee differed the confirmation of Minutes.

MINUTE SEN/SCLENR/324/2021: ADOPTION OF THE FOLLOWING INQUIRY REPORTS;

- (a) **Draft Report of the Committee on the Natural Resources (Benefit Sharing) Bill, Senate Bill No. 25 of 2020**

Having considered the bill, the Committee hereby adopted its report with the following amendments:

- (1) **Clause 2- Interpretation-** Clause 2 be amended by inserting the words ‘the exploitation of’ in the definition of the term “benefit sharing agreement” to make it consistent with other provisions of the Bill.
- (2) **Clause 10- Establishment of a County Benefit Sharing Committee-** Clause 10 be amended by inserting the following new subclause immediately after

subclause (2) to provide that the members of the County Benefit Sharing Committee elected by local communities shall serve for one single term of five years.

- (3) **Clause 10- Establishment of a County Benefit Sharing Committee-** Clause 10 be further amended in subclause (4) to provide that the Chairperson of the County Benefit Sharing Committee be elected by the Committee from among the members of the Committee elected by local communities.
- (4) **Clause 12- Approval of a Benefit Sharing Agreement-** Clause 12(2) be amended to remove reference to county and local community benefit sharing agreement and only retain the term benefit sharing agreement as proposed.
- (5) **Clause 13- Local Community Benefit Sharing Forum-** Clause 13 be amended in subclause (1) by inserting the words “two of whom shall be of the opposite gender” immediately after the words “of five persons” to provide for sufficient gender representation in local community benefit sharing forums.
- (6) **Clause 13- Local Community Benefit Sharing Forum-** Clause 13(6)(a) be deleted and replaced with an obligation of the local community benefit sharing forums to *“collect and collate the interests of the local community and present them to the respective County Benefit Sharing Committee in the negotiations of a Benefit Sharing Agreement”*.
- (7) **Deletion of Clause 15(2) on prioritization of projects by the County Benefit Sharing Committee-**The Bill be amended to delete subclause 15(2) as it is redundant and unnecessary noting the provisions under subclause 15(a) and (b).

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Johnes Mwaruma, MP and Sen. Sen. (Dr.) Lelegwe Ltumbesi, MP respectively.

- (b) **Draft Report of the Committee on Climate Change and Approaches: Roles and Responsibilities of the Legislature Training, which was held in ESAMI, Dubai, U.A.E.**

Having conducted the training, the Committee hereby adopted its report with the with the following the conclusions

- (a) **The Committee acknowledges the support it has received from the Senate in fulfilling its mandate. Climate Change and its effects are a key frontier in safeguarding the lives and livelihoods of Kenyans in the foreseeable future.**
- (b) **The training will go a long way in enhancing service to the nation and to a great extent in preparing the Committee for the United Nations Climate Change Conference (COP 26) scheduled for 31st October to 12th November, 2021.**

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Philip Mpaayei, MP respectively.

MINUTE SEN/SCLENR/325/2021: ANY OTHER BUSINESS;

There was no other business discussed.

MINUTE SEN/SCLENR/326/2021: DATE OF NEXT MEETING;

The meeting was adjourned at 4.00 pm and the next meeting was scheduled for 20th August, 2021 at 9:00 am

Signed: 

Date: 20 /08 /2021

SEN. MWANGI PAUL GITHIOMI, MP

**CHAIRPERSON, STANDING COMMITTEE ON LAND, ENVIRONMENT
AND NATURAL RESOURCES**

MINUTES OF THE 48TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 21ST JULY, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Mwaruma Johnes, MP
3. Sen. (Dr.) Lelegwe Ltumbesi, MP
4. Sen. Boy Issa Juma, MP
5. Sen. George Khaniri, MGH, MP
6. Sen. Sylvia Kasanga, MP

PRESENT

- **Chairperson**
- Member
- Member
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Philip Mpaayei, MP
2. Sen. Gideon Moi, CBS, MP
3. Sen. Ndwiga Peter Njeru, EGH, MP

- **Vice Chairperson**
- Member
- Member

IN ATTENDANCE

SECRETARIAT

1. Mr. Victor Bett
2. Mr. Mitchell Otoro
3. Mr. Eric Kimani Njogu
4. Mr. Luciano Limo
5. Teopard Mukundi

- Clerk Assistant
- Legal Counsel
- Clerk Assistant
- Audio Recording
- Audio Recording

MINUTE SEN/SCLENR/273/2021: PRELIMINARIES

The meeting was called to order at 11.06 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/274/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. Boy Issa Juma, MP as follows –

1. Preliminaries – *Prayer*
2. Adoption of the agenda
3. Confirmation of Minutes of Previous Sitzings;
4. Matters Arising;
5. Consideration the Draft Committee Report on the Natural Resources (Benefit Sharing) Bill, Senate Bills No. 25 of 2020;
6. Any other Business;
7. Date of the next meeting;
8. Adjournment.

MINUTE SEN/SCLENR/275/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The confirmation of Minutes was differed to the next housekeeping meeting.

MINUTE SEN/SCLENR/276/2021: MATTERS ARISING

There were no matters arising

MINUTE SEN/SCLENR/277/2021: CONSIDERATION OF THE DRAFT COMMITTEE REPORT ON THE NATURAL RESOURCES (BENEFIT SHARING) BILL, SENATE BILLS NO. 25 OF 2020;

The Secretariat informed the Committee that the Draft Report was ready for consideration by members but requested to put the exercise on hold to consider late submissions from Kenya Private Sector Alliance (KEPSA) on the Bill.

The Committee was further informed that the Draft Report would be considered together with the report on petitions during the scheduled report writing proposed to take place in August 2021.

The Committee, Legal Counsel took the Committee through the submissions from KEPSA as **attached** to the following minutes as Matrix of the entire Public Hearing with the Committees Resolutions.

The Committee allowed the secretariat to proceed and have the Draft Report on the Bill ready for consideration by the Committee during the proposed report writing exercise.

MINUTE SEN/SCLENR/277/2021: ANY OTHER BUSINESS

A Statement on Poor Service Provision and Alleged Mismanagement of Water, Sanitation and Sewerage Companies was brought to the attention of the Committee. Members were informed that the issues it brought forth touched on multiple counties and it was therefore necessary to have a sitting with the **Council of Governors' Committee on Water and Natural Resources** together with the **Cabinet Secretary for Ministry Water, Sanitation and Irrigation** for deliberations.

The Committee allowed the secretariat to go ahead and invite the two for a joint discussion.

MINUTE SEN/SCLENR/278/2021: DATE OF NEXT MEETING

The meeting was adjourned at 12.00 pm and the next meeting was to be held on 22nd July, 2021 at 11.00 am.

Signed: **For:** 

Date: **8/9/2021**

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

MINUTES OF THE 44TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 30TH JUNE, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Mwaruma Johnes, MP
3. Sen. (Dr.) Lelegwe Ltumbesi, MP
4. Sen. Gideon Moi, CBS, MP
5. Sen. Boy Issa Juma, MP
6. Sen. Ndwiga Peter Njeru, EGH, MP

PRESENT

- **Chairperson**
- Member
- Member
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Philip Mpaayei, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. Sylvia Kasanga, MP

- **Vice Chairperson**
- Member
- Member

IN ATTENDANCE

SECRETARIAT

1. Mr. Victor Bett
2. Mr. Mitchell Otoro
3. Mr. Eric Kimani Njogu
4. Mr. James Kimiti

- Clerk Assistant
- Legal Counsel
- Clerk Assistant
- Audio Recording

MINUTE SEN/SCLENR/248/2021: PRELIMINARIES

The meeting was called to order at 11.22 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/249/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. (Dr.) Lelegwe Ltumbesi, MP as follows –

1. Preliminaries – *Prayer*
2. Adoption of the agenda
3. Confirmation of Minutes of Previous Sittings;
4. Matters Arising;
5. Consideration of submissions received on the Natural Resources (Benefit Sharing) Bill, Senate Bills No. 25 of 2020;
6. Any other Business;
7. Date of the next meeting;
8. Adjournment.

MINUTE SEN/SCLENR/250/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Minutes of the 8th sitting held on 10th March, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Gideon Moi, CBS, MP respectively.

The Minutes of the 11th sitting held on 28th March, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Johnes Mwaruma, MP and Sen. (Dr.) Lelegwe Ltumbesi, MP respectively.

The Minutes of the 18th sitting held on 31st March, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Johnes Mwaruma, MP and Sen. Boy Issa Juma, MP respectively.

The Minutes of the 20th sitting held on 7th April, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Johnes Mwaruma, MP and Sen. Boy Issa Juma, MP respectively.

The Minutes of the 21st sitting held on 8th April, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Johnes Mwaruma, MP respectively.

The Minutes of the 22nd sitting held on 8th April, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Johnes Mwaruma, MP respectively.

The Minutes of the 24th sitting held on 12th May, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Philip Mpaayei, MP and Sen. George Khaniri, MGH, MP respectively.

The Minutes of the 43rd sitting held on 20th May, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Johnes Mwaruma, MP and Sen. (Dr.) Lelegwe Ltumbesi, MP respectively.

MINUTE SEN/SCLENR/251/2021: MATTERS ARISING

(a) Under MINUTE SEN/SCLENR/122/2021: ANY OTHER BUSINESS

- Sen. Johnes Mwaruma, informed the meeting that in 2018, he had requested for a statement on all projects being undertaken by the Ministry of Water, Sanitation and Irrigation. The Ministry was to get back with a more updated list with clearly projects per County but has since not returned any feedback. Further the CS, at the time assured the Senator that a Kshs. 300,000,000 project was in the Pipeline on Mzima 1, Taita Taveta County and he has since not received an update on the matter.
- The Committee asked the Ministry to share the information that has been raised by Sen. Johnes Mwaruma and a copy of the response shared with his office.

The Committee noted that the Senator, Taita Taveta has since not received any submissions on the matter from the Ministry of Water, Sanitation and Irrigation. The Secretariat was thus tasked to liaise with the Senator and a letter done to the Ministry seeking for the information.

(b) Under MINUTE SEN/SCLNR/132/2021: PETITION SUBMITTED BY THE RESIDENTS OF MKAMENYI VILLAGE IN VOI SUB-COUNTY OF TAITA TAVETA COUNTY, THE ALLEGED ENCROACHMENT OF LAND BELONGING TO MKAMENYI RESIDENTS BY VOI POINT LIMITED IN TAITA TAVETA COUNTY

The Committee discussed the matter of the Business Registration Service (BRS) having not sent details of the ownership of Voi Point Limited and the secretariat was tasked to follow up on the information the Committee requires. Further, the Committee resolved as follows:

- Letter be done to the Director of Voi Point Limited once their contacts have been received from BRS;
- Letter be done to Cabinet Secretary, Ministry of Lands and Physical Planning requesting for the following information;
 - Documentation supporting the current subdivision that is ongoing on the parcel of land;
 - Documentation showing that the subdivisions were sanctioned by the County Government of Taita Taveta;
 - The original lease of the Land to Voi Sisal Estate, the current lease to Voi Point Limited and documents used by Voi Sisal Estate in the application of the new lease including the minutes of consent by the then Municipal Council of Voi accepting the renewal of the lease and the corresponding communications notifying the decision of the defunct Municipal Council of Voi.
- Letter be done to the Cabinet Secretary, Ministry of Interior and Coordination of National Government, following the failure by the DCI to appear before the committee and that the CS now responds to the matter of the report by the County Government of Taita Taveta to the Directorate of Criminal Investigations concerning irregularities that had taken place during the process of renewal of lease on Land Registration Number 4637 (original number) and the recent subdivision and sale of Land Registration Number 28683 (new number).

MINUTE SEN/SCLNR/252/2021: CONSIDERATION OF SUBMISSIONS RECEIVED ON THE NATURAL RESOURCES (BENEFIT SHARING) BILL, SENATE BILLS NO. 25 OF 2020;

The Committee, Legal Counsel took the Committee through the submissions obtained **attached separately** to this Minutes.

The Committee allowed the secretariat to proceed and have the Draft Report on the Bill ready for consideration by the Committee.

MINUTE SEN/SCLNR/253/2021: ANY OTHER BUSINESS

There were was no other business discussed.

MINUTE SEN/SCLENR/254/2021: DATE OF NEXT MEETING

The meeting was adjourned at 12.30 pm and the date of the next meeting was to be held on 7th July, 2021 at 11.00 am.

Signed: For: 

Date: 8/7/2021

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES**

ANNEX II

COMMITTEE STAGE AMENDMENTS TO THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO. 25 OF 2020)

19th August, 2021

The Clerk of the Senate

Parliament Buildings

NAIROBI

RE: COMMITTEE STAGE AMENDMENTS TO THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO. 25 OF 2020)

NOTICE is given that Sen. Paul Mwangi Githiomi, the Chairperson to the Standing Committee on Land, Environment and Natural Resources, intends to move the following amendments to the Natural Resources (Benefit Sharing) Bill, Senate Bills No. 25 of 2020, at the Committee Stage—

CLAUSE 2

THAT clause 2 of the Bill be amended by inserting the words “the exploitation of” appearing immediately after the words “revenue accruing from” in the definition of the term “benefit sharing agreement”;

CLAUSE 10

THAT clause 10 of the Bill be amended—

(a) by inserting the following new subclause immediately after subclause (2)—

(3) The members of the County Benefit Sharing Committee elected under subsection (2)(d) shall serve for one single term of five years.

- (b) in subclause (4) by deleting the expression “(2)(c)” appearing immediately after the words “elected under subsection” and substituting therefor the expression “(2)(d)”.

CLAUSE 12

THAT clause 12 of the Bill be amended in subclause (2) by deleting the words “county and local community” appearing immediately after the word “Each”.

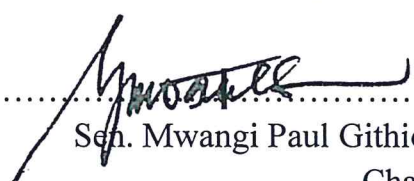
CLAUSE 13

THAT clause 13 of the Bill be amended—

- (a) in subsection (1) by inserting the words “two of whom shall be of the opposite gender” immediately after the words “of five persons”; and
- (b) in subsection (6) by deleting paragraph (a) and substituting therefor the following new paragraph—
 - (a) collect and collate the interests of the local community and present them to the respective County Benefit Sharing Committee in the negotiations of a Benefit Sharing Agreement

CLAUSE 15

THAT clause 15 of the Bill be amended by deleting subclause (2).

.....

Sen. Mwangi Paul Githiomi, MP,
Chairperson,
Committee on Land, Environment and Natural Resources.

ANNEX III

DAILY NATION THURSDAY, MAY 13, 2021

REPUBLIC OF KENYA



TWELFTH PARLIAMENT | FIFTH SESSION THE SENATE

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Tuesday, 11th May, 2021, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 140 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written Memoranda.

The Memoranda may be sent **by email** on the address: csenate@parliament.go.ke and copied to the respective Committee email addresses indicated at the fourth column below, to be received on or before **Friday, 28th May, 2021 at 5.00pm**.

	Bill	Committee Referred To	Email Address
1.	The Coffee Bill (Senate Bills No. 22 of 2020)	Standing Committee on Agriculture, Livestock and Fisheries	senatescalf@parliament.go.ke
2.	The Natural Resources (Benefit Sharing) Bill (Senate Bills No. 25 of 2020)	Standing Committee on Land, Environment and Natural Resources	senlandenviron@gmail.com
3.	The Health (Amendment) Bill (Senate Bills No. 26 of 2020)	Standing Committee on Health	senatekehealth@gmail.com
4.	The Basic Education (Amendment) Bill (Senate Bills No. 4 of 2021)	Standing Committee on Education	senateeducom@gmail.com
5.	The Kenyan Sign Language Bill (Senate Bills No. 5 of 2021)	Standing Committee on Education	senateeducom@gmail.com
6.	The County Vocational Education and Training Bill (Senate Bills No. 6 of 2021)	Standing Committee on Education	senateeducom@gmail.com
7.	The Street Vendors (Protection of Livelihood) Bill (Senate Bills No. 7 of 2021)	Standing Committee on Tourism, Trade and Industrialization	senatetourismandtrade@gmail.com
8.	The County Hall of Fame Bill (Senate Bills No. 9 of 2021)	Standing Committee on Labour and Social Welfare	senatecommittee.labour@parliament.go.ke
9.	The Office of The County Printer Bill (Senate Bills No. 13 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlalrc@gmail.com
10.	The Disaster Risk Management Bill (Senate Bills No. 14 of 2021)	Standing Committee on National Security, Defence and Foreign Relations	snsdfr@gmail.com
11.	The Law of Succession (Amendment) Bill (Senate Bills No. 15 of 2021)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlalrc@gmail.com
12.	The Prompt Payment Bill (Senate Bills No. 16 of 2021)	Standing Committee on Finance and Budget	scfinanceandbudget@gmail.com

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

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

