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PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION - 2022

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ON:

NATURAL RESOURCES (BENEFITS SHARING) BILL, (SENATE BILL NO. 25 OF
2020)

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI


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BY: CLERK-AT THE-TABLE:	HON. SOPHIA ABDI NOOR, M.P. CHAIR, ENVIRONMENT APRIL, 2022 CHRISTINE NJURITU

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CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Natural Resources (Benefits Sharing) Bill, (Senate Bill No. 25 of 2020) which was read a First Time in the National Assembly on 2nd February, 2022. The Bill was thereafter, committed to the Departmental Committee on Environment and Natural Resources pursuant to National Assembly Standing Order 143.

The Bill which is sponsored by the Senator (Dr.) Agnes P. Zani, **M.P.**, *proposes to enact an Act of Parliament 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.*

In considering the Bill, the Committee applied itself to the provisions of Articles 109(5) and 114 of the Constitution of Kenya which relate to the origination and definition of a 'Money Bill', by seeking determination as to whether the Bill was a money bill from the Parliamentary Budget Office. The Committee also sought for views from the stakeholders in line with Article 118 of the Constitution through an advertisement that was placed the dailies on 15th February, 2022. The analysis on the Bill is contained in Part II of this Report.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all stakeholders who participated in the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

The Committee having considered the Natural resources (Benefit Sharing) Bill, 2020, recommends that the House **REJECTS** the Bill since it is a 'Money Bill' pursuant to Article 114 of the Constitution and as such it can only be introduced in the National Assembly pursuant to Article 109(5) of the Constitution. The Bill conflicts with existing legislation namely the Mining Act, 2016, Petroleum (Exploration, Development and Production) Act, 2019, Energy Act, 2019 and Fisheries (Management and Development) Act 2016, Natural Resources (Classes of Transactions Subject to Ratification) Act, No. 14 of 2016, Environmental Management and Coordination Act, 1999, there is further an ongoing comprehensive Review of the Wildlife Conservation and Management Act No. 47 of 2013.

On behalf of the Departmental Committee on Environment and Natural Resources and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Natural Resources (Benefits Sharing) Bill, 2020.

HON. SOPHIA ABDI NOOR, MP

1.0 PREFACE

1.1 Committee Mandate

1. The Departmental Committee on Environment and Natural Resources is established under the National Assembly Standing Orders No. 216 (1). The functions and mandate of the Committee are also contained under the National Assembly Standing Orders, No. 216(5) as:-
 - a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - b) Study the program and policy objectives of the Ministries and departments and the effectiveness of the implementation;
 - c) **Study and review all legislation referred to it;**
 - d) Study, access and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
 - e) Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - f) Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
 - g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.
2. The subject matters of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

1.2 Oversight

3. In executing its mandate, the Committee directly oversees the following Government Ministries and Departments: -
 - a) The Ministry of Environment and Forestry;
 - b) The Ministry of Water & Sanitation and Irrigation;
 - c) The State Department for Wildlife; and
 - d) The Ministry of Petroleum and Mining.

1.3 Committee Membership

4. The Committee comprises the following Members:

Chairperson

The Hon. Sophia Abdi Noor, M.P.
Ijaara Constituency

Party of Development and Reforms (PDR)

Vice-Chairperson

The Hon. (Eng.) Paul M. Nzengu, M.P.
Mwingi North Constituency

Wiper Party

The Hon. David Kangogo Bowen, M.P.
Marakwet East Constituency

Jubilee Party

The Hon. Francis Chachu Ganya, M.P.
North Horr Constituency

Frontier Alliance Party (FAP)

The Hon. Ali Wario Guyo, M.P.
for Garsen Constituency

Wiper Party

The Hon. Benard Masaka Shinali, M.P.
Ikolomani Constituency

Jubilee Party

The Hon. George Macharia Kariuki, M.P.,
Ndia Constituency

Jubilee Party

The Hon. Charity K. Chepkwony, M.P.
Njoro Constituency

Jubilee Party

The Hon. Simon Ng'ang'a King'ara, M.P.
Ruiru Constituency

Jubilee Party

The Hon. Peter Kimari Kihara, M. P.
Mathioya Constituency

Jubilee Party

The Hon. Janet Ong'era, MP.

Kisii County

Orange Democratic Movement (ODM)

The Hon. Charles Ong'ondo Were, M.P.
Kasipul Constituency

Orange Democratic Movement (ODM)

The Hon. Nasri Sahal Ibrahim, M.P.
Nominated

Forum for Restoration of Democracy-K

The Hon. Rozaah Buyu. M.P.
Kisumu County

Orange Democratic Movement (ODM)

The Hon. Said Hiribae, M.P.

Galole Constituency

Forum for Restoration of Democracy- K

The Hon. Hassan Oda Hulufu, M.P.
Isiolo North Constituency

Kenya Patriots' Party (KPP)

The Hon. Amin Deddy Mohamed Ali, M.P.
Laikipia East Constituency

Jubilee Party

The Hon. Rehema Hassan, M.P.
Tana River County

Maendeleo Chap Chap Party (MCC)

The Hon. David Gikaria, M.P.
Nakuru Town East Constituency

Jubilee Party

1.4 Secretariat

5. The Committee is serviced by the following staff:

Ms. Esther Nginyo
First Clerk Assistant
Lead Clerk

Mr. Dennis Mogare Ogechi
Second Clerk Assistant

Ms. Lynette Otieno
Legal Counsel I

Dr. Benjamin Ngimor
Senior Fiscal Analyst

Mr. Eugene Akaa
Research Officer

2.0 OVERVIEW OF THE BILL

2.1 Introduction

6. The Natural Resources (Benefit Sharing) Bill, (Senate Bill No.25 of 2020) was read for the first time on 2nd February, 2022 and committed for consideration to the Departmental Committee on Environment and Natural Resources pursuant to Standing Order 127(1).
7. The primary objective of this Bill is to provide a legislative framework for the establishment and enforcement of a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities.
8. The Bill is a money Bill as per the provisions of Article 114 of the Constitution and the National Assembly Standing Order No. 117 (d); the enactment of the Bill shall occasion expenditure of public funds to be provided for through the annual estimates.
9. The Bill concerns county governments in terms of Article 110 (1) (a) of the Constitution as it contains provisions that affect the powers of the county governments, in as far as the provisions of the benefit-sharing of resources collected from wildlife protected areas.

2.2 Analysis of the Bill

10. The highlights of the Bill which contains 6 parts are as follows.
 - a) **PART I** contains **Preliminary Provisions** which include the short title, interpretation, application of the Act and guiding principles of benefit sharing. The Bill in Clause 3 enumerates the following natural resources that the Act shall apply to; sunlight; water resources; forest, biodiversity and genetic resources; wildlife resources; industrial fishing and wind
 - b) **PART II** contains provisions relating to **functions of the commission of revenue allocation** which shall include coordination and preparation of benefit sharing agreement between an affected county and affected entity.
 - c) **PART III** contains provisions relating to **Collection of Royalties and Fees** which include the imposition of royalties and fees payable by entities, the Kenya Revenue Authority shall collect royalties. This part also sets out the revenue sharing ratio.
 - d) **PART IV** contains provisions relating to **benefit sharing agreements and establishment of county benefit sharing committees whose functions include** to negotiate terms of benefit sharing agreement with an affected entity on behalf of the county government, monitor implementation of projects required to be undertaken pursuant to the benefit sharing agreement and determine amount of money to be allocated to each local community from the moneys that accrue under a benefit sharing agreement. This part also establishes local community benefit sharing forum that shall collect and collate views of the local communities and

represent their interest in negotiations the respective county benefit sharing committee.

- e) **PART V** contains the Financial Provisions. This Part establishes the Natural Resources Royalties fund where all royalties and fees collected shall be paid into.
- f) **PART VI** contains the Miscellaneous Provisions. It provides for how munities distributed to counties shall utilized for projects. It also sets out offences under the Act and provides for transitional provisions. The Commission is required to review all existing laws and agreements prescribing the ratio of natural resource sharing within two years of the commencement of the Act. The Bill seeks to also amend the Mining Act, 2016 and review the revenue sharing ratio prescribed therein.

3.0 VIEWS FROM STAKEHOLDERS

11. In considering the Bill, the Committee applied itself to the provisions of Articles 109(5) and 114 of the Constitution of Kenya which relate to the origination and definition of a 'Money Bill', by seeking determination as to whether the Bill was a money bill from the Parliamentary Budget Office.
12. The Committee placed an advertisement on 15th February, 2022 in the Standard Newspaper and the Daily Nation Newspaper in accordance with Article 118 of the Constitution. The Committee received comments from the following stakeholders:
 - i. Kenya Oil and Gas Working Group (KOGWG)
 - ii. Natural Justice
 - iii. WWF-Kenya
 - iv. Kenya Civil Society Platform on Oil and Gas (KCSPOG)
 - v. Community Action for Nature Conservation (CANCO)
 - vi. Kanasianta POGH Water Resources Users Association
13. The Committee also received views from the Ministry of Tourism and Wildlife, Kenya Law Reform Commission, the Office of the Attorney General & Department of Justice and other stakeholders to submit their memoranda on of the Natural Resources (Benefits Sharing) Bill, 2020. The Stakeholders submitted as follows:

3.1 Briefing from the Parliamentary Budget Office

In a meeting that was held on 1st March, 2022, Parliamentary Budget Office briefed the Committee.

14. The Key highlights of the Bill are:

- (i) **Royalties and fees from natural resource exploitation** [*Sections 6 & 7*] – the Commission on Revenue Allocation (CRA) is tasked with determining and review of royalties and fees payable by affected entities engaging in natural resource exploitation. The Kenya Revenue Authority (KRA) is tasked with the collection of these royalties and fees.
- (ii) **Revenue sharing ratio** [*Section 8*]– 20% of the revenue collected shall be paid into a sovereign wealth fund while the remaining 80% will be shared between the National Government and respective County Government. The sovereign wealth fund will consist of a Futures Fund and a Natural Resource Royalties Fund which will share the allocation in the ratio of 60% for the Futures Fund and 40% for the Natural Resource Royalties Fund. Similarly, the two levels of government will share their allocation in the ratio of 60% for National Government and 40% for the respective County Government. Lastly, the 40% of the revenue assigned to the County Government will be utilized on local community with the natural resource while 60% will be utilized for the benefit of the entire county.
- (iii) **Benefits Sharing Agreement** [*Sections 9, 10, 11, 12 & 13*] – The bill proposes for the establishment benefit sharing agreements between county government and affected entities which will be coordinated by the CRA. Each county with a natural resource is required to establish a County Benefit Sharing Committee whose key role will be to negotiate the terms of the benefit sharing agreement with the affected entity on behalf of the county government. Additionally, a Local

Community Benefit Sharing Forum is also established to represent the interests of the local community in negotiations with the County Benefit Sharing Committee.

- (iv) **Natural Resource Royalties Fund [Section 14]** – All royalties and fees collected from natural resources exploitation will be payable to this fund. The fund will be administered by the CRA.
- (v) **Amendment to the Mining Act, 2016 [Section 19]** – The bill proposes to amend Section 183 of the Mining Act, 2016 which deals with Royalties. The amendment related to the distribution of royalties collected from natural resource exploitation. The table below summarizes the proposed amendment.

Table 1: Distribution of Royalties

	Mining Act, 2016	Proposed Amendment by this Bill
National Government	70%	48%
County Government	20%	19%
Local Community	10%	13%
Futures Fund	-	12%
Natural Resource Royalties Fund	-	8%
Total	100%	100%

- 15. The Bill seeks to vary the distribution of royalties and fees collected from natural resource exploitation by reducing the allocations for the national government and county government, increasing the allocation to the local community and introducing two new functions to which part of the royalties will be payable. This provision is a variation of an existing charge to a public fund which is in line with Article 114 (3) (b) of the Constitution.
- 16. The Bill also proposes to allocate the CRA and the KRA additional functions with respect to natural resource exploitation. These two entities will require the National Assembly to appropriate additional resources for them to adequately undertake these new functions. Therefore, this provision will lead to appropriations of public money which is in line with Article 114 (3) (c) of the Constitution.

3.2 . Briefing from the Parliaments Directorate of Legal Services

17. Conflict of laws

It was noted that the Bill does not clearly define the boundaries of its application with respect to the exploitation (or management) of forest resources, water resources, wildlife resources, and fishery resources against the provisions of:

- a)The Forest Conservation and Management Act (No.34 of 2016) that is an Act of Parliament to give effect to Article 69 of the Constitution with regard to forest resources; to provide for the development and sustainable management, including conservation and rational utilization of all forest resources for the socio-economic development of the country;

- b) The Water Act (No.43 of 2016) that is an Act of Parliament to provide for the regulation, management and development of water resources, water and sewerage services;
- c) The Wildlife Conservation and Management Act (No.47 of 2013) that is an Act of Parliament to provide for the protection, conservation, sustainable use and management of wildlife in Kenya; and
- d) The Fisheries Management and Development Act (No.35 of 2016) that is an Act of Parliament to provide for the conservation, management and development of fisheries and other aquatic resources to enhance the livelihood of communities dependent on fishing and to establish the Kenya Fisheries Services.

3.3 Comments from the Ministry of Tourism and Wildlife

- 18. The Ministry submitted that they are taking into consideration the Bill is proposing together with other proposals that they are receiving as there is a Comprehensive Review of the Wildlife Conservation and Management Act No. 47 of 2013 being undertaken as sanctioned by the Cabinet.
- 19. They observed that the proposed amendments are being looked into comprehensively and it is in the interest of the public to carry out this comprehensive review with the view of repealing the current Act and coming up with a new law that will effectively address the issues being proposed to avoid piece meal amendments

3.4 Comments from Kenya Law Reform Commission

- 20. They Submitted that they are part of the team carrying out Comprehensive Review of the Wildlife Conservation and Management Act No. 47 of 2013.
- 21. They observed that, in view of the amount of work that has been undertaken, they were of the considered view that it would be prudent to include proposals in the review of the Act instead of having it as a separate legislation.
- 22. They noted that proceeding in this manner will also help to ensure that there is no duplicity in legislation and avoid piecemeal amendments.

3.5 Comments from the Office of the Attorney General & Department of Justice

- 23. They Submitted that they consulted the Ministry of Tourism and Wildlife on the legislative proposal and were informed of the Comprehensive Review of the Wildlife Conservation and Management Act No. 47 of 2013 as sanctioned by the Cabinet.
- 24. They observed that the Ministry will consider the proposal made and harmonize with others to enable the Ministry develop a comprehensive legal instrument that enables a unified approach in conservation and management of wildlife.

3.6 Submission from the Kanasianta POGH Water Resources Users Association

- 25. They submitted that they fully acknowledge and support that a harmonized system of benefits sharing, through consultative consensus, in natural resources exploitation, between resource exploiters, the national government, county governments, the local communities; and for other mutually connected purposes.

3.7 Matrix of comments by various stakeholders

CLAUSE	PROVISION OF BILL	STAKEHOLDER'S COMMENTS	JUSTIFICATION	COMMITTEE'S COMMENTS
PREAMBLE	AN ACT of Parliament to establish a system of benefit sharing in natural resource exploitation between resource exploiters, the national government, county governments and local communities; and for connected purposes	Kenya Oil and Gas Working Group (KOGWG) 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	Kenya Oil and Gas Working Group (KOGWG) 69(1)(a) provides the basis for benefit sharing and it 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." The Bill should also aim at harmonizing all existing sector specific laws that make provision for benefit sharing as well.	The Committee agrees that the Bill should harmonize all existing sector specific laws that make provision for benefit sharing as well.
2	Interpretation 'natural resources'	Kenya Oil and Gas Working Group (KOGWG) 1. Review of the definition of "natural resource" to the provided in the Constitution of Kenya 2010 2. "Genetic resources" has the meaning assigned to it under the Section 2 of the Environmental Management and Coordination Act No. 8	Kenya Oil and Gas Working Group (KOGWG) 3. Has the meaning assigned to it in Article 260 of the Constitution in order to incorporate hydrocarbons and mineral resources.	The Definitions should align with existing laws and the Constitution.

		of 1999.	4. 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.	
3	<p>(3) This Act shall apply to the following natural resources-</p> <p>(a) sunlight;</p> <p>(b) water resources;</p> <p>(c) forests, biodiversity and genetic resources;</p> <p>(d) wildlife resources;</p> <p>(e) industrial fishing; and</p> <p>(f) wind.</p>	<p>Kenya Oil and Gas Working Group (KOGWG)</p> <p>In Clause 3 (Application of the Act)</p> <p>No inclusion of 'Rocks, minerals, fossil fuels and other sources of energy' in list of natural resources to which this Act applies.</p> <p>3. This Act shall apply to the following natural resources -</p> <p>(a) Sunlight;</p> <p>(b) Water resources;</p> <p>(c) Forests, biodiversity and genetic resources;</p> <p>(d) Wildlife resources;</p> <p>(e) Industrial fishing; and</p> <p>(d) Wind; and</p> <p>(e) Rocks, minerals, fossil fuels and other sources of energy.</p>	<p>Kenya Oil and Gas Working Group (KOGWG)</p> <p>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.</p> <p>"Natural Resources" is defined under the Constitution to mean "the physical non-human factors and components, whether renewable or non-renewable, including -</p>	

			<p>(a) Sunlight; (b) Surface and groundwater; (c) Forests, biodiversity and genetic resources; and (d) Rocks, minerals, fossil fuels and other sources of energy.”</p> <p>Excluding some natural resources from the Bill’s application will lead to fragmentation of and conflict in the benefit sharing legal framework in Kenya.</p>	
4	<p>(4) All persons shall be guided by the following principles in the performance of their functions under this Act-</p> <p>(a) transparency and inclusivity;</p> <p>(b) revenue maximization and adequacy;</p> <p>(c)efficiency and equity;</p> <p>(d) accountability and participation of the people;</p> <p>(e)rule of law and respect for human rights of people; and</p> <p>(f) sustainable natural resources management.</p>	<p>Kenya Oil and Gas Working Group (KOGWG) Amend the section to include sustainable utilization of Natural Resource Revenues as one of the Act’s guiding principles.</p>	<p>Kenya Oil and Gas Working Group (KOGWG) 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</p>	
5		Kenya Oil and Gas	Kenya Oil and	Committee agrees

<p>5(1) In addition to its principal functions under Article 216(1) of the Constitution and section 10(1)(d) of the Commission on Revenue Allocation Act, the Commission shall be responsible for the implementation of this Act and shall for this purpose, -</p> <p>(a) co-ordinate the preparation of benefit sharing agreements between an affected county and an affected entity;</p> <p>(b) review, and where appropriate, determine the royalties payable by an affected entity engaged in natural resource exploitation;</p> <p>(c) identify counties that are required to enter into a benefit sharing agreement under this Act in consultation with the respective county governments;</p> <p>(d) oversee the administration of funds set aside for community projects to be implemented under a benefit sharing agreement; The Natural Resources (Benefit Sharing) Bill, 2020 613</p> <p>(e) facilitate and monitor the implementation of a benefit sharing agreement entered into between a county government and an affected entity;</p> <p>(f) conduct research</p>	<p>Working Group (KOGWG)</p> <p>Clause 5 (1) (Functions of the Commission)</p> <p>We recommend the deletion of this clause and the inclusion of 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 all the way to the Court of Appeal whose decision shall be final.</p> <p>5. (1) In addition to its principal functions under Article 216(1) of the Constitution and section 10(1)(d) of the Commission on Revenue Allocation Act, the Commission shall be responsible for the implementation of this Act and shall, for this purpose —</p>	<p>Gas Working Group (KOGWG)</p> <p>As 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.</p>	<p>appeals arising out of conflicts relating to benefit sharing agreements should be lodged with and determined by a different independent body.</p>
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<p>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;</p> <p>(h) advise the national government on policy and the enactment of legislation relating to benefit sharing in resource exploitation;</p> <p>(i) oversee the establishment of benefit sharing committees and forums;</p> <p>(j) ensure the proper and timely payment of funds to counties and local communities as provided under this Act;</p> <p>(k) build the capacity of local communities in negotiations for benefit sharing and implementation of related projects;</p> <p>(l) prepare national guidelines on benefit sharing in consultation with the relevant sectoral leaders;</p> <p>(m) identify, in consultation with sector specific organizations, incentives and benefits to promote the conservation of natural resources;</p> <p>(n) ensure and promote value addition in natural resources;</p>			
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	(o) promote local content initiatives; and (p) promote the restoration of the environment after the exploitation of a natural resource in an affected county.			
6	(c) obligations imposed on Kenya under any international treaty or agreement relating to the exploitation of natural resources.	Kenya Oil and Gas Working Group (KOGWG) Section 5 (3) Paragraph (c) The paragraph be amended to include obligations created by international treaties and agreements on sharing of benefits accruing from natural resource exploitation	Kenya Oil and Gas Working Group (KOGWG) 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.	The Committee agrees with this observation.
7	18. (1) The Cabinet Secretary may make Regulations for the better carrying out of the provisions of this Act. Power to make Regulations. (2) In particular and without prejudice to the generality of the power conferred by sub-section (1), the Cabinet Secretary shall make Regulations— (a) prescribing the fees in respect of anything required to be done under this Act; (b) prescribing the administration of the Fund; (c) prescribing	Kenya Oil and Gas Working Group (KOGWG) Inclusion of regulations under section 18 on monitoring and enforcement of local content	Kenya Oil and Gas Working Group (KOGWG) 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.	Monitoring and enforcement of local content should be included.

	<p>mode for the payment of royalties under this Act;</p> <p>(d) prescribing the revenue sharing formula between counties that share a natural resource; and</p> <p>(e) prescribing anything which is required to be prescribed or is necessary to give effect to this Act.</p>			
8	<p>5 (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.</p>	<p>Kenya Oil and Gas Working Group (KOGWG)</p> <p>5. (3) <i>Where a written law prescribes the royalty, fees, payments or benefit sharing in a particular natural resource, the relevant written law shall apply with respect to that sector.</i></p> <p>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.</p> <p>Alternatively, this part be amended to make the Bill the primary statutory framework on benefit sharing</p>	<p>Kenya Oil and Gas Working Group (KOGWG)</p> <p>Although there are provisions regarding benefit sharing under other sector specific laws, these provisions are not necessarily suitable and favorable to communities. Therefore, where the specific laws conflict with the provisions of this Bill, the provisions of this Bill or the law with favorable terms should prevail.</p> <p>This will promote local content. 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</p>	<p>The committee agrees that where other specific laws conflict with the provisions of this Bill, the provisions of this Bill or the law with favorable terms should prevail.</p>

			on benefit sharing into a single and authoritative benefit sharing framework applicable across sectors.	
9	6(4) The Commission shall monitor compliance with the written law and the implementation of any benefit sharing agreement entered into pursuant to this Act or any other written law.	Kenya Oil and Gas Working Group (KOGWG) 6. (4) "...benefit sharing agreement entered into...." Inclusion of section providing for the mechanism of entering a benefit sharing agreement.	Kenya Oil and Gas Working Group (KOGWG) The Commission needs to provide a mechanism that they will monitor compliance thus avoiding the loophole of it being open ended.	The Committee agrees with the provision
10	8(2) (b) forty per cent shall be paid into a natural resources fund.	Kenya Oil and Gas Working Group (KOGWG) 8. (2.b) "...Monies paid into the Sovereign Wealth Fund...." Harmonize the provisions under this section with that in the Draft Sovereign Wealth Fund Bill, 2019.	Kenya Oil and Gas Working Group (KOGWG) Part II of the Draft Sovereign Wealth Fund Bill 2019 provides for 3 components; Stabilization Component, Infrastructure Development Component and Urithi Component. The natural resources benefit sharing bill under section 8 subsection 2 refers to a natural resources fund that in non-existent in the draft Sovereign Wealth Fund bill.	The Bill cannot refer to a non-existent Fund. The Committee does not agree with the comment.
11	9. (1) Every affected entity shall enter into a	Kenya Oil and Gas Working Group	Kenya Oil and Gas Working Group	The committee agrees with the

<p>benefit sharing agreement with the relevant county government before the exploitation of a natural resource in the affected county.</p>	<p>(KOGWG) 9. (1)"...benefit sharing agreement..." Inclusion of section 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 17 subsection 4. The section should be amended to make a benefit sharing agreement a precondition for issuance of natural resource exploitation licences across sectors.</p>	<p>Group (KOGWG) This is for purposes of clarity in order to avoid the assumption by affected entities 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.</p>	<p>comment</p>
<p>12</p>	<p>Kenya Oil and Gas Working Group (KOGWG) <i>No provision on the minimum clauses or terms that should be included in a Benefit Sharing Agreement</i> 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 sharing obligations will be</p>	<p>Kenya Oil and Gas Working Group (KOGWG) This will enhance uniformity in the way agreements are developed and ensure that the bare minimum requirements are met. 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.</p>	<p>The committee notes minimum terms can be provided however perhaps the matter through regulations.</p>

		<p>discharged</p> <p>(d) Definition of what acts are not allowed</p> <p>(c) Clear stipulation of consequences of breaches and enforcement</p> <p>(d) Conflict resolution</p> <p>(e) Applicable laws that will govern the contract (especially where the agreement is being entered into with multinational companies)</p> <p>Public participation should be a precondition to the approval of benefit sharing agreements</p>		
13.	<p>13. (1) There shall be established by each affected local community a Local Benefit Sharing Forum comprising of five persons elected by the residents of the local community. Local Community Benefit Sharing Forum.</p> <p>(2) A public officer shall not be eligible for election as a member of a local community benefit sharing forum.</p> <p>(3) The members of a local community benefit sharing forum shall serve for a single term of five years. (4) The respective county government shall facilitate meetings and the election of the members of the Local Community Benefit Sharing Forum.</p> <p>(5) A local community</p>	<p>Kenya Oil and Gas Working Group (KOGWG)</p> <p>Clause 13(6) (Local Community Benefit Sharing Forum)</p> <p>Include either an additional clause or Schedule outlining the key provisions or contents that should be included in a Local Community Benefit Sharing Agreement.</p> <p>Clause 13 (4) Facilitation of meetings by the respective county governments</p> <p>Clause 13 (5) Meetings by the local community benefit sharing forum within a year</p> <p>Functions of the local</p>	<p>Kenya Oil and Gas Working Group (KOGWG)</p> <p>This will enhance uniformity in the way agreements are developed and ensure that the bare minimum requirements are met</p> <p>Facilitation of meetings by the county governments will open it to influence and corruption. Need to ensure the autonomy of the Community Benefit Sharing Forum to work independently.</p> <p>Proposal to have the local</p>	The Committee agrees with the comment

	<p>benefit sharing forum shall not hold more than eight meetings in one year.</p> <p>(6) The functions of a Local Community Benefit Sharing Forum shall be to—</p> <p>(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;</p> <p>(b) identify local community projects to be supported by money allocated to the local community by the The Natural Resources (Benefit Sharing) Bill, 2020 619 County Benefit Sharing Committee under this Act; and</p> <p>(c) oversee the implementation of projects undertaken at the local community using money devolved under this Act.</p> <p>(6) The members of a local community benefit sharing forum shall be paid such allowances as shall be determined by the County Public Service Board in consultation with the Salaries and Remuneration Commission.</p>	<p>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.</p> <p>The Bill to make provisions for a local community benefit sharing agreement</p> <p>The Bill to provide for the composition in terms of diversity, and the tenure of the members of the local community benefit sharing forums.</p>	<p>community benefit sharing forum hold a meeting a month so that the frequency can enable the forum collate and discuss issues raised by the community before escalation to the committee</p> <p>As much as resource exploitation will affect the entire concerned county, 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.</p> <p>To promote inclusivity of marginalized populations</p>	
17	<p>17. (1) The Commission shall, within two years of the commencement of this Act, review all existing laws and</p>	<p>Kenya Oil and Gas Working Group (KOGWG)</p> <p>17 (1) Transitional provisions</p>	<p>Kenya Oil and Gas Working Group (KOGWG)</p> <p>This is evident by powers vested in</p>	<p>The Committee notes that there should be specific stating actual amendments to</p>

<p>agreements prescribing the ratio of natural resource sharing, taking into account the provisions of this Act and international best practice in revenue sharing.</p> <p>(2) The Commission shall submit a report to the National Assembly, the Senate and the Cabinet Secretary on the outcome of the review within three months of the conclusion of the review. The Natural Resources (Benefit Sharing) Bill, 2020 621</p> <p>(3) The report submitted under subsection (2) shall, in addition to the requirements set out under subsection (1), set out proposals on legislative and policy amendments required to fully implement this Act.</p> <p>(4) An affected entity that, immediately before the commencement of this Act, was lawfully authorised to exploit a natural resource under this Act shall be considered to be authorised to conduct such exploitation under this Act. (5) Despite subsection (4), an affected entity shall comply with the provisions of this Act within two years of its commencement</p>	<p>The section provides the justification in inclusion of hydrocarbons and mineral resources under section 3.</p> <p>Clause 17 (5) Compliance to the provisions of the Act by an affected entity</p>	<p>the Commission to review all existing laws and agreements prescribing the ratio of natural resources sharing within two years of commencement of the Act. Hence the bill upon enactment will supersede all other natural resource governance laws.</p> <p>Proposal to have entities comply with the provisions of the Act within a year of its commencement subject to subsection (4).</p>	<p>existing laws.</p>
<p>19. Section 183 of the Mining Act is amended by — (a) by deleting</p>	<p>Kenya Oil and Gas Working Group (KOGWG)</p>	<p>Kenya Oil and Gas Working Group (KOGWG)</p>	<p>Committee agrees with the comment.</p>

subsection (5) and substituting therefor the following new subsection (5) —

(5) The royalties payable under sub-section (1) shall be distributed as follows — (a) twenty per cent of the royalties shall, subject to subsection (6), be paid into a sovereign wealth fund established by the National Government; and

(b) eighty per cent of the royalties shall, subject to subsection (7), be shared between the National Government and respective county governments in the ratio of sixty per cent to the National Amendment to Act No. 12 of 2016. 622 The Natural Resources (Benefit Sharing) Bill, 2020 Government and forty per cent to the county governments; and

(b) by inserting the following new subsections immediately after subsection (5) —

(6) The royalties paid into the sovereign wealth fund under sub-section (5)(a) shall be paid as follows into the following funds constituting the sovereign wealth fund —

(a) sixty per cent shall be paid into a futures fund; and

(b) forty per cent shall be paid into a natural

Section 19 purports to amend the Mining Act, while section 3 excludes minerals from the list of mineral resources.

Section 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

resources fund.

(7) At least forty per cent of the royalties assigned to county governments under sub-section (5)(b) shall be utilised to implement respective local community projects and sixty per cent of the royalties shall be utilised for the benefit of the entire county.

(8) Where mineral resources bestride two or more counties, the Commission on Revenue Allocation established under Article 215 of the Constitution shall determine the ratio of sharing the retained royalties amongst the affected counties in consultation with the affected counties.

(9) In determining the ratio of sharing the retained royalties amongst counties sharing a mineral resource under sub-section (8), the Commission on Revenue Allocation shall take into account —

(a) the contribution of each affected county in relation to the mineral resource;

(b) the inconvenience caused to the county in the exploitation of the mineral resource; and

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

(10) The Commission on Revenue Allocation

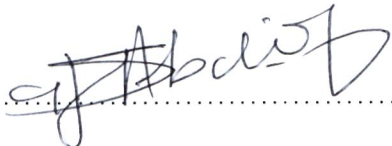
	shall, in consultation with the lead agencies with respect to each mineral resource, review the revenue sharing ratio after every five years and present its recommendations to Parliament for approval.			
Memorandum of Objects and Reasons		<p>Kenya Oil and Gas Working Group (KOGWG)</p> <p>Need to clarify and distinguish which Cabinet Secretary for Natural Resources since the bill makes reference to different natural resources sectors.</p>		As matter of legislative practice memorandum of objects and reasons are not part of committee amendments.

4.0 Committee Observations

26. In Considering the Bill, the Committee observed as follows, that :
27. The Bill meets the criteria required to define it as a 'Money Bill' pursuant to Article 114(b) & (c) of the Constitution. As such, the National Assembly is required to take into consideration the recommendations of the Budget and Appropriations Committee when debating the Bill. Further, a 'Money Bill' can only be introduced in the National Assembly pursuant to Article 109(5) of the Constitution. Therefore, the Bill should have been first introduced in the National Assembly and not in the Senate;
28. There is an ongoing Comprehensive Review of the Wildlife Conservation and Management Act No. 47 of 2013 by the Ministry of Tourism and Wildlife. The Ministry was collating submissions for inclusion in a new Bill that will overhaul the current Act. The Committee also noted that the Ministry was willing to incorporate the proposed amendments provided in this Bill;
29. The Bill needs to be harmonized with existing laws that govern natural resources including the Mining Act, 2016, Petroleum (exploration, development and production) Act, 2019, Energy Act, 2019 and Fisheries (management and development) Act 2016, Natural Resources (classes of transactions subject to ratification) Act no. 14 of 2016, Environmental Management and Coordination Act, 1999, in order to avoid conflict on between the bill and already enacted laws;
30. The Bill does not propose a model benefit sharing agreement, outlining basic provisions, including rights and obligations that must be contained in benefit sharing agreements;
31. Transition provisions for timelines for the establishment of the various Funds referenced under the Bill are not provided for;
32. The Bill has not incorporated provisions specifying a transparency and accountability criteria for the allocation and investment of the benefits; and
33. The Bill does not clearly bring out the element of public participation. It is not clear at what point in the benefit sharing cycle the public should be involved. The public/local community should have power to negotiate.

5.0 Committee Recommendation

34. **The Committee having considered the Natural resources (Benefit Sharing) Bill, 2020, recommends that the House REJECTS the Bill since it is a 'Money Bill' pursuant to Article 114 of the Constitution and as such it can only be introduced in the National Assembly pursuant to Article 109(5) of the Constitution. The Bill conflicts with existing legislation namely the Mining Act, 2016, Petroleum (Exploration, Development and Production) Act, 2019, Energy Act, 2019 and Fisheries (Management and Development) Act 2016, Natural Resources (Classes of Transactions Subject to Ratification) Act, No. 14 of 2016, Environmental Management and Coordination Act, 1999, there is further an ongoing comprehensive Review of the Wildlife Conservation and Management Act No. 47 of 2013.**

Signed: 

**HON. SOPHIA ABDI NOOR, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND
NATURAL RESOURCES**

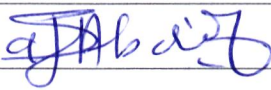

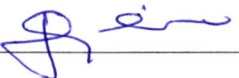


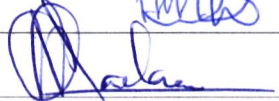
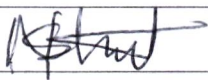
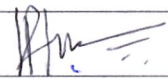
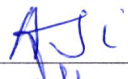

Date: 13/04/2022

ANNEX 1
ADOPTION LIST

DC-ENR: DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL
RESOURCES

REPORT ADOPTION LIST

REPORT ON NATURAL RESOURCES (BENEFITS SHARING) SENATE
BILL 2020

	NAME	SIGNATURE
1.	The Hon. Sophia Abdi Noor , M.P., Chairperson	
2.	The Hon. Eng. Paul Musyimi Nzengu, M.P. Vice Chairperson	
3.	The Hon. Francis Chachu Ganya, M.P.	
4.	The Hon. Bernard Shinali, M.P.	
5.	The David Kangogo Bowen, M.P.	
6.	The Hon. David Gikaria, M.P.	
7.	The Hon. Simon King'ara, M.P.	
8.	The Hon. Janet Ong'era, MP.	
9.	The Hon. Charity Kathambi Chepkwony, M.P	
10.	The Hon. Charles Ong'ondo Were, M.P.	
11.	The Hon. Amin Deddy Mohamed Ali, M.P.	
12.	The Hon. Hassan Oda Hulofo, M.P.	
13.	The Hon. George Kariuki, M.P.	
14.	The Hon. Ali Wario Guyo, M.P.	
15.	The Hon. Nasri Sahal Ibrahim, M.P.	
16.	The Hon. Peter Kimari Kihara, M.P	
17.	The Hon. Rehema Hassan, M.P.	
18.	The Hon. Rozaah Buyu. M.P.	
19.	The Hon. Said Hiribae, M.P.	

ANNEX 2
COMMITTEE MINUTES

MINUTES OF THE 20TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD AT THE ELMER RESORT AND SPA, NAIVASHA ON SATURDAY 9TH APRIL, 2022 AT 10.00 AM.

PRESENT

- | | |
|--|--------------------|
| 1. The Hon. Sophia Abdi Noor, M.P., | Chairperson |
| 2. The Hon. Janet Ong'era, M.P. | |
| 3. The Hon. Nasri Sahal Ibrahim, M.P. | |
| 4. The Hon. Simon King'ara, M.P. | |
| 5. The Hon. George Kariuki, M.P. | |

APOLOGIES

- | | |
|---|-------------------------|
| 1. The Hon. Eng. Paul Musyimi Nzengu, M.P. | Vice Chairperson |
| 2. The Hon. Bernard Shinali, M.P. | |
| 3. The Hon. Hassan Oda Hulufu, M.P. | |
| 4. The Hon. Charles Ong'ondo Were, M.P. | |
| 5. The Hon. Charity Kathambi Chepkwony, M.P. | |
| 6. The Hon. Francis Chachu Ganya, M.P. | |
| 7. The Hon. David Gikaria, M.P. | |
| 8. The Hon. Rozaah Buyu, M.P. | |
| 9. The Hon. Peter Kimari Kihara, M.P. | |
| 10. The Hon. Ali Wario Guyo, M.P. | |
| 11. The Hon. David Kangogo Bowen, M.P. | |
| 12. The Hon. Rehema Hassan, M.P. | |
| 13. The Hon. Said Hiribae, M.P. | |
| 14. The Hon. Amin Deddy Mohamed Ali, M.P. | |

IN ATTENDANCE

THE NATIONAL ASSEMBLY

- | | | |
|-----------------------|---|---------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Dennis Mogare | - | Clerk Assistant II |
| 3. Ms. Lynette Otieno | - | Legal Counsel I |
| 4. Mr. Eugene Apaa | - | Research Officer II |
| 5. Mr. Stanley Lagat | - | Sergeant-At-Arms |

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Consideration and adoption of a Report on the Natural Resources (Benefits Sharing) Bill, (Senate Bill No. 25 Of 2020)**
- v) Date of the next Sitting

MIN.NO. DC/ENR/095/2022:

- **PRELIMINARIES**

The Meeting was called to order at 10.22 am after which prayers were said. The Chairperson stated that the main agenda of the day was Consideration and adoption of a Report on the Natural Resources (Benefits Sharing) Bill, (Senate Bill No. 25 Of 2020)

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/096/2022:

- **CONFIRMATION OF MINUTES**

Confirmation of minutes of the previous sitting was deferred to the next meeting.

MIN.NO. DC/ENR/097/2022:

- **CONSIDERATION AND ADOPTION OF A REPORT ON THE NATURAL RESOURCES (BENEFITS SHARING) BILL, (SENATE BILL NO. 25 OF 2020)**

The Report on the Natural Resources (Benefits Sharing) Bill, (Senate Bill No. 25 Of 2020) was considered and adopted after being proposed by the Hon. Janet Ong'era, M.P. and seconded by the Hon. Simon King'ara, M.P.

It was adopted with the following observations and recommendation:

Observations

The Committee observed that:

1. The Bill meets the criteria required to define it as a 'Money Bill' pursuant to Article 114(b) & (c) of the Constitution. As such, the National Assembly is required to take into consideration the recommendations of the Budget and Appropriations Committee when debating the Bill. Further, a 'Money Bill' can only be introduced in the National Assembly pursuant to Article 109(5) of the Constitution. Therefore, the Bill should have been first introduced in the National Assembly and not in the Senate;
2. There is an ongoing Comprehensive Review of the Wildlife Conservation and Management Act No. 47 of 2013 by the Ministry of Tourism and Wildlife. The Ministry was collating submissions for inclusion in a new Bill that will overhaul the current Act. The Committee also noted that the Ministry was willing to incorporate the proposed amendments provided in this Bill;
3. The Bill needs to be harmonized with existing laws that govern natural resources including the Mining Act, 2016, Petroleum (exploration, development and production) Act, 2019, Energy Act, 2019 and Fisheries (management and development) Act 2016, Natural Resources (classes of transactions subject to ratification) Act no. 14 of 2016, Environmental Management and Coordination Act, 1999, in order to avoid conflict on between the bill and already enacted laws;
4. The Bill does not propose a model benefit sharing agreement, outlining basic provisions, including rights and obligations that must be contained in benefit sharing agreements;
5. Transition provisions for timelines for the establishment of the various Funds referenced under the Bill are not provided for;

6. The Bill has not incorporated provisions specifying a transparency and accountability criteria for the allocation and investment of the benefits; and
The Bill does not clearly bring out the element of public participation. It is not clear at what point in the benefit sharing cycle the public should be involved. The public/local community should have power to negotiate.

Recommendation

The Committee having considered the Natural resources (Benefit Sharing) Bill, 2020, recommended that the House **REJECTS** the Bill since it is a 'Money Bill' pursuant to Article 114 of the Constitution and as such it can only be introduced in the National Assembly pursuant to Article 109(5) of the Constitution. Equally, the Bill conflicts with existing legislation namely the Mining Act, 2016, Petroleum (Exploration, Development and Production) Act, 2019, Energy Act, 2019 and Fisheries (Management and Development) Act 2016, Natural Resources (Classes of Transactions Subject to Ratification) Act, No. 14 of 2016, Environmental Management and Coordination Act, 1999, there is further an ongoing comprehensive Review of the Wildlife Conservation and Management Act No. 47 of 2013.

MIN.NO. DC/ENR/098/2022:

- **ADJOURNMENT**

There being no other business the meeting was adjourned at 12.19 pm.

SIGNED:

THE HON. HON. SOPHIA ABDI NOOR, M.P.

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE:

MINUTES OF THE 10TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD VIRTUALLY ON TUESDAY 1ST MARCH, 2022 AT 11.30 AM.

PRESENT

1. **The Hon. Eng. Paul Musyimi Nzengu, M.P.** Vice Chairperson
2. The Hon. Janet Ong'era, M.P.
3. The Hon. David Gikaria, M.P.
4. The Hon. Ali Wario Guyo, M.P.
5. The Hon. Charles Ong'ondo Were, M.P.
6. The Hon. Peter Kimari Kihara, M.P.
7. The Hon. Said Hiribae, M.P.
8. The Hon. George Kariuki, M.P.
9. The Hon. Simon King'ara, M.P.
10. The Hon. Rehema Hassan, M.P.

APOLOGIES

1. **The Hon. Sophia Abdi Noor, M.P.,** Chairperson
2. The Hon. David Kangogo Bowen, M.P.
3. The Hon. Francis Chachu Ganya, M.P.
4. The Hon. Bernard Shinali, M.P.
5. The Hon. Nasri Sahal Ibrahim, M.P.
6. The Hon. Rozaah Buyu. M.P.
7. The Hon. Charity Kathambi Chepkwony, M.P.
8. The Hon. Hassan Oda Hulufu, M.P.
9. The Hon. Amin Deddy Mohamed Ali, M.P.

IN ATTENDANCE

THE NATIONAL ASSEMBLY

1. Ms. Esther Nginyo - Clerk Assistant I
2. Mr. Dennis Mogare - Clerk Assistant II
3. Mr. Benjamin Ngimor - Senior Fiscal Analyst
4. Ms. Lynette Otieno - Legal Counsel I
5. Ms. Nancy Chamunga - Fiscal Analyst III
6. Mr. Eugene Apaa - Research Officer II
7. Mr. Mark Mbuthia - Audio Officer

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising

iv) Briefing on the Natural Resources (Benefit Sharing) Bill, 2020 (Senate Bill No. 197 of 2020).

v) Date of the next Sitting

MIN.NO. DC/ENR/044/2022: - PRELIMINARIES

The Meeting was called to order at 11.58 am after which prayers were said. The Chairperson stated that the main agenda of the day was receiving a briefing on the Natural Resources (Benefit Sharing) Bill, 2020 (Senate Bill No. 197 of 2020).

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/045/2022: - CONFIRMATION OF MINUTES

Confirmation of minutes of the previous sitting was deferred to the next meeting.

MIN.NO. DC/ENR/046/2022: - BRIEFING ON THE NATURAL RESOURCES (BENEFIT SHARING) BILL, 2020 (SENATE BILL NO. 197 OF 2020).

PRESENTATION FROM THE LEGAL COUNSEL

The Legal Counsel briefed the meeting as follows:

1. The Natural Resources (Benefit Sharing) Bill, 2020, Senate Bill No.25 of 2020 was committed for consideration to the Departmental Committee on Environment and Natural Resources pursuant to Standing Order 127(1).
2. The Bill in summary proposes to enact an Act of Parliament to establish a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities.
3. The Bill contains 6 parts.
 - a) **PART I** contains **Preliminary Provisions** which include the short title, interpretation, application of the Act and guiding principles of benefit sharing. The Bill in Clause 3 enumerates the following natural resources that the Act shall apply to; sunlight; water resources; forest, biodiversity and genetic resources; wildlife resources; industrial fishing and wind
 - b) **PART II** contains provisions relating to **functions of the commission of revenue allocation** which shall include coordination and preparation of benefit sharing agreement between an affected county and affected entity.
 - c) **PART III** contains provisions relating to **Collection of Royalties and Fees** which include the imposition of royalties and fees payable by entities, the Kenya Revenue Authority shall collect royalties. This part also sets out the revenue sharing ratio.
 - d) **PART IV** contains provisions relating to **benefit sharing agreements and establishment of county benefit sharing committees whose functions include** to negotiate terms of benefit sharing agreement with an affected entity on behalf of the county government,

monitor implementation of projects required to be undertaken pursuant to the benefit sharing agreement and determine amount of money to be allocated to each local community from the moneys that accrue under a benefit sharing agreement. This part also establishes local community benefit sharing forum that shall collect and collate views of the local communities and represent their interest in negotiations the respective county benefit sharing committee.

- e) **PART V** contains the Financial Provisions. This Part establishes the Natural Resources Royalties fund where all royalties and fees collected shall be paid into.
 - f) **PART VI** contains the Miscellaneous Provisions. It provides for how munities distributed to counties shall utilized for projects. It also sets out offences under the Act and provides for transitional provisions. The Commission is required to review all existing laws and agreements prescribing the ratio of natural resource sharing within two years of the commencement of the Act. The Bill seeks to also amend the Mining Act, 2016 and review the revenue sharing ratio prescribed therein.
4. **Duplicity:** The Bill does not clearly define the boundaries of its application with respect to the exploitation (or management) of forest resources, water resources, wildlife resources, and fishery resources against the provisions of: The Forest Conservation and Management Act (No.34 of 2016); The Water Act (No.43 of 2016); The Wildlife Conservation and Management Act (No.47 of 2013); and The Fisheries Management and Development Act (No.35 of 2016).

She then gave a clause by clause analysis of the Bill (attached to this minutes).

PRESENTATION FROM THE FISCAL ANALYST

The Fiscal Analyst briefed the meeting as follows:

- 1. Pursuant to Standing Order 41, the Speaker received a Message from the Senate seeking the concurrence of the National Assembly on the Natural Resources (Benefit Sharing) Bill, 2020 (Senate Bill No. 197 of 2020). The bill was read for the first time on Wednesday, 2nd February, 2022 and committed to the Departmental Committee on Environment and Natural Resources.
- 2. In considering the bill, the Speaker directed the Committees to apply themselves to the provisions of Articles 109(5) and 114 of the Constitution which relate to the origination and definition of a 'Money Bill' and make appropriate recommendations to the House as required by the Constitution.
- 3. Article 109(5) of the Constitution directs that a 'money bill' can only be introduced in the National Assembly. In addition, Article 114 of the Constitution gives the definition of a money bill and directs that the National Assembly may only proceed to debate a 'money bill' after taking into consideration the recommendations of the Budget and Appropriations Committee.
- 4. The primary objective of this Bill is to provide a legislative framework for the establishment and enforcement of a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities.
- 5. The key highlights of the Bill are:
 - (i) Royalties and fees from natural resource exploitation [Sections 6 & 7] – the Commission on Revenue Allocation (CRA) is tasked with determining and review of royalties and

fees payable by affected entities engaging in natural resource exploitation. The Kenya Revenue Authority (KRA) is tasked with the collection of these royalties and fees.

- (ii) Revenue sharing ratio [Section 8]– 20% of the revenue collected shall be paid into a sovereign wealth fund while the remaining 80% will be shared between the National Government and respective County Government. The sovereign wealth fund will consist of a Futures Fund and a Natural Resource Royalties Fund which will share the allocation in the ratio of 60% for the Futures Fund and 40% for the Natural Resource Royalties Fund. Similarly, the two levels of government will share their allocation in the ratio of 60% for National Government and 40% for the respective County Government. Lastly, the 40% of the revenue assigned to the County Government will be utilized on local community with the natural resource while 60% will be utilized for the benefit of the entire county.
- (iii) Benefits Sharing Agreement [Sections 9, 10, 11, 12 & 13] – The bill proposes for the establishment benefit sharing agreements between county government and affected entities which will be coordinated by the CRA. Each county with a natural resource is required to establish a County Benefit Sharing Committee whose key role will be to negotiate the terms of the benefit sharing agreement with the affected entity on behalf of the county government. Additionally, a Local Community Benefit Sharing Forum is also established to represent the interests of the local community in negotiations with the County Benefit Sharing Committee.
- (iv) Natural Resource Royalties Fund [Section 14] – All royalties and fees collected from natural resources exploitation will be payable to this fund. The fund will be administered by the CRA.
- (v) Amendment to the Mining Act, 2016 [Section 19] – The bill proposes to amend Section 183 of the Mining Act, 2016 which deals with Royalties. The amendment related to the distribution of royalties collected from natural resource exploitation. The table below summarizes the proposed amendment.

	Mining Act, 2016	Proposed Amendment by this Bill
National Government	70%	48%
County Government	20%	19%
Local Community	10%	13%
Futures Fund	-	12%
Natural Resource Royalties Fund	-	8%
Total	100%	100%

- 6. The Bill seeks to vary the distribution of royalties and fees collected from natural resource exploitation by reducing the allocations for the national government and county government, increasing the allocation to the local community and introducing two new functions to which part of the royalties will be payable. This provision is a variation of an existing charge to a public fund which is in line with Article 114 (3) (b) of the Constitution.

7. The Bill also proposes to allocate the CRA and the KRA additional functions with respect to natural resource exploitation. These two entities will require the National Assembly to appropriate additional resources for them to adequately undertake these new functions. Therefore, this provision will lead to appropriations of public money which is in line with Article 114 (3) (c) of the Constitution.
8. In light of the above, the Parliamentary Budget Office concluded that pursuant to the provision of Article 114 (3) of the Constitution, the draft Bill **does meet** the criteria required to define it as a "Money Bill". Therefore, the Bill may proceed as contemplated in the relevant Standing Orders.

OBSERVATIONS

Members observed that the Natural Resources (Benefit Sharing) Bill, 2020 (Senate Bill No. 197 of 2020) fell in the category of bills that can be defined as "money bills". Therefore, the fact that it originated in the Senate renders it a nullity since constitutionally, all money bills ought to originate in the National Assembly.

MIN.NO. DC/ENR/047/2022: - ADJOURNMENT

There being no other business the meeting was adjourned at 12.45 pm.

SIGNED: 

THE HON. HON. SOPHIA ABDI NOOR, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE:

ANNEX 3
COPY OF THE BILL

=====

REPUBLIC OF KENYA

PARLIAMENT

=====

SENATE BILLS

(Bill No. 25 of 2020)

THE NATURAL RESOURCES (BENEFIT
SHARING) BILL, 2020

(A Bill published in the Kenya *Gazette* Supplement No. 197 of 19th November, 2020 and
passed by the Senate, with amendments, on 2nd December, 2021.)

THE NATURAL RESOURCES (BENEFIT SHARING) BILL, 2020

ARRANGEMENT OF CLAUSES

Clause

PART I – PRELIMINARY

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

PART II — FUNCTIONS OF THE COMMISSION ON REVENUE ALLOCATION

- 5 — Functions of the Commission.

PART III – COLLECTION OF ROYALTIES AND FEES

- 6 — Imposition of royalties and fees.
- 7 — Kenya Revenue Authority to collect royalties.
- 8 — Revenue sharing ratio.

PART IV— BENEFIT SHARING AGREEMENT

- 9 — Benefit sharing agreement.
- 10 — Establishment of a County Benefit Sharing Committee.
- 11 — Functions of a County Benefit Sharing Committee.
- 12 — Approval of a Benefit Sharing Agreement.
- 13 — Local Community Benefit Sharing Forum.

PART V— FINANCIAL PROVISIONS

- 14 — Natural Resources Royalties Fund.

PART VI — MISCELLANEOUS PROVISIONS

- 15 — Use of retained funds.
- 16 — Offences.
- 17 — Transitional provisions.
- 18 — Power to make Regulations.
- 19 — Amendment to Act No. 12 of 2016.

THE NATURAL RESOURCES (BENEFIT SHARING) BILL, 2020

A Bill for

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

ENACTED by the Parliament of Kenya, as follows —

PART I - PRELIMINARY

Short title.

1. This Act may be cited as the Natural Resources (Benefit Sharing) Act, 2020.

Interpretation.

2. In this Act, —

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

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

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

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

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

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;

“Commission” means the Commission on Revenue Allocation established under Article 215 of the Constitution;

“county executive committee member” means the county executive committee member responsible for matters relating to finance in the respective county;

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

“Fund” means the Natural Resources Royalties Fund established under section 14;

“futures fund” means a fund set aside from the sovereign wealth fund for future generations;

“industrial fishing” means the exploitation of fishing resources—

No. 35 of 2016.

(a) using an industrial or a semi industrial fishing vessel as provided under the Fisheries Management and Development Act; or

(b) by a foreign entity.

“local community” means

(a) people living in a ward within which a natural resource is situated; and

(b) people displaced to make way for the exploitation of a natural resource;

“natural resources” means the natural resources provided under section 3 of this Act;

“natural resources fund” means a fund set aside from the sovereign wealth fund for social and economic development and rehabilitation of depleted natural resources;

No. 17 of 2015.

“officer” has the meaning assigned to it under section 3 of the Companies Act;

“royalties” includes fees or payments by whatever name, paid by an affected entity for the exploitation or exploration of a

natural resource in Kenya; and

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

Application of
the Act.

3. 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.

Guiding
principles of
benefit sharing.

4. 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

Functions of
the
Commission.
No. 16 of 2011.

5. (1) In addition to its principal functions under Article 216(1) of the Constitution and section 10(1)(d) of the Commission on Revenue Allocation Act, the Commission shall

be responsible for the implementation of this Act and shall, for this purpose, —

- (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;
- (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 sectoral leaders;
- (m) identify, in consultation with sector specific organizations, incentives and benefits to promote the conservation of natural resources;
- (n) ensure and promote value addition in natural resources;
- (o) promote local content initiatives; and
- (p) promote the restoration of the environment after the exploitation of a natural resource in an affected county.

(2) The Commission 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 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.

PART III- COLLECTION OF ROYALTIES AND FEES

Imposition of royalties and fees.

6. (1) The Commission 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 a written law does not prescribe the royalties or fees.

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

- (a) the total capital investment of the affected entity;
- (b) the prevailing international market value of the commodity from which royalty is payable;
- (c) the commercial viability of the natural resource being exploited;
- (d) the impact of the exploitation on the local community, the affected county and the environment; and
- (e) obligations of the affected entity under any existing benefit sharing agreement with the affected county.

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

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

Kenya Revenue
Authority to
collect
royalties.

7. (1) The Kenya Revenue Authority shall collect royalties as determined by the Commission under section 6 from affected entities and any other payment of royalties from natural resource exploitation undertaken under any other written law.

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

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

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

Revenue
sharing ratio.

8. (1) The revenue collected under this Act shall be shared as follows—

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

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

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

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

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

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

- (a) the contribution of each affected county in relation to the resource;
- (b) the inconvenience caused to the county in the exploitation of the natural resource; and
- (c) any existing benefit sharing agreement with an affected entity.

(6) The Commission shall, in consultation with the lead agencies with respect to each natural resource, review the revenue sharing ratio after every five years and present its recommendations to Parliament for approval.

PART IV— BENEFIT SHARING AGREEMENT

Benefit sharing agreement.

9. (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.

(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.

Establishment of a County Benefit Sharing Committee.

10. (1) Each county that has a natural resource to which this Act applies shall establish a County Benefit Sharing Committee.

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

- (a) the county executive committee member responsible for finance;
- (b) the chairperson of the committee of the respective county assembly responsible for matters relating to natural resources;
- (c) two technical officers of the relevant county departments, appointed by the county executive committee member in consultation with the county executive committee member responsible for the respective natural resources; and

(d) five persons, two of whom shall be of the opposite gender, elected by the local communities where the natural resource is found and representing the areas with the main natural resources within the county.

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

(4) The members of the County Benefit Sharing Committee shall be paid such allowances as shall be determined by the County Public Service Board in consultation with the Salaries and Remuneration Commission.

(5) The members of the County Benefit Sharing Committee shall elect a chairperson from amongst the members elected under subsection (2)(d).

(6) The Cabinet Secretary shall, in consultation with the Council of County Governors, make Regulations for the conduct of the affairs of the County Benefit Sharing Committees.

(7) 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.

Functions of a
County Benefit
Sharing
Committee.

11. The functions of each County Benefit Sharing Committee shall be to—

- (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.

Approval of a benefit sharing agreement.

12. (1) Every benefit sharing agreement shall be approved by the respective county assembly prior to the execution of the agreement by the respective county government.

(2) 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.

Local Community Benefit Sharing Forum.

13. (1) There shall be established by each affected local community a Local Benefit Sharing Forum comprising of five persons, two of whom shall be of the opposite gender, elected by the residents of the local community.

(2) A public officer shall not be eligible for election as a member of a local community benefit sharing forum.

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

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

(5) A local community benefit sharing forum shall not hold more than eight meetings in one year.

(6) The local community benefit sharing forum shall ensure that the respective local community benefits from the exploitation of natural resources and shall, for this purpose —

- (a) collect and collate the views of the local community and represent the interests of the local community in the negotiations with the respective County Benefit Sharing Committee and in the implementation of a Benefit Sharing Agreement;
- (b) in consultation with the local community, 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 in the relevant local community using funds devolved under this Act.

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

PART V— FINANCIAL PROVISIONS

Natural
Resources
Royalties Fund.

14. (1) There is established a Natural Resources Royalties Fund which shall vest in the Commission.

(2) There shall be paid into the Fund —

- (a) all royalties collected as a result of exploitation of natural resources in Kenya;
- (b) all fees and other charges levied on affected entities for the exploitation of natural resources in Kenya; and

- (c) all contributions and other payments required by this Act to be paid into the Fund.

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

PART VI — MISCELLANEOUS PROVISIONS

Uses of retained funds.

15. 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.

Offences.

16. (1) A person who—

- (a) fails to furnish information required to be furnished to the Commission under this Act;
- (b) makes a statement which the entity knows to be false or which the entity has no reason to believe to be true; or
- (c) knowingly makes a false statement under this Act;

commits an offence.

(2) A person who is found guilty of an offence under subsection (1) is liable, on conviction, —

- (a) in the case of a natural person, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; and
- (b) in the case of a body corporate, to a fine not exceeding five million shillings.

(3) Where a body corporate is found guilty of an offence under this Act, every officer of that corporation is deemed to have committed an offence and is liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

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

Transitional provisions.

17. (1) The Commission shall, within two years of the commencement of this Act, review all existing laws and agreements prescribing the ratio of natural resource sharing, taking into account the provisions of this Act and international best practice in revenue sharing.

(2) The Commission shall submit a report to the National Assembly, the Senate and the Cabinet Secretary on the outcome of the review within three months of the conclusion of the review.

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

(4) An affected entity that, immediately before the commencement of this Act, was lawfully authorised to exploit a natural resource under this Act shall be considered to be authorised to conduct such exploitation under this Act.

(5) Despite subsection (4), an affected entity shall comply with the provisions of this Act within two years of its commencement.

Power to make
Regulations.

18. (1) The Cabinet Secretary may make Regulations for the better carrying out of the provisions of this Act.

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

- (a) prescribing the fees in respect of anything required to be done under this Act;
- (b) prescribing the administration of the Fund;
- (c) prescribing mode for the payment of royalties under this Act;
- (d) prescribing the revenue sharing formula between counties that share a natural resource; and
- (e) prescribing anything which is required to be prescribed or is necessary to give effect to this Act.

Amendment to
Act No. 12 of
2016.

19. Section 183 of the Mining Act is amended by —

- (a) by deleting subsection (5) and substituting therefor the following new subsection (5) —

(5) The royalties payable under sub-section (1) shall be distributed as follows —

- (a) twenty per cent of the royalties shall, subject to subsection (6), be paid into a sovereign wealth fund established by the National Government; and
 - (b) eighty per cent of the royalties shall, subject to subsection (7), 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; and
- (b) by inserting the following new subsections

immediately after subsection (5) —

(6) The royalties paid into the sovereign wealth fund under sub-section (5)(a) shall be paid as follows into the following funds constituting the sovereign wealth fund —

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

(7) At least forty per cent of the royalties assigned to county governments under sub-section (5)(b) shall be utilised to implement respective local community projects and sixty per cent of the royalties shall be utilised for the benefit of the entire county.

(8) Where mineral resources bestride two or more counties, the Commission on Revenue Allocation established under Article 215 of the Constitution shall determine the ratio of sharing the retained royalties amongst the affected counties in consultation with the affected counties.

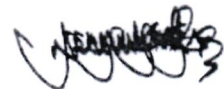
(9) In determining the ratio of sharing the retained royalties amongst counties sharing a mineral resource under sub-section (8), the Commission on Revenue Allocation shall take into account —

- (a) the contribution of each affected county in relation to the mineral resource;
- (b) the inconvenience caused to the county in the exploitation of the mineral resource; and
- (c) any existing benefit sharing agreement with an affected entity.

(10) The Commission on Revenue Allocation shall, in consultation with the lead agencies with respect to each mineral resource, review the revenue sharing ratio after every five years and present its recommendations to Parliament for approval.

The Natural Resources (Benefit Sharing) Bill, 2020

I certify that this printed impression is a true copy of the Bill as passed by the Senate on Thursday, 2nd December, 2021.



Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 156 of the Senate Standing Orders.



Speaker of the Senate

PRINTED BY THE CLERK OF THE SENATE

