



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (SECOND SESSION)

THE SENATE

VOTES AND PROCEEDINGS

AFTERNOON SITTING

WEDNESDAY, JUNE 07, 2023 AT 2.30 PM

1. The Senate assembled at thirty Minutes past Two O'clock.
2. The proceedings were opened with Prayer said by the Speaker.

3. **QUORUM OF THE SENATE**

The Speaker, having counted the Honourable Senators present at the commencement of the Sitting and confirming that there was no Quorum, caused the Bell to be rung for ten minutes, pursuant to Standing Order 40(1);

And there being a Quorum after the expiry of ten minutes;

The Speaker invited the Clerk to call the Orders of the day.

4. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair: -

a) Demise of Mrs. Marya Elizabeth Adjibodou, Principal Clerk Assistant I, in the Directorate of Legislative and Procedural Services in the Senate

“Honourable Senators,

It is with deep sorrow that I notify you of the untimely demise of Mrs. Marya Elizabeth Adjibodou, Principal Clerk Assistant I, P/No. 99003735, serving in the Directorate of Legislative and Procedural Services in the Senate. Mrs. Adjibodou passed away in the evening of yesterday, Tuesday, 6th June, 2023.

Honourable Senators,

The Late Mrs. Marya Elizabeth Adjibodou was born on 24th December, 1968. She held a Masters of Science Degree in Community Economic Development and a Bachelor of Science Degree in Marketing, both from the New Hampshire College in Manchester. The departed officer obtained her “O” and “A” levels at the Hillcrest Secondary School in Nairobi.

The Late Mrs. Adjibodou joined the Parliamentary Service on 6th December, 2005, as a Personal Assistant in the then office of the Vice President and Leader of Government Business. On 21st April, 2009, she joined the Directorate of Legislative and Procedural Services in the National Assembly as a Clerk Assistant, serving in the Table Office (Room 8).

Following the promulgation of the new Constitution in 2010, Mrs. Adjibodou joined the Senate Service in February 2013, as a Senior Clerk Assistant in the Directorate of Committee Services. She later joined the Directorate of Legislative and Procedural Services where she rose to the level of Principal Clerk Assistant I, heading the Journals, Procedural Research and Records Department, where she served until her demise.

Indeed, Mrs. Adjibodou was on duty and called out the Orders at the Table in this Chamber, yesterday afternoon.

Honourable Senators,

The late Mrs. Adjibodou has been an exceptional parliamentary officer who personified commitment and diligence in Service. Her death is indeed a big loss to the Parliamentary Service, the wider parliamentary fraternity and the Senate in Particular. Our thoughts and prayers are with her family, friends and colleagues at this most taring time.

A condolence book has been opened in the Office of the Clerk on the 1st floor of the Main Parliament Buildings, for Members and staff who wish to convey their condolences to the family and friends.

Honourable Senators,

On behalf of all Senators and the entire staff of the Parliament, and indeed on my own behalf, I wish to take this opportunity to condole with the family of Mrs. Adjibodou, Parliamentary Staff and all her friends in this most difficult time. The Parliament of Kenya has indeed lost a diligent and committed staffer.

Honourable Senators,

In honour of our departed staffer, I request that we all stand and observe a minute of silence.

May the soul of the Late Mrs. Marya Elizabeth Adjibodou rest in eternal peace.”

Thereupon, the Speaker allowed Honourable Senators to eulogize the departed officer.

b) Visiting Students and Teachers from Koriema Secondary School

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, visiting teachers and students from Koriema Secondary School – Baringo County. The group comprises five (5) teachers and fifty – seven (57) students who are in the Senate for a one – day academic exposition.

Honourable Senators,

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

c) Visiting Students and Teachers from Ngurweini Secondary School

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, visiting teachers and students from Ngurweini Secondary School – Murang’a County. The group comprises one (1) teacher and one fifty- four (154) students who are in the Senate for a one- day academic exposition.

Honourable Senators,

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

5. PAPERS

The following Papers were laid on the Table of the Senate: -

- i.) Report of the Auditor General for the County Governments (County Executives) (Volume 1) for the financial year 2021/2022.
- ii.) Report of the Auditor General for the County Governments (County Assemblies) (Volume 2) for the financial year 2021/2022.
- iii.) The Office of the Controller of Budget (CoB) Annual Report and Financial Statements for the financial year 2021/2023.
- iv.) Report of the Auditor General on the Financial Statements of the County Facilities Improvement Fund Board for the County Government of Taita Taveta for the year ended 30th June, 2022.
- v.) Report of the Auditor General on the Financial Statements of the Municipality of Rongo for the year ended 30th June, 2022.
- vi.) Report of the Auditor General on the Financial Statements of Migori County Water and Sanitation Company Limited for the year ended 30th June, 2022.
- vii.) Report of the Auditor General on the Financial Statements of Kikuyu Water Company Limited for the year ended 30th June, 2022.
- viii.) Report of the Auditor General on the Financial Statements of Karuri Water and Sanitation Company Limited for the year ended 30th June, 2022.
- ix.) Report of the Auditor General on the Financial Statements of Kiambu County Assembly Car Loan and Mortgage Scheme Fund for the year ended 30th June, 2022.
- x.) Report of the Auditor General on the Financial Statements on the Receiver of Revenue – Revenue Statements for the County Government of Kiambu for the year ended 30th June, 2022.
- xi.) Report of the Auditor General on the Financial Statements of Kiambu County Alcoholic Drinks Control Fund for the year ended 30th June, 2022.
- xii.) Report of the Auditor General on the Financial Statements of Kiambu County Emergency Fund for the year ended 30th June, 2022.

(The Senate Majority Leader)

6. QUESTIONS AND STATEMENTS

STATEMENTS

a) Pursuant to Standing Order 52(1)

The Senator for Nandi County (Sen. Samson Cherarkey, MP) made a statement to commend the exemplary performance of Kenyan athletes who participate at the Wanda Diamond League 2023 Golden Gala in Florence, Italy.

Thereupon the Senator stated that history was made when Faith Kipyegon, an Olympic champion, broke the world record for the women's 1,500 metres race, setting a new record time of 3 minutes. 49.11 seconds. The Senator further lauded Mr. Ferdinand Omanyala, for finishing second at the Diamond League by clocking 10.05 seconds in the 100 m race.

The Senator called upon Kenyan athletes to remain clean and dedicated in their careers by avoiding the doping menace that had ended careers and tainted the image of many other athletes. The Senator also called upon the Government, Athletics Kenya (AK) and the National Olympics Committee of Kenya (NOCK) to engage the athletes as Kenya's brand ambassadors in sports tourism and in marketing Kenya abroad, and to ensure that their welfare and rewards are taken care of with a view to keep them motivated at all times.

b) Pursuant to Standing Order 53(1)

- (i) Nominated Senator (Sen. Tabitha Mutinda, MP) sought a statement from the Standing Committee on Land, Environment and Natural Resources concerning regulation of sand harvesting in Kitui County.
- (ii) Nominated Senator (Sen. Hamida Kibwana, MP) sought a statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the challenges in the issuance of passport and alleged corruption in the Directorate of Immigration Services.
- (iii) Nominated Senator (Sen. Hamida Kibwana, MP) sought a statement from the Standing Committee on Health concerning accessibility and affordability of Fistulla care in Kenya.
- (iv) Nominated Senator (Sen. Hamida Kibwana, MP) sought a statement from the Standing Committee on Health concerning actions to make cancer treatment accessible and affordable in Kenya.

- (v) The Senator for Kitui County (Sen. Enoch Wambua, MP) on behalf of Nominated Senator (Sen. Beth Syengo, MP), sought a statement from the Standing Committee on Trade, Industrialization and Tourism regarding the promotion and marketing of tourist sites in the Eastern Region of Kenya.
- (vi) The Senator for Kitui County (Sen. Enoch Wambua, MP) sought a statement from the Standing Committee on Land, Environment and Natural Resources regarding issuance of title deeds to the residents of Kitui County.
- (vii) The Senator for Nairobi City County (Sen. Edwin Sifuna, MP) sought a statement from the Standing Committee on Agriculture, Livestock and Fisheries regarding the non-payment of dairy farmers' dues by the New Kenya Cooperative Creameries (KCC).
- (viii) The Senator for Murang'a County (Sen. Joe Nyutu, MP) sought a statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the safety and evacuation of Kenyans stranded in Sudan following unrest in the country.

c) Pursuant to Standing Order 56(1) (a)

The Chairperson, Standing Committee on Land, Environment and Natural Resources made a statement on the World Environment Day.

Thereupon, the Chairperson averred that the World Environment Day is a global event that is celebrated annually on June 5th and organized by the United Nations Environment Programme (UNEP). He further stated that the event aims to raise awareness about pressing environmental challenges and that the theme for the World Environment Day 2023 was "*Solutions to Plastic Pollution*."

The Chairperson noted that the choice of the theme reflected the urgent need to address the detrimental effects of plastic pollution on climate change and biodiversity. The Senator observed that plastic pollution poses a significant threat to Kenya, as it does to the rest of the world while noting that rivers, lakes, and coastlines in the country had been suffocating under the weight of plastic waste, endangering ecosystems and marine life. He argued that the World Environment Day serves as a platform to encourage collective action and commitment from all stakeholders by raising awareness in order to combat plastic pollution effectively.

The Chairperson emphasized on the need to strengthen existing legislation on plastic waste management by imposing stricter enforcement, enhanced penalties, and comprehensive guidelines as necessary tools to tackle plastic production, consumption, and disposal in order to overcome the effects of plastic pollution. He appreciated that

this would require review and amendment to the Sustainable Waste Management Act to address such emerging challenges.

7. **COMMITTEE OF THE WHOLE**

Order for the Committee read;

IN THE COMMITTEE

(The Chairperson of Committees – in the Chair)

The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 5 of 2022)

Clause 2 -amendment proposed

THAT clause 2 of the Bill be amended by inserting the words “The Parliamentary Powers and Privileges (Amendment) Act, hereinafter referred to as” at the beginning of the introductory clause.

(The Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights Committee)

Clause 2 -vote deferred

Clause 3

Motion made and Question proposed;

THAT, Clause 3 of the Bill be part of the Bill.

(Sen. Danson Mungatana, MP)

Clause 3 -vote deferred

Clause 4 -amendment proposed

THAT clause 4 of the Bill be amended –

- a) in the introductory clause by deleting the words “Parliamentary Powers and Privileges Act hereinafter referred to as the” appearing immediately after the word “The”;
- b) by deleting the proposed new section 23A and substituting therefor the following new section –

23A. In this Part, “responsible officer” means –

- a) Cabinet Secretary;
- b) a county governor;

- c) the chairperson of a commission established under the Constitution;
 - d) the Auditor-General;
 - e) the Controller of Budget;
 - f) the chairperson and the accounting officer of a corporate body; and
 - g) a public officer to whom a resolution or report of a House or a Committee of Parliament is submitted in accordance with this Act.
- c) in the proposed new section 23C –
- (i) by renumbering the existing provision as subsection (1); and
 - (ii) inserting the following new subsection immediately after the new subsection (1)–
 - (2) A person liable for an offence under subsection (1) shall be personally liable for the fine and public funds shall not be used to pay such a fine.

(The Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights Committee)

Clause 4 -vote deferred

New Clause 3A -insertion of new clause proposed

THAT the Bill be amended by inserting the following new clause immediately after clause 3 –

3A. Section 16 of the principal Act is amended in paragraph (d) by deleting the expression “38” appearing immediately after the words “under section” and substituting therefor the expression “37”.

Motion made and Question Proposed;

THAT New Clause 3A be now read a Second Time.

(The Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights Committee)

New Clause 3A -vote deferred

The Title and Clause 1

Motion made and Question proposed;

THAT, the Title and Clause 1 be part of the Bill

(Sen. Danson Mungatana, MP)

Progress Report

Motion made: -

THAT, the Committee of the Whole do report to the Senate its consideration of the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No. 5 of 2022) and seek leave to sit again tomorrow.

(Sen. Danson Mungatana, MP)

Before the Question was put and pursuant to Standing Order 84 (1), the Chairperson ruled that the Question does not affect counties;

Question put and agreed to.

8. **THE HOUSE RESUMED** – (The Temporary Speaker (Sen. Veronica Maina, MP)
- in the Chair)
9. **THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL
(SENATE BILLS NO. 5 OF 2022)**

Progress reported;

Motion made and Question proposed: -

THAT, the Senate do agree with the Committee of the Whole in the said report.

(Sen. Danson Mungatana, MP)

There being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 84 (1) the Temporary Speaker (Sen. Veronica Maina, MP) ruled that the Motion does not affect counties.

Question put and agreed to.

- ## 10. COMMITTEE OF THE WHOLE

IN THE COMMITTEE

(The Acting Chairperson of Committees (Sen. Wakili Hillary Sigei, MP) – in the Chair)

The Natural Resources (Benefit Sharing) Bill (Senate Bills No. 6 of 2022)

Clause 3 -amendment proposed

THAT clause 3 of the Bill be amended by—

- (a) deleting paragraph (b) and substituting therefor the following new paragraph (b) —
- (b) surface and underground water;
- (b) inserting the following new paragraphs immediately after paragraph (f) —
- (g) geothermal resources;
- (h) minerals; and
- (i) petroleum.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Further amendment proposed

THAT clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (f)—

- (g) geothermal resources.

(Sen. Tabitha Karanja, MP)

Further amendment dropped in the absence of the Mover.

Clause 3 -vote deferred

Clause 4 -amendment proposed

THAT clause 4 of the Bill be amended by inserting the following new paragraph immediately after paragraph (f)—

- (g) environmental protection and restoration.

(Chairperson to the Standing Committee on Land, Environment and Natural Resources)

Clause 4 -vote deferred

Clause 5 -amendment proposed

THAT the Bill be amended by deleting clause 5 and substituting therefore the following New Clause-

**PART II – ESTABLISHMENT AND MANAGEMENT OF THE BENEFIT
SHARING AUTHORITY**

Establishment of the Benefit Sharing Authority. **5.** (1) There is established the Benefit Sharing

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

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

Clause 5 -vote deferred

Clause 6 -amendment proposed

THAT clause 6 of the Bill be amended—

(a) in subclause (1) by—

(i) deleting the word “Commission” appearing immediately after the word “The” and substituting therefor the word “Authority”; and

(ii) inserting the words “and upon conducting public participation” immediately after the words “national government entities”;

(b) in subclause (3) by deleting the words “payments or benefit sharing” appearing immediately after the words “the royalty, fees,” and substituting therefor the words “or payments”; and

(c) in subclause (4) by—

(i) deleting the word “Commission” appearing immediately after the word “The” and substituting therefor the word “Authority”; and

(ii) deleting the words “or any other written law” appearing immediately after the words “to this Act”.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 6 -vote deferred

Clause 7 -amendment proposed

THAT clause 7 of the Bill be amended—

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

(2) The Kenya Revenue Authority shall declare and pay monies collected under subclause (1) to the Consolidated Fund by the fifth day of every month.

- (b) in subclause (4) by deleting the word “Commission” appearing immediately after the words “account to the” and substituting therefor the word “Authority”; and

- (c) inserting the following new subclauses immediately after subclause (4)—

(5) The Authority shall submit to the respective county government declarations received from the Kenya Revenue Authority under subsection (4) at least once every quarter.

(6) The county executive committee member in the respective county shall submit to the respective local community declarations received from the Authority under subsection (5) within twenty one days of receipt.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 7 -vote deferred

Clause 8 -amendment proposed

THAT clause 8 of the Bill be amended—

- (a) by deleting subclause (1) and substituting therefor the following new subclause —

(1) The revenue collected under this Act shall, subject to subsection (3), be shared between the National Government and respective county governments in the ratio of sixty per cent to the National Government and forty per cent to the county governments.

- (b) by deleting subclause (2);

- (c) in subclause (3) by—
 - (i) deleting the word “forty” appearing immediately after the words “At least” and substituting therefor the word “sixty”; and
 - (ii) deleting the word “sixty” appearing immediately after the words “community projects and” and substituting therefor the word “forty”;
- (d) in subclause (4) by deleting the word “Commission” appearing immediately after the words “more counties the” and substituting therefor the word “Authority”;
- (e) in subclause (5) by deleting the word “Commission” appearing immediately after the words “subsection (4) the” in the introductory clause and substituting therefor the word “Authority; and
- (f) in subclause (6) by deleting the word “Commission” appearing immediately after the word “The” and substituting therefor the word “Authority”.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 8 -vote deferred

Clause 9

Motion made and Question proposed;

THAT, Clause 9 of the Bill be part of the bill –

(Sen. Danson Mungatana, MP)

Clause 9 - vote deferred

Clause 10 -amendment proposed

THAT clause 10 of the Bill be amended—

- (a) in subclause (2) by deleting paragraph (b) and substituting therefor the following new paragraph (b)—
- (b) the county executive committee member responsible for matters relating to natural resources;
- (b) in subclause (3) by inserting the words “be appointed by the county governor and” immediately after the words “subsection (2)(d) shall”; and

(c) by inserting the following new subclause immediately after subclause (5)—

(5A) The county chief officer responsible for matters relating natural resources shall serve as the secretary to the County Benefit Sharing Committee.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 10 -vote deferred

Clause 11 -amendment proposed

THAT clause 11 of the Bill be amended in paragraph (a) by inserting the words “in consultation with the respective local community and upon conducting public participation” before the words “negotiate the terms”.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 11 -vote deferred

Clause 12 -amendment proposed

THAT clause 12 of the Bill be amended in subclause (2) by deleting the word “Commission” appearing immediately after the words “deposited with the” and substituting therefor the word “Authority”.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 12 -vote deferred

Clause 13 -amendment proposed

THAT clause 13 of the Bill be amended in subclause (3) by inserting the words “be appointed by the respective county executive committee member responsible for matters relating to natural resources and” immediately after the words “sharing forum shall”.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 13 -vote deferred

Clause 14 -amendment proposed

THAT the Bill be amended by deleting clause 14 and substituting therefor the following new clause—

- Funds of the Authority.
- 14.** The funds of the Authority shall consist of—
- (a) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
 - (b) such money as may be provided by the National Assembly for defraying expenses incurred in the implementation of this Act;
 - (c) all monies from any other source provided for or donated or lent to the Authority; and
 - (d) such other monies that may lawfully accrue in the discharge of functions of the Authority under this Act.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 14 -vote deferred

Clause 15

Motion made and Question proposed;

THAT, Clause 15 of the Bill be part of the Bill.

(Sen. Danson Mungatana, MP)

Clause 15 -vote deferred

Clause 16 -amendment proposed

THAT clause 16 of the Bill be amended in subclause (1) by deleting the word “Commission” appearing immediately after the words “furnished to the” in paragraph (a) and substituting therefor the word “Authority”.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 16 -vote deferred

Clause 17 -amendment proposed

THAT the Bill be amended by deleting clause 17 and substituting therefor the following new clause 17—

Transitional provisions. **17.** (1) An affected entity that, immediately before the commencement of this Act, was lawfully authorised to exploit a natural resource under this Act shall be deemed to be authorised to conduct such exploitation under this Act.

(2) Despite subsection (1), an affected entity shall comply with the provisions of this Act within two years of the commencement of the Act.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 17 -vote deferred

Clause 18 -amendment proposed

THAT clause 18 of the Bill be amended in subclause (1) by inserting the words “in consultation with the Authority and the Council of County Governors” immediately after the words “Cabinet Secretary may”.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 18 -vote deferred

Clause 19 -amendment proposed

THAT the Bill be amended by deleting clause 19 and substituting therefor the following new clause 19—

Amendment to section 183 of Act No. 12 of 2016. **19.** Section 183 of the Mining Act is amended by deleting subsection (5) and substituting therefor the following new subsection (5)—

(5) The royalty received by the State under this section shall be paid into the Consolidated Fund and apportioned in accordance with section 8 of the Natural Resources (Benefit Sharing) Act.

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 19 -vote deferred

New Clause 5A -insertion of new clause proposed

Functions of the to—
Authority.

- 5A.** (1) The functions of the Authority shall be to
- (a) coordinate the preparation of benefit sharing agreements between an affected county and an affected entity;
 - (b) review, and where appropriate, determine the royalties payable by an affected entity engaged in natural resource exploitation;
 - (c) identify counties that are required to enter into a benefit sharing agreement under this Act in consultation with the respective county governments;
 - (d) oversee the administration of funds set aside for community projects to be implemented under a benefit sharing agreement;
 - (e) facilitate and monitor the implementation of a benefit sharing agreement entered into between a county government and an affected entity;
 - (f) conduct research regarding the exploitation and development of natural resource and benefit sharing in Kenya;
 - (g) determine appeals arising out of conflicts regarding the preparation and implementation of benefit sharing agreements;
 - (h) advise the national government on policy and the enactment of legislation relating to benefit sharing in resource exploitation;
 - (i) oversee the establishment of benefit sharing committees and forums established under this Act;
 - (j) ensure the proper and timely payment of funds to counties and local communities as provided under this Act;
 - (k) build the capacity of local communities in negotiations for benefit sharing and implementation of related projects;
 - (l) prepare national guidelines on benefit sharing in consultation with the relevant stakeholders;
 - (m) identify, in consultation with sector specific organizations, incentives and benefits to

promote the conservation of natural resources;

- (n) promote value addition in natural resources;
- (o) promote local content initiatives on the exploration and exploitation of natural resources under this Act; and
- (p) promote the restoration of the environment after the exploitation of a natural resource in an affected county.

(2) The Authority may, in furtherance of its functions, collaborate with such other bodies or organizations within or outside Kenya as it may consider necessary for the better performance of its functions under this Act.

(3) The Authority 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.

Motion made and Question proposed;

THAT, New Clause 5A be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5A

-vote deferred

New Clause 5B

-insertion of new clause proposed

Board of the Authority. **5B.** (1) The management of the Authority shall vest in a Board which shall consist of—

- (a) a chairperson appointed by the President with the approval of Parliament;
- (b) the Principal Secretary responsible for finance or a designated representative;
- (c) the Principal Secretary responsible for mining or a designated representative;

- (d) the Principal Secretary responsible for petroleum or a designated representative;
- (e) the Principal Secretary responsible for energy or a designated representative;
- (f) two persons of opposite gender nominated by the Council of County Governors to represent such communities as the council shall determine;
- (g) one person nominated by a registered association representing a majority of members of county assemblies to represent local communities;
- (h) one person nominated by an umbrella body representing the interests of the private sector in Kenya; and
- (i) the Director-General appointed by the Board in accordance with section 5K.

(2) The chairperson shall be competitively recruited by the Public Service Commission and appointed by the President by notice in the *Gazette*.

(3) The Cabinet Secretary shall, with the approval of Parliament, appoint the persons nominated under subsection (1)(f), (g) and (h) by notice in the *Gazette*.

(4) In nominating and appointing persons as members of the Board, the nominating authorities and the Cabinet Secretary shall—

- (a) have regard to—
 - (i) the principles of non-discrimination on the basis of gender, disability, youth and marginalized persons under the Constitution; and
 - (ii) the requirements of chapter six of the Constitution; and
- (b) ensure that the nominations reflect the regional diversity of the people of Kenya.

Motion made and Question proposed;

THAT, New Clause 5B be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5B

-vote deferred

New Clause 5C -insertion of new clause proposed

Tenure of office. **5C.** (1) The members of the Board other than the Director-General shall—

(a) hold office for a term of three years and shall be eligible for reappointment for one further term; and

(b) serve on a part-time basis.

(2) Paragraph (1)(a) shall not apply to principal secretaries who serve as members of the board.

Motion made and Question proposed;

THAT, New Clause 5C be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5C -vote deferred

New Clause 5D -insertion of new clause proposed

Qualifications for appointment. **5D.** A person is qualified for appointment as the chairperson or a member of the Board under section 5B(1) (f), (g) and (h) if that person—

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

(b) has knowledge and at least seven years' experience in—

(i) law;

(ii) environmental management;

(iii) economics;

(iv) public finance;

(v) mining;

(vi) community development; or

(vii) any other related field.

Motion made and Question proposed;

THAT, New Clause 5D be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5D -vote deferred

New Clause 5E

-insertion of new clause proposed

Vacation of office.

5E. The office of the chairperson or a member of the Board appointed under section 5B(1)(f), (g) and (h) shall become vacant if the chairperson or member—

- (a) is unable to perform the functions of the office by reason of mental or physical incapacity;
- (b) is otherwise unable or unfit to continue serving as the chairperson or member of the Board;
- (c) is adjudged bankrupt;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is absent, without reasonable cause, from three consecutive meetings of the Board;
- (f) resigns in writing addressed, in the case of the chairperson, to the President and in the case of a member appointed under section 5B(1) (f), (g) or (h), to the Cabinet Secretary;
- (g) fails to declare their interest in any matter being considered by the Board; or
- (h) dies

Motion made and Question proposed;

THAT, New Clause 5E be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5E

-vote deferred

New Clause 5F

-insertion of new clause proposed

Powers of the Board.

5F. (1) The Board shall have all the powers necessary for the performance of the functions of the Authority under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have the power to—

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Authority in such manner and for such purposes as best promote the purposes for which the Authority is established;

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

(2) The Board shall consult the respective Cabinet Secretary responsible for an affected natural resource in carrying out its functions under this Act.

Motion made and Question proposed;

THAT, New Clause 5F be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5F -vote deferred

New Clause 5G -insertion of new clause proposed

Committees of the Board. **5G.** (1) The Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

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

Motion made and Question proposed;

THAT, New Clause 5G be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5G -vote deferred

New Clause 5H -insertion of new clause proposed

Power to **5H.** The Board may, by resolution either generally
delegate. or in any particular case, delegate to any committee of
the Board or to any member, officer, employee or agent
of the Authority the exercise of any of the powers or the
performance of any of the functions or duties of the
Board under this Act.

Motion made and Question proposed;

THAT, New Clause 5H be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5H -vote deferred

New Clause 5I -insertion of new clause proposed

Remuneration **5I.** The remuneration, allowances, expenses and
and other emoluments of members and staff of the
allowances. Authority shall be determined by the Salaries and
Remuneration Commission.

Motion made and Question proposed;

THAT, New Clause 5I be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5I -vote deferred

New Clause 5J -insertion of new clause proposed

Conduct of **5J.** The Board shall conduct its affairs in
business accordance with the provisions of the Schedule.
and affairs
of the
Board.

Motion made and Question proposed;

THAT, New Clause 5J be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5J -vote deferred

New Clause 5K -insertion of new clause proposed

Director-General. **5K.** (1) There shall be a Director-General of the Authority who shall be competitively recruited and appointed by the Board on such terms and conditions as the Board shall determine.

(2) A person qualifies for appointment as a Director-General under subsection (1) if such person —

- (a) holds a degree from a university recognized in Kenya; and
- (b) has knowledge and at least ten years' experience in —
 - (i) law;
 - (ii) environmental management;
 - (iii) economics;
 - (iv) public finance;
 - (v) mining;
 - (vi) community development; or
 - (vii) in any other related field.

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

Motion made and Question proposed;

THAT, New Clause 5J be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5K -vote deferred

New Clause 5L -insertion of new clause proposed

Tenure of office of the Director-General. **5L.** The Director-General shall be appointed for a term of four years and shall be eligible for reappointment for one further term.

Motion made and Question proposed;

THAT, New Clause 5L be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5L -vote deferred

New Clause 5M

-insertion of new clause proposed

Functions of the Director-General. **5M.** (1) The Director-General shall be the chief executive officer of the Authority and secretary to the Board.

(2) The Director-General shall, for the effective performance of the functions under this Act and subject to the direction of the Board, —

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

Motion made and Question proposed;

THAT, New Clause 5L be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5M

-vote deferred

New Clause 5N

-insertion of new clause proposed

Tenure of office of the Director-General. **5N.** The Board may terminate the appointment of the Director-General in accordance with the terms and conditions of service for—

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

Motion made and Question proposed;

THAT, New Clause 5N be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5N -vote deferred

New Clause 5O -insertion of new clause proposed

Common **50.** (1) The common seal of the Authority shall be
seal of the kept in the custody of the Director-General or such
Authority. other person as the Board may direct and shall not be
used except with the express authority and direction of
the Board.

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

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

Motion made and Question proposed;

THAT, New Clause 5O be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5O -vote deferred

New Clause 5P -insertion of new clause proposed

Staff of the **5P.** (1) The Board may employ such officers, agents
Authority. and staff as are necessary for the proper and efficient
discharge of the functions of the Authority under this
Act.

(2) The staff employed under subsection (1) shall serve on such terms and conditions as the Board may, subject to section 5I, determine.

Motion made and Question proposed;

THAT, New Clause 5P be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5P -vote deferred

New Clause 5Q -insertion of new clause proposed

Motion made and Question proposed;

THAT, Clause 5Q of the Bill be now read a second Time.

Protection from personal liability.	5Q. No matter or thing done by a member of the Board or by any officer, employee or agent of the Authority shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand.
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Motion made and Question proposed;

THAT, New Clause 5Q be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5Q -vote deferred

New Clause 5R -insertion of new clause proposed

Liability of the Authority to damages.	5R. Section 5Q shall not relieve the Authority of liability to pay compensation or damages to any person for any injury to them, their property or any of their interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.
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Motion made and Question proposed;

THAT, New Clause 5R be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 5R -vote deferred

New Clause 14A -insertion of new clause proposed

Financial year. **14A.** The financial year of the Authority shall be the period of twelve months ending on thirtieth June in each year.

Motion made and Question proposed;

THAT, New Clause 14A be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 14A -vote deferred

New Clause 14B -insertion of new clause proposed

Accounts. **14B.** (1) The Authority shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Authority.

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

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

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act.

No. 34 of 2015. (4) The Authority may establish, control, manage, maintain and contribute to pension and provident funds for the benefit of employees of the Authority and may grant pensions and gratuities from any such fund to the said employees upon their resignation, retirement or separation from the service of the Authority or, as the case may be, to the dependants of any such employee upon such employee's death.

Motion made and Question proposed;

THAT, New Clause 14B be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 14B -vote deferred

New Clause 14C -insertion of new clause proposed

Annual
Report.

14C. (1) Within three months of the end of each financial year, the Authority shall submit—

(a) to the Auditor-General, the accounts of the Authority in respect of that year together with—

(i) a statement of the income and expenditure of the Authority during that year; and

(ii) a statement of the assets and liabilities of the Authority as at the last day of that financial year; and

(b) to the President and Parliament, an annual report in respect of that year containing—

(i) the financial statements of the Authority including—

(A) a statement of the income and expenditure of the Authority during that year; and

(B) a statement of the assets and liabilities of the Authority as at the last day of that financial year;

(ii) a list of institutions contributing to benefit sharing under this Act, the proportion of benefit and the local community that benefited;

(iii) the total sums contributed towards benefit sharing and its distribution;

(iv) the progress made in the implementation of the Authority's functions; and

(v) any other information that the Authority may consider necessary.

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

Motion made and Question proposed;

THAT, New Clause 14C be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 14C -vote deferred

New Clause 20 -insertion of new clause proposed

Amendment to section 7 of Act No. 47 of 2013. **20.** Section 76 of the Wildlife Conservation and Management Act is amended by—

(a) deleting subsection (1) and substituting therefor the following new subsection —

(1) The revenue received by the National Government under this Act shall be paid into the National Treasury and apportioned in accordance with section 8 of the Natural Resources (Benefit Sharing) Act.

(b) deleting subsection (2);

(c) deleting subsection (3); and

(d) deleting subsection (4).

Motion made and Question proposed;

THAT, New Clause 20 be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 20 -vote deferred

New Clause 21 -insertion of new clause proposed

Amendment to section 85 of Act No. 1 of 2019. **21.** Section 85 of the Energy Act is amended by—

(a) deleting subsection (3) and substituting therefor the following new subsection (3)—

(3) The royalty received by the National Government under this section shall be paid into the National Treasury and apportioned in accordance with section 8 of the Natural Resources (Benefit Sharing) Act.

(b) deleting subsection (4).

Further amendment proposed

THAT the Bill be amended by inserting the following new clause immediately after clause 20—

Amendment to section 85 of Act No. 1 of 2019. **21.** Section 85 of the Energy Act is amended by—

(a) deleting subsection (3) and substituting therefor the following new subsection —

(3) The royalty received by the National Government under this section shall be paid into the National Treasury and apportioned in

accordance with section 8 of the
Natural Resources (Benefit Sharing)
Act.

(b) deleting subsection (4).

(Sen. Tabitha Keroche, MP)

Further amendment dropped in the absence of the Mover.

Motion made and Question proposed;

THAT, New Clause 21 be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 21 -vote deferred

New Clause 22 -insertion of new clause proposed

Motion made and Question proposed;

THAT, Clause 22 of the Bill be now read a second Time.

Amendment **22.** The Petroleum Act is amended by deleting section 58 and
to section 58 substituting therefor the following new section 58—
of Act No. 2 of
2019.

Chairperson, Standing Committee on Land, Environment and Natural Resources)

Motion made and Question proposed;

THAT, New Clause 22 be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Clause 22 -vote deferred

New Schedule - insertion of new schedule

THAT the Bill be amended by inserting the following new Schedule—

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

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

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

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

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

- (a) at the first sitting of the Board; and
- (b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.

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

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

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

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

Quorum. **2.** (1) Subject to subparagraph (2), the quorum of a meeting of the Board shall be not less than half of the appointed members.

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

Voting.

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

Conflict of interest.

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

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

- (a) be present during the deliberation on the matter by the Board; or
- (b) take part in the decision of the Board on the matter.

(3) A member of the Board who makes a disclosure under subparagraph (1) shall not—

- (a) be present in the meeting of the Board held to determine whether or not the member should take part in the deliberations or decision of the Board in relation to the matter; or
- (b) influence any other member of the Board in arriving at a particular decision in relation to the matter.

(4) A member or staff of the Authority shall not transact any business or trade with the Authority.

Rules of Procedure and minutes.

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

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

by the chairperson or the person presiding at the meeting.

Motion made and Question proposed;

THAT, the New Schedule be now read a Second Time

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

New Schedule -vote deferred

Clause 2 -amendment proposed

THAT clause 2 of the Bill be amended by—

a) deleting the definitions of the terms—

- (i) Commission;
- (ii) fund;
- (iii) futures fund;
- (iv) natural resources fund; and
- (v) sovereign wealth fund;

b) inserting the following new definitions in the proper alphabetical sequence—

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

“Board” means Board of the Benefit Sharing Authority constituted under section 5B; and

“Director-General” means Director-General of the Benefit Sharing Authority appointed under section 5K(1).

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

Clause 2 -vote deferred

The Title and Clause 1

Motion made and Question proposed;

THAT, the Title and Clause 1 be part of the Bill

(Sen. Danson Mungatana, MP)

The Title and Clause 1 -vote deferred

Progress Report

Motion made;

THAT, the Committee of the Whole do report to the Senate its consideration of the Natural Resources (Benefit Sharing) Bill (Senate Bills No. 6 of 2022) and seek leave to sit again tomorrow;

(Sen. Danson Mungatana, MP)

Before the Question was put and pursuant to Standing Order 84 (1), the Acting Chairperson (Sen. Wakili Hillary Sigei, MP) ruled that the Question does not affect counties;

Question put and agreed to.

11. **THE HOUSE RESUMED** – (The Temporary Speaker (Sen. Veronica Maina, MP) - in the Chair
12. **THE THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO. 6 OF 2022)**

Progress reported;

Motion made and Question proposed: -

THAT, the Senate do agree with the Committee of the Whole in the said report.

(Sen. Danson Mungatana, MP)

There being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 84 (1) the Temporary Speaker (Sen. Veronica Maina, MP) ruled that the Motion does not affect counties.

Question put and agreed to.

13. **THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILLS NO. 11 OF 2022)**
(Sen. Samson Cherarkey, MP)

Order for Second Reading read;

(Resumption of debate interrupted on Tuesday, 6th June, 2023)
(Mover to Reply)

Order deferred.

14. **QUORUM IN THE SENATE**

Raising a point of order pursuant to Standing Order 41(1), the Senator for Kilifi County (Sen. Justice (Rtd.) Stewart Madzayo, MP) drew the attention of the Temporary Speaker (Sen. Veronica Maina, MP) that there was no quorum in the House;

And the Temporary Speaker (Sen. Veronica Maina, MP) having counted the Senators present and confirmed that there was no quorum, caused the Division Bell to be rung for ten minutes;

And there being no quorum after the expiry of ten minutes;

The Temporary Speaker (Sen. Veronica Maina, MP) adjourned the Senate at fifty-nine minutes past Five O'clock without Question put, pursuant to the Standing Orders.

15. **SENATE ROSE** - at fifty-nine minutes past Five O'clock.

MEMORANDUM

*The Speaker will take the Chair on
Thursday, June 08, 2023 at 2:30 p.m.*

-x