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THE NATURAL RESOURCES (BENEFIT SHARING) BILL, 2014

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THE NATURAL RESOURCES (BENEFIT SHARING) BILL, 2014

A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

Short title

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

Interpretation.

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

"affected county" means a county in which a natural resource is exploited;

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

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

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

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

"exploiter" means an organization involved in the exploration, appropriation or in any way extraction or use of a natural resource from the first point of contact for commercial purposes;

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

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

"local community" means a people living in a ward within which a natural resource is situated and are affected

by the exploitation of that natural resource;

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

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

Application of the Act.

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

(a) petroleum;

(b) natural gas;

(c) minerals;

(d) forest resources;

(e) water resources;

(f) wildlife resources; and

(g) fishery resources.

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

Guiding principles of benefit sharing.

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

(a) transparency and inclusivity;

(b) revenue maximization and adequacy;

(c) efficiency and equity;

(d) accountability and participation of the people; and

(e) rule of law and respect for human rights of the people.

PART II—ESTABLISHMENT OF THE BENEFIT SHARING AUTHORITY

Establishment of the Benefit Sharing Authority.

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

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

corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) borrowing or lending money; and

(d) doing or performing such other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

Functions of the Authority.

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

(a) coordinate the preparation of benefit sharing agreements between local communities and affected organizations;

(b) review, and where appropriate, determine the royalties payable by an affected organization engaged in natural resource exploitation;

(c) identify counties that require to enter into a benefit sharing agreement for the commercial exploitation of natural resources within the counties;

(d) oversee the administration of funds set aside for community projects identified or determined under any benefit sharing agreement;

(e) monitor the implementation of any benefit sharing agreement entered into between a county government and an affected organization;

(f) conduct research regarding the exploitation and development of natural resource and benefit sharing in Kenya;

(g) make recommendations to the national government and county governments on the better exploitation of natural resources in Kenya;

(h) determine appeals arising out of conflicts regarding the preparation and implementation of county benefit sharing agreements; and

(i) advise the national government on policy and the enactment of legislation relating to benefit sharing

in resource exploitation.

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

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

(a) all existing law regulating the natural resources sector in Kenya;

(b) all existing arrangements for benefit sharing between local communities and an affected organization under any law in Kenya; and

(c) obligations imposed on Kenya under any international treaty or agreement relating to the exploitation of natural resources.

PART III—THE MANAGEMENT OF THE AUTHORITY

Board of the Authority.

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

(a) a chairperson appointed by the President with the approval of the Senate;

(b) the Principal Secretary responsible for environment or the Principal Secretary's alternate;

(c) the Principal Secretary responsible for finance or the Principal Secretary's alternate;

(d) the Principal Secretary responsible for mining or the Principal Secretary's alternate;

(e) three persons representing communities nominated by the Council of Governors and who shall represent the regional diversity of the people of Kenya including minorities;

(f) three persons representing communities nominated by the Forum of County Assembly Speakers and who shall represent the regional diversity of the people of Kenya and minorities;

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

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

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

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

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

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

Tenure of office.

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

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

Qualifications for appointment.

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

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

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

(i) law;

(ii) environmental management;

(iii) economics;

(iv) public finance;

(v) mining; or

(vi) community development; or

any other related field.

Vacation of office.

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

(a) is unable to perform the functions of his office by reason of mental or physical infirmity;

(b) is otherwise unable or unfit to continue serving as the chairperson or member of the Board;

(c) is adjudged bankrupt;

(d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(e) is absent, without reasonable cause, from three consecutive meetings of the Board;

(f) resigns in writing addressed, in the case of the chairperson, to the President and in the case of a member appointed under section 7(1) (*e*), (*f*) and (g) to the Cabinet Secretary;

(g) fails to declare his interest in any matter being considered or to be considered by the Board; or

dies.

Powers of the Board.

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

(a) enter into contracts;

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

(c) receive any gifts, grants, donations or endowments made to the Authority or any other monies in respect of the Authority and make disbursements therefrom in accordance with the provisions of this Act;

(d) require from any person, such information as it considers necessary for the performance of its functions under this Act; and

(e) open a bank account for the funds of the Authority into which all moneys received by the Authority shall be paid in the first instance and out of which all payments made by the Authority shall be made.

Committees of the Board.

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

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

Power to delegate.

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

Remuneration and allowances.

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

Conduct of business and affairs of the Board.

15. The Board shall conduct its affairs in accordance with the provisions of the Schedule.

Director-General.

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

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

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

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

(i) law;

(ii) environmental management;

(iii) economics;

(iv) public finance;

(v) mining; or

(vi) community development;

or in any other related field.

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

Tenure of office of Director-General.

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

Functions of the Director-General.

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

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

(a) be responsible for the day-to-day management of the Authority;

(b) manage the funds, property and affairs of the Authority;

(c) be responsible for the management of the staff of the Authority;

(d) cause to be prepared for the approval of the Board-

(i) the strategic plan and annual plan of the Authority; and

(ii) the annual budget and audited accounts of the Authority; and

(e) perform such other duties as may be assigned by the Board.

Removal of Director-General.

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

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct or misbehaviour;

(c) incompetence or neglect of duty; or

any other ground that would justify removal from office under the terms and conditions of service.

Seal of the Authority.

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

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

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

Staff of the Authority.

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

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

Protection from personal liability.

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

Liability of the Authority to damages.

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

PART IV – COLLECTION OF ROYALTIES AND FEES

Imposition of Royalties and fees.

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

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

(a) the overall capital investment of the affected organization;

(b) the prevailing international market value of the commodity from which royalty is payable;

(c) the commercial viability of the natural resource being exploited; and

obligations of the affected organization under any existing County Benefit Sharing Agreement with the local community.

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

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

Kenya Revenue Authority to collect royalties.

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

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

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

(4) The Kenya Revenue Authority shall declare and account to the Authority the total sum collected from

affected organizations and with respect to each natural resource as provided for under this Act.

Revenue sharing ratio.

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

(a) twenty per cent of the revenue collected shall be set aside and shall, subject to subsection (2), be paid into a sovereign wealth fund established by the national government; and

(b) eighty per cent of the revenue collected shall, subject to subsection (3), be shared between the national government and the county governments in the ratio of sixty per cent to the national government and forty per cent to the county governments.

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

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

(b) forty per cent of the monies shall be paid into a natural resources fund.

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

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

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

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

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

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

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

PART V— COUNTY BENEFIT SHARING

County benefit sharing agreement.

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

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

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

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

(a) the County Executive Committee Member responsible for finance;

(b) the chairperson of the committee of the respective County Assembly responsible for matters relating to natural resources; and

five persons elected by the local community where the resource bestrides representing the diversity of the local community.

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

(4) The members of the Committee shall elect a chairperson from amongst the members elected under subsection (2) (*c*).

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

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

Functions of a County Benefit Sharing Committee.

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

(a) negotiate with an affected organization on behalf of the County Government prior to entering into a county benefit sharing agreement;

(b) monitor the implementation of projects required to be undertaken in the county pursuant to a benefit sharing agreement;

(c) determine the amount of money to be allocated to each local community from sums devolved under this Act;

(d) convene public forums to facilitate public participation with regard to proposed county benefit sharing agreements prior to execution by the county government;

(e) convene public forums for the purpose of facilitating public participation with regard to community projects proposed to be undertaken using monies that accrue to a county government pursuant to this Act; and

make recommendations to the county government on projects to be funded using monies which accrue to the county government pursuant to this Act.

Approval of the county benefit sharing agreement.

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

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

Local Community Benefit Sharing Forum.

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

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

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

(a) negotiate with the county benefit sharing committee for the purpose of entering into a local community benefit sharing agreement on behalf of the community;

(b) identify local community projects to be supported by money allocated to the local community by the county benefit sharing committee under this Act; and

(c) oversee the implementation of projects undertaken at the local community using money devolved under this Act

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

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

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

Local Community benefit sharing agreement.

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

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

PART VI— FINANCIAL PROVISIONS

Funds of the Authority.

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

(a) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;

(b) such money as may in future be provided by the National Assembly for defraying expenses incurred in the implementation of this Act;

(c) such monies as may be provided by Parliament for the purposes of the Authority;

(d) all monies from any other source provided for or donated or lent to the Authority; and

(e) such other monies that may lawfully accrue in the discharge of functions of the Authority under this Act not being money accruing pursuant to Article 114 of the Constitution.

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

(a) taxes;

(b) the imposition of charges on a public fund;

(c) the variation or repeal of any of those charges, the appropriation, receipt, custody, investment or issue of public money;

(d) the raising or guaranteeing of any loan or repayment; or

matters incidental to any of those matters.

Natural Resources Royalties Fund.

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

(2) There shall be paid into the Fund —

(a) all royalties collected as a result of exploitation of natural resources in the country;

(b) all fees and other charges levied on affected organizations for the exploitation of natural resources; and

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

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

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

Financial year.

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

Accounts.

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

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

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

(b) a statement of the assets and liabilities of the Authority on the last day of that year

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(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2003.

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

Annual Report.

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

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

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

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

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

(i) the financial statements of the Authority;

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

(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.

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

PART VII — MISCELLANEOUS PROVISIONS

Uses of retained funds.

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

(a) are prioritized by the county benefit sharing committee;

(b) are prioritized by the local community benefit sharing forums;

(c) meet the socio-economic needs of the residents of the County or local community; and

(d) are of public interest and are community-based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.

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

Offences.

39. (1) An affected organization which—

(a) fails to furnish particulars or information required to be furnished to the Authority under this Act; or

(b) makes a statement which the organization knows to be false or which the organization has no reason to believe to be true; or

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

commits an offence.

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

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

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

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

Transitional provisions.

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

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

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

Power to make Regulations.

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

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

(a) prescribing the procedure for the nomination of representatives from the Council of Governors and the Forum of County Assembly Speakers as members of the Authority under section 7;

(b) prescribing and for the review the revenue sharing formula under this Act;

(c) prescribing the fees in respect of anything required to be done under this Act;

(d) prescribing the administration of the Fund;

(e) prescribing the mode for the payment of royalties under this Act;

(f) prescribing the revenue sharing formula between counties that share a natural resource; and

(g) prescribing anything which is required to be prescribed or is necessary to give effect to this Act.

SCHEDULE (*s. 15*)

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

Meeting of the Board.

1.(1)The Board shall meet at least once in every three months to conduct the business of the Board of 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 sub-paragraph (1), the chairperson shall, upon a written request by at least five members of the Board, convene a special meeting of the Board at any time where he considers it expedient for the transaction of the business of the Authority.

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

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

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

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

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

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

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

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

Conflict of interest.

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

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

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

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

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

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

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

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

Rules of Procedure and minutes.

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

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

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

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

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

This Bill once enacted would confer on the Authority the power to make regulations for the purpose of bringing into effect the provisions contained in the Bill including the nomination of persons into the membership of the Board of the Authority. This Bill therefore delegates legislative powers. The Bill however does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

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

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

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

Dated the 12th of August, 2014.

AGNES ZANI,

Chairperson, Select Committee on Legislation on Royalties Accruing from Natural Resources in the Counties.