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KENYA NATIONAL ASSEMBLY

(TENTH PARLIAMENT – FOURTH SESSION)

**DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL
RESOURCES.**

Report on

**Question by Private Notice by Hon. Edick Omondi
Anyanga, MP on the licensing of Mid Migori
Mining Company Limited to explore and prospect
gold in Nyatike, MIGORI COUNTY**

**National Assembly
Parliament Buildings
Nairobi**

August 2012

- (xiv) A statement of Technical Capability and experience in previous similar work/programme;
 - (xv) Financial capability of the applicant, giving supporting bank statements; and
 - (xvi) The name and the qualifications of the supervisor/manager who will be responsible for the programme.
- (b) That:-
- (i) Mid Migori Mining Company Limited was granted two licenses after satisfying the requirement for grant of special licenses.
 - (ii) The Company had been exploring for gold in an area for which they were licensed since 1989. The year the license was granted.
 - (iii) Licenses held by Mid Migori Mining Company Limited are exploratory licenses and not mining licenses; therefore their Social Responsibility is limited to employment benefits and also because the company is at a spending stage of mineral development.
 - (iv) Hoped that aerial surveys completed and commencement of a detailed programme for drilling, the company would consider starting a mining project; and
 - (v) Noted the company expenditure of large sums of monies of its exploration work hence needs to be supported in all ways.
- (c) The company is trying its best to employ locals.
4. Following the Minister's answer, the House raised further queries and comments, which included, that:-
- (a) The company has been operating in Nyatike without the consent of the County Council of Migori;
 - (b) The company has been undertaking exploratory activities without the consent of the land owners.
 - (c) The company was issued with a license unprocedurally without the laid down rules and procedures.
 - (d) The company has not been sharing the resources out of its activities with the local community pursuant to Article 69 (1) of the Constitution.
 - (e) The company was undertaking mining rather than exploration and that the company has taken a long time in exploration approximately 22 years;
 - (f) The company directors could be senior citizens or Ministers or Members of Parliament who acquired the license while they were civil servants contrary to Section 81 of the Mining Act, Cap 306, Laws of Kenya.

- ii. to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- iii. to study and review all legislation referred to it;
- iv. to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- v. to 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 or a Minister; and
- vi. to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

8. The Committee is mandated to consider the following **subjects**:-

- i.) Lands and settlement,
- ii.) forestry, water resource management and development,
- iii.) irrigation;
- iv.) environment,
- v.) wildlife,
- vi.) Mining and natural resources.

OVERSIGHT

9. The Committee oversees the following Government Ministries; namely: -

- i) Ministry of Water and Irrigation;
- ii) Ministry of Environment and Minerals Resources;
- iii) Ministry of Lands; and
- iv) Ministry of Forestry and Wildlife.

COMMITTEE COMPOSITION

10. The Parliamentary Committee on Lands and Natural Resources was constituted on June 17th 2009 and its membership is as follows:-

- 9.1 Hon. Mutava Musyimi, M.P. – **Chairperson**;
- 9.2 Hon. Peris Chepchumba Simam, M.P. - **Vice Chairperson**
- 9.3 Hon. Benjamin Jomo Washiali, M.P.
- 9.4 Hon. Silas Ruteere Muriuki, M.P.
- 9.5 Hon. Benedict Fondo Gunda, M.P.
- 9.6 Hon. Justus M. Kizito, M.P.
- 9.7 Hon. Njuguna Peter Gitau, M.P.
- 9.8 Hon. Mohammed Abdi Affey, M.P.

- (iii) The Committee holds a public hearing in Nyatike to establish the relationship between the Local Community and Mid Migori Company, the activities of the Company and seeks the views of the local community on the same.
- (iv) The Committee seeks the views of the Commission of Mines & Geology on the Licensing requirements legal regimes, status of the Mining industry Kenya, the monitoring of the activities of Mid Migori Company Limited for a report on the following:-
 - (a) Acquisition of special/exclusive prospecting license;
 - (b) Land ownership and acquisition;
 - (c) Relationship with locals;
 - (d) Change of name from Migori Mining Company Limited to Mid Migori Mining Company Limited;
 - (e) Consent by the County Council of Migori; and
 - (f) Prospecting duration/tenure.
- (v) The Committee invites the Minister for Environment & Mineral Resource to submit a report and for a meeting on the following, respectively:-
 - (a) Acquisition of special/exclusive prospecting license;
 - (b) Land ownership and acquisition;
 - (c) Relationship with locals;
 - (d) Change of name from Migori Mining Company Limited to Mid Migori Mining Company Limited;
 - (e) Licensing for mineral prospecting and mining in Kenya; and
 - (f) Legal frameworks to support the mineral and mining sub sector in Kenya.
- (vii) The Committee seeks the Kenya Revenue Authority and the Registrar-General, Department of the Registrar General; and
- (viii) The Committee invited the Clerk, County Council of Migori to clarify the consent granted to Mid Migori Mining Company Ltd.

SUMMARY OF FINDINGS

13. The Committee therefore found out that:-

- a.) **Consent from the County Council** - Mid Migori Mining Company Limited has been undertaking exploration without the consent of the Migori County Council and or the former South Nyanza County Council, as the consent provide was irregularly signed;

renewed) to the company from February 1995; and the same SPL licenses were renewed again on February 1, 2011.

- h.) **Consents from land owners** - As late as November 2010, the company was still requesting the Commissioner of Mines to assist to get consents from land owners and County Councils in Migori, Kuria West and Nyatike. Contrary to claims by Mid Migori Mining Company Limited to have consents from Land owners, for them to be granted a special prospecting license by the Commissioner of Mines & Geology and thus satisfying the criteria for grant of a license.
- i.) Despite Mid Migori Mining Company Limited being in Migori, Kuria West and Nyatike for about 30 years, it's intriguing to note, that there no results to show, have not raised or voiced any challenges or grievances or complaining but appear to be undertaking mining activities beyond prospecting or exploration with different ventures;
- j.) Mid Migori Mining Company Limited has not met the following requirements for grant of exclusive prospecting license/special prospecting licenses, these are:-
 - i. A receipt for deposit with the Provincial Commissioner of the Province in which mineral resource is to be prospected;
 - ii. A written consent from the land owner;
 - iii. A properly acquired written consent from the County Council of the mineral prospecting area;
 - iv. A detailed work programme;
 - v. An expenditure proposal for implementing the work programme;
 - vi. A statement of Technical Capability and experience in previous similar work/programme; and
 - vii. Financial capability of the applicant, giving supporting bank statements.
- k.) According to the evidence adduced by the Commissioner of Mines & geology, In 2009, the Commissioner of Mines & geology, after it became evident that the Company has held the license areas for quite a long time without concluding exploration work, ordered for a fast tracking and completion of activities vide letter Ref.SPL/232/IV/(49) dated May 14, 2009. In the letter, the Commissioner noted that Mid Migori Mining Company Limited has not met the following specific special license conditions:-
 - i. Transfer or assignment of the special license requires the Commissioner's consent;

- b.) Mid Migori Mining Company Limited did not meet the following specific special license conditions:-
- i. Transfer or assignment of the special license requires the Commissioner's consent;
 - ii. The company to rehabilitate any degraded areas by exploration activities; and
 - iii. Renewal of the special license on application by the licensee and subject to satisfactory performance on the work programme and fulfillment of the license conditions.
- c.) Mid Migori Mining Company Limited, appears to have a **frosty relationship with the locals** as a result of:-
- (h) Lack of corporate social responsibility by the company in form of employment and provision of other social amenities or assistance;
 - (i) Lack of information on the activities of the company;
 - (j) The company has been in Nyatike for long mining;
 - (k) In some instances, the locals believe that the company is doing mining instead of prospecting or exploration;
 - (l) In some instances, the company has been defrauding the locals of their lands without due regard to procedure and law;
 - (m) In some instance, The company has failed honour leases or agreement on land rent for private land; and
 - (n) In some instance, the company has been invading into people's land conducting mining, exploration and extracting activities without consent.

RECOMMENDATIONS

15. From the foregoing and based on evidence adduced, the Committee recommends, that:-
- a.) the Commissioner of Mines and Geology, should re-evaluate and assess the need for grant of a Special exploration/prospecting license to Mid Migori Mining Company Limited with a view to revoking one of the two Special exploration/prospecting license;
 - b.) The Ministry of Environment and Mineral Resources in conjunction with the Ministry of Lands should with immediate effect investigate the land disputes and alleged fraudulent acquisition of title deeds by Mid Migori Mining Company Limited. The matter should be resolved and necessary action taken including revoking the licenses held by Mid Migori Mining Company Limited if culpability is established.

CHAPTER II - BACKGROUND INFORMATION

21. The Member for Nyatike, Hon. Edick Omondi Anyanga, MP through a Question by Private Notice, asked the Minister for Environment & Mineral Resources the licensing of Mid Migori Mining Company Limited. The Member sought to know from the Minister:-

- (e) The criteria and official requirements for mineral prospecting rights and license for gold mining;
- (f) Criteria used to award Mid Migori Mining Company Limited an exclusive prospecting rights and license for gold mining in Nyatike Constituency and for how long has the company been operating;
- (g) How much the company has spent on corporate social responsibility for the benefit of the local community; and
- (h) The member cited tension between the company and the local residents

STATUS OF MINING INDUSTRY

22. Kenya is well endowed with Mineral resources, some of which are already being explored and exploited by Private companies. A good percentage of the country's mineral resources are yet to be explored and exploited. The Mineral sub sector contributes only about 1% to the GDP which is rather low compared to the available potential.
23. Minerals in Kenya include soda ash, fluorite, diatomite, carbon dioxide gold, iron ore, vermiculite, kyanite, manganese, titanium, silica, sands, gemstones, gypsum and limestone.
24. In a report dated July 2012 for the Mineral export (soda ash, fluorspar, refined soda, salt, carbon dioxide, diatomite and gold) period 2006 – 2009, the value in Kshs of the Mineral export was Kshs.78,870,886,124.
25. Exploration and development of minerals in Kenya is governed by the Mining Act, Cap 306 of the Laws of Kenya which came into effect in 1940.

LICENSING REGIMES IN KENYA

26. There are a number of licenses which include:-
- a) Mining location – which bestows mining rights (upto 0.5 km²) and only 8 locations are allowed per district. Each location can have a maximum of 10 smaller portions called claims – measuring either 50,000m² (for gemstones) or 20,000m² (for gold, silver and platinum);
 - b) Exclusive prospecting License – this is a large scale exploration license in areas that are open to prospecting and mining. up to 1000 km²

B) SPL LICENSES HELD BY FOREIGN INVESTORS

no.	holder	nationality	area(km ²)	district	mineral sought
3	Sebimu enterprises & Mining company limited	Swedish	326 128 105	Migori Transmara Turkana	Precious metals Gemstones Base metals
4	Afri Ore Ltd	Barbados	2833	Kakamega Kisumu Bondo Siaya	Gold
5	Kenya Discovery Ltd	Kenyan and Americans	1154	Busia Siaya Kakamega	Precious Metals
6	Covenant Mining CO. Ltd	Kenyan and Americans	36	Migori	All minerals
7	East African Pure Gold Ltd	Kenyan and Americans	200	Migori Kisii Rachuony o	Gold
11	ABBA Mining Company Ltd	Kenyan and Americans	112	Homa Bay	All minerals

CHRONOLOGICAL HISTORY OF LICENSING OF MID MIGORI MINING COMPANY LIMITED - LICENSE NOS.122 & 201

36. In 1988/89 Migori Gold Mining Company Limited acquired Special Prospecting Licences No.122 covering 245km², later in November 1989 acquired S.P.L. No.202 (158) covering 440km² in Migori District, South Nyanza among other adjacent area in Nyanza, Rift Valley and Western Provinces. The company entered a joint venture with Santa Barbara Mining Ltd of UK.
37. The company changed its name from Migori Gold Mining Company to Mid Migori Mining Company Ltd.
38. In the Mid 1990, Panorama Resources NL of Australia acquired Mid Migori Mining Company Ltd through its subsidiary Auvista Minerals NL. In 1999, Panorama Resources NL and Tanganyika Gold NL merged and formed Tanganyika Gold NL and joint venture of Tanganyika (60%) and Mid Migori Mining Co. Ltd of Kenya (40%).
39. From 1990 to 1998, prospecting for Gold was very active in Kenya but with the slump in gold prices then, led to considerable decline in prospecting. There were reported 1.6 million tons at an average grade of 4.3g of Gold per ton. Auvista NL was progressively earning 100% interest in the prospect from Mid Migori Mining Co. Ltd of Kenya.
40. In 2002, Kansai Mining Corporation of Canada acquired Mid Migori Mining Co. Ltd. A share purchase agreement made and dated March 1, 2002 among the company, the shareholders of Migori Mining Company Limited ('MMM') are – Eugene Joseph Charnel, James Stanley Mathenge, Achates Services Limited and Achates Trust Limited. Directors of MMM Ltd were Eugene J. Charnel, James Mathenge, Chief Executive Officer of Kansai Mining Corporation was Bruce T. Walsham.
41. In mid of 2009, Red Rock Resources of UK acquired up to 60% of Kansai operating subsidiary, through Mid Migori Mining Co. Ltd. Therefore Red Rock Resources are the Managers of Mining tenements and related information - intellectual property rights and responsible for cost of exploration.
42. In December 2009, Red Rock increased its stake in Kansai Mining Corporation to become the largest shareholder with 35.2%. Kansai was suspended in 2009 after failing to file accounts for its years ended 30 September, 2008.

Limited from the Registrar General. Department of Registrar of Companies/Societies. The Committee vide was informed through letter Ref.CR 12 C.33840 dated May 24, 2011 that:-

(a) Mid-Migori Mining Company Limited had been issued with a certificate of change of name on 24th January, 1992 under registration number C. 33840;

(b) The Directors/Shareholders are:-

DIRECTOR	NATIONALITY	SHARES (Y/1000)
Eugene Joseph Charnel	Kenyan	nil
James Stanley Mathenge	Kenyan	1
Bruce Taylor Walsham	British	nil
Thomas John Ian Wright	British	nil
Joseph Andrew Crummy	British	nil
Henri Frelinx – Belgium	Belgium	nil
Andrew Bell	British	Nil
Kansai Mining Corporation	Canada	999

(c) The total number of share is 1000 and that the company is registered in Nairobi, Kenya.

HON. EDICK OMONDI ANYANGA, MP – MEMBER OF PARLIAMENT

48. On June 2, 2011, the Committee met with the Member of Parliament for Nyatike on the licensing of Mid Migori Mining Company Ltd and informed the Committee that:-

(a) Mining in Kenya accounts for less than 1% of GDP and gold is primarily produced by artisanal workers in the West and South Western parts of Kenya.

(b) Surveys done by the Mines and Geology Department since the year 2000 have resulted in the identification of gold and copper minerals in Nyatike Area in Migori County.

(c) Reports indicate that approximately 2 million ounces or 62 ton gold valued at Kshs.186 billion have been discovered in Migori.

(d) There exist a bad relationship between the locals of Nyatike and the Mid Migori Mining Co. Ltd and is as a result of:-

(i) Lack of corporate social responsibility by the company in form of employment and provision of other social amenities or assistance.

- (ii) the company behind the backs of the Alwalo's family, acquired full ownership of the plot No. 157 and was granted a title deed;
 - (iii) sub divide the Alwalo's plot into 4 portions - No. 660, 661, 662 and 559;
 - (iv) The Company converted plot. No.660 and 662 their property; however, they continued to sign contracts with the original plot No. 157;
 - (v) The said fraud was reported to the concerned Ministry however instead of resolving the disputes as raised by the Alwalo's, the Ministry through vide Ref. No. SPL/232/VI/(29) dated February 10, 2009 by One Mr. E. S. Osumo on behalf of the Commissioner of Mines and Geology, reprimanded the family instead of arbitrating on the matter.
- e) Mid-Migori Mining Company Limited was involved in fraud against Alwalo with disregard of section 61(2) (b) of the Mining act Cap 306 laws of Kenya.
 - f) Mid-Migori Mining Company Limited was involved in unlawful sub-division of land;
 - g) County Council of Migori had not issued any consent to Mid-Migori Mining Company Limited;
 - h) A purported order of the Migori County Council dated 5th August 2011 was served to the Mid-Migori Mining Company Limited ("MMM") requiring the company to cease gold exploration in the council's area of jurisdictions.
 - i) Surveys carried out by the Mines and Geology Department since 2000 revealed indications of Gold and mineral resources in Migori.
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THE CLERK, MIGORI COUNTY COUNCIL

50. Submission by the Clerk County Council. He informed the Committee that:-

- a) The Parcel No. 498, Migori County Council (formerly South Nyanza County Council) was referred to as trustland gazetted in 1970;
- b) Macalder Nyanza Ltd was granted a mining lease in 1951 by the colonial Mines Department for a period of 21 years. Upon expiry of the lease

- k) In 1993, Migori County Council was carved out of the larger South Nyanza County Council which prompted the direct custody of the trustland to the new County Council of Migori;
- l) In 1995, MID MIGORI MINING COMPANY re-emerged as Australian registered company name AUVISTA MINERALS/PANORAMA RESOURCES LTD with intentions to conduct explorations and continue with previous mining activities in the tunnel;
- m) Their activities were within privately owned pieces of land but they occasional forayed into the trustland where they drilled and conducted other operations , without the express consent or authority of the Council and the Community;
- n) In 2000, MID MIGORI MINING COMPANY re-emerged with a new partner, KANSAI MINING CORPORATION registered in United Kingdom; and began conducting exploration in new land parcels for period of two years where their activities stopped until 2009, when MID MIGORI MINING COMPANY partnered with Red Rock Resources of United Kingdom under the patronage of Mr. Andrew Bell as President and Mr. James Mathenge of Mid Migori;
- o) Red Rock Resources acquired 85% of the Mid Migori Mining Company Limited making it the Principle shareholders;
- p) During the merging of the above two, the Council formally engaged the companies on the following:-
 - (i) Their activities within the Trustland in an effort to know their benefits to the Council and community;
 - (ii) The large mobilization of drilling machines for mining activities;
 - (iii) Community involvement in the activities of the companies in areas of mining;
 - (iv) To establish whether there was consent granted by either the previous or current Council on the activities of the company;
 - (v) Whether the company adhered to council rules and regulations on the operations of commercial activities within their area of jurisdictions;

51. Comments on documents provided:-

- a) For how long should a company explore;
- b) Mid-Migori Mining Company Limited leased land from the Alwalo family on 28th January 2007. On that basis of breach of contract, the Alwalo's terminated the contract when the company failed to pay the Kshs.5000 installment;
- c) Without the consent of Alwalo's family, the company acquired Titles Deed to the land illegally, but still continued to sign contracts with Alwalo's.
- d) Mid-Migori Mining Company Limited had not applied for consent to mine.
- e) Mid-Migori Mining Company limited allegedly sub-divided the land into 4 parts or plots or pieces and took titles of 2 plots;
- f) Mid-Migori Mining Company Limited has been operating illegally since it has no license.

M/S. MID-MIGORI MINING COMPANY LIMITED

52. Submission by Red Rock Resources , a subsidiary and principal shareholder of Mid-Migori Mining Company Limited, through the Directors – Mr. Andrew Bell and James Mathenge, informed the Committee that:-

- i) the company is carrying out exploration activities which was mostly characterized by drilling instead of mining, drilling is use of a drill bit to drive down into the rock a narrow hole that enables it to extract samples of the rock whereas mining produces large footprint that is impossible to hide;
- ii) The company could not produce since the amount of gold in the samples were too small i.e. 1.1g/ton only 20% of the sample size.
- iii) Commercially the sample sent would not produce any gold and would require a big processing plant, a huge quantity of ore and dumping of the processed material;
- iv) According to the Mineral Resources of Canadian government, it defines different mineral resources development work as follows
 - a) **Exploration work phase:** the search for, discovery and first delimitation of a previously unknown mineral deposit or the re-

- (ii) Artisanal miners have been within the area and now number about 2000. they are faced by a number of challenges which include:-
 - The method of mining are crude and obsolete, giving less result on a lot of work;
 - Mining and land tenure systems in the region are conflicting. Therefore not clear on how to carry out mining and relate it to land ownership;
 - 99 % of the land there is trustland and 1% is privately owned;
- (iii) Artisanal miners express a lot of enthusiasms on the proposed Mining Bill and requested hastening of the review of the old law;

b. Migori County Council

- (i) Permits are issued at the national level without consulting the county council as per the law requires;
- (ii) No environmental impact assessment was carried out by any of the companies undertaking mining and or exploration are required by law;
- (iii) The Mid Migori Mining Company limited has been around for some time now and no results has ever been shared with the local authority on the exploration;
- (iv) The Company Mid Migori Mining Company limited has not rehabilitated any degraded areas or mines or trenches dug as required by the licenses;
- (v) The Company Mid Migori Mining Company limited has not carried out any Corporate Social Responsibility activity in the area;
- (vi) On March 29, 2011, Mid Migori Mining Company limited applied for consent from the council and which appears not to be proper for a company to be within the area since 1980 and operating without the consent of the local Council;

c. Commissioner of Mines and Geology

- (i) Mid Migori Mining Company was granted special license for exploration only because the areas were previously closed after the colonialist left;
- (ii) The license owners, Mid Migori Mining Company Limited and its shareholders have mining and exploration interest;

- vii) The first companies to undertake mining were foreign and were only licensed to mine copper but in the course extracting copper, they did mine gold.
- viii) After independence, the government closed mining in Macalder Nyanza Mines and the companies left four valuable assets – buildings, tailings, Machinery/equipments and steel structures;. However, the steel structures and equipment were taken away;
- ix) The Chairman of Mid Migori Mining Company limited and former Permanent secretary, may have been one of the person involved in the taking away of the equipments and that he has been operating the exploration in the name of partnerships;
- x) The companies licensed to explore in Migori are done by the Commissioner of Mines and Geology without consulting or meeting the locals;
- xi) The foreign companies come and used documents of the local established companies to get licenses and does not involved the locals;
- xii) Mid Migori Mining Company Limited is the sole holder of the special license for exploration only not mining and has entered into joint venture with a number of companies. They include – Uniafro, Santa Barbara, Auvista Minerals, Panorama Resources, Kansai, Tanganyika Gold and Red Rock;
- xiii) They have explore for over 25 years but they use all means to process gold from rich reef from different points and shafts with very good assay results. They collect rich gold infested reefs; grind using mills for instance Santa Barbara Stamp Mills;
- xiv) Mid-Migori mining company limited acquired Alwalo's property in 2004 only for it to surface with a fraudulent document purporting it to have been signed by the late Alwalo in 2007;
- xv) Mid-Migori Mining Company Limited is the same company Macalder Nyanza Mines Operation under another name because all the companies it has partnered with is related in one way or another.
- xvi) Mid-Migori mining company limited has all along presented a purported document signed by the then South Nyanza county council chairman

RESPONSES FROM THE MINISTRY OF ENVIRONMENT AND MINERAL RESOURCES – informed the Committee that:-

55. Messrs Mid Migori Company Limited are holders of special licenses No. 12 and no. 126 km² squared and 184.8 km² respectively in the larger Migori and Kuria Districts;
56. The company was initially granted the two exploration areas under Special licence No. 122 and 202 (formerly 158) with effect from April 1, 1988 and November 1, 1989. The licenses were re-granted to the company effective February 1, 1995.
57. Mid Migori Mining Company is locally incorporated fully owned company of Canadian Based Kansai Mining Corporation and the Directors were initially Mr. J. S. Mathenge and Mr. E. J. Charnel;
58. The Company recently entered a joint venture in Mid 2009 with Red Rock Resources of the United Kingdom to undertake exploration in Special Prospecting Licences No. 122 (126 km²) and 202 (184.5 km²) which do not have a mandatory maximum duration and are subject to renewals after every two years;
59. Mid Migori Mining Company limited applied for a Special Prospecting Licence on November 11, 1988 on form 8 by company agent Mr. Eugene J. Charnel who held prospecting right No. 3041 as required by the Mining Act Cap 306 Laws of Kenya. The Company obtained consent from the South Nyanza County Council on January 6, 1989;
60. By then it was common practice that after the **County Council consent** had been granted, individual land owner's consent was sought progressively during the operations where agreements were made on compensation for any damage to land and property;
61. The **dispute between the local community and the company** is based on a number of issues, which include
 - a) **Local Artisanal Miners** - In 2004, the local artisanal miners who are members of the Lake Side Mining Co-operatives Society wanted the company to leave gold prospecting at Gor Maria Site for them;

was issued prior to the one issued in 1987 contrary to section 86A of the Local Government Act, Cap 265, Laws of Kenya;

66. Section 163A of the Local Government Act, Cap 265 provides that a local authority may on receipt of the application under the Act; grant a business permit to allow the conduct of a business or trade within its area.
67. According to the Commissioner of Mines and Geology, the consent presented by Mid Migori Mining Company Limited **APPEARS** to be authentic;
68. The Company was **seeking the land owners consent as they progressively** advanced exploration from one parcel of land to another by entering into agreements on compensation for any damage to land and property.
69. Procedures for renewals of Special Prospecting Licences – issued under section 17 of the Mining Act on areas that have been previously excluded or closed from prospecting and mining. The licence period or term is specified in the licence document and the practice has been a term of two (2) years.
70. On expiry of the specified term, the owner applies for an extension to renew the licence to enable conclusion of exploration activities. Renewal is provided only on conditions that a progress reports of previous works, genuine reasons for requesting the additional time is to conclude exploration and the area is reduced by half or applicant pays four times the annual fee for not reducing the area, are all met;
71. Mid Migori Mining Company limited has worked under various partners and had requested for renewal of their licences before, with an intention to concluding the exploration work. Request for renewal had been granted and had been paying four times the annual rent for not reducing the area in subsequent renewals;

76. The two licenses – SPL. No. 122 and 202, issued to Mid Migori Mining Company Limited had specific special license conditions, which include:-
- f) Submission of progress reports on a quarterly basis;
 - g) Transfer or assignment of the special license requires the Commissioner's consent;
 - h) The company to rehabilitate any degraded areas by exploration activities;
 - i) Progressive reduction of the license areas or payment of four times the license fees; and
 - j) Renewal of the special license on application by the licensee and subject to satisfactory performance on the work programme and fulfillment of the license conditions.
77. From the above 52, In fulfillment of the license conditions, The Committee observed that:-
- a) The Company gave quarterly reports to the Commissioner of Mines and Geology, for the Ministry of Environment and Mineral Resources;
 - b) No evidence has been provided to show that there was transfer of assignment of the special license requiring the Commissioner's consent
 - c) On the site visit, company has not rehabilitated any degraded areas by exploration activities. There is no rehabilitation of mines or degraded areas and also the material may have a health hazard to the community;
 - d) Renewal of the special license on application by the licensee was not provided or done and that performance on the work programme and fulfillment of the license conditions was not fulfilled as per the Commissioners letter ordering fast tracking and completion of activities and the various warnings b the Commissioner of Mines & Geology;
 - e) undertook exploration work under joint ventures;
 - f) was penalized for nonreduction of the areas - in 1999, the company reduced the license areas for SPL No. 122 from 245km² to 126Km²
 - g) In 2009, the Commissioner of Mines, after it became evident that the Company has held the license areas for quite a long time without concluding exploration work, ordered for a fast tracking and completion of activities vide letter Ref.SPL/232/IV/(49) dated May 14, 2009.

South Nyanza County Council, Mr. Elisha Aketch Chieng. Therefore, making the consent fraudulent on the following grounds:-

- (i) It was signed by non-executive, unauthorized officer of the council, According to Local Government Act, Cap 265, the Chairman is not a gazetted officer, therefore not authorized to sign documents on behalf of the Council;
 - (ii) The consent was granted to Migori Gold Mining Company not Mid Migori Mining Company Limited. The Committee observed that is the consent is transferable?;
 - (iii) No other letter or consent was issued prior to the one issued in 1987 contrary to section 86A of the Local Government Act, Cap 265, Laws of Kenya;
- b.) Following the enactment of the EMCA Act, 1999, the Company should also comply with environment regulations as per the Act. The Act stipulates that there should be an Environmental Impact Assessment report to be prepared by the proponent (company) for it to be allowed to undertake such activities. An inspection by NEMA established that Mid-Migori Mining Company Limited commenced gold mining and exploration activities without Environmental Impact Assessment being carried out pursuant to section 58(1) of Environment Management & Coordination Act(EMCA), 1999 as required for the licensing of exploration. Therefore, the company has not complied with EMCA Act, 1999;
- c.) The company is licensed to undertake exploration but may be clandestinely doing mining;
- d.) The company appears not to be completing the work they were licensed to undertake, yet they are not complaining.
- e.) As late as November 2010, the company was still requesting the Commissioner of Mines to assist to get consents from land owners and county councils inn Migori, Kuria West and Nyatike;

TAX AND CUSTOM COMPLIANCE

80. The Committee found that on **Tax and custom compliance** of Mid Migori Mining Company Ltd, the Kenya Revenue Authority has nothing adverse

PART II - SUMMARY OF FINDINGS

85. The Committee therefore found out that:-

- (a) **Consent from the County Council** - Mid Migori Mining Company Limited has been undertaking exploration without the consent of the Migori County Council and or the former South Nyanza County Council, as the consent provide was irregularly signed;
- (b) **A written consent from the land owner** - Mid Migori Mining Company Limited has been undertaking exploration within privately-owned pieces of land, with the help of the Provincial Administration and Department of Mines & Geology, without the consent of land owners in some instances;
- (c) **Consent is non-transferable** - Mid Migori Mining Company Limited did change the name once from Migori Gold Mining Limited to Mid Migori Mining Company Limited and there is no evidence to show that the consent granted by the Commissioner of Mines & Geology was noted pursuant to the provision of the Mining Act;
- (d) **Environmental Impact Assessment Report** – following the enactment of the Environment Management Coordinating Act, 1999 (the company was licensed in 1989); the Company should have complied with the rules and regulations under the Environment Management Coordinating Act, 1999 and prepared an Environmental Impact Assessment report.
- (e) Following the Committee inspection, the Company appears not to have been **rehabilitating and restoring back dug out or excavated areas** as required;
- (f) Mid Migori Mining Company Limited, appears to have a **frosty relationship with the locals** as a result of:-
 - i. Lack of corporate social responsibility by the company in form of employment and provision of other social amenities or assistance;
 - ii. Lack of information on the activities of the company;
 - iii. The company has been in Nyatike for long mining;
 - iv. In some instances, the locals believe that the company is doing mining instead of prospecting or exploration;
 - v. In some instances, the company has been defrauding the locals of their lands without due regard to procedure and law;
 - vi. In some instance, The company has failed honour leases or agreement on land rent for private land; and
 - vii. In some instance, the company has been invading into people's land conducting mining, exploration and extracting activities without consent.

2009. In the letter, the Commissioner noted that Mid Migori Mining Company Limited has not met the following specific special license conditions:-

- i. Transfer or assignment of the special license requires the Commissioner's consent;
 - ii. The company to rehabilitate any degraded areas by exploration activities; and
 - iii. Renewal of the special license on application by the licensee and subject to satisfactory performance on the work programme and fulfillment of the license conditions.
- (l) Mid Migori Mining Company was penalized by the Commissioner of Mines & Geology for holding the license area for long without completion of exploration works; and
- (m) Lack of transparency and accountability in their declaration of samples meant for export to Tanzania - Mid Migori Mining Company Limited has been taking mineral samples to Tanzania for laboratory testing and from the records availed to the Committee, there is no customs declaration and appear incomplete. Consequently, the results of the testing undertaken in Tanzania are not availed.
- (n) Mid Migori Mining Company Limited was granted a special prospecting rights through his applicant, one Mr. James Mathenge, a former government employee and Permanent Secretary while still services contrary to section 81 of the mining Act, Cap 306 Laws of Kenya;

CONCLUSION

86. Following the Question by private notice by the Member for Nyatike, Hon. Anyanga, MP, Committee makes the following conclusion, that:-

- a.) Mid Migori Mining Company Limited has not met the following requirements for grant of exclusive prospecting license/special prospecting licenses, these are:-
- i. A receipt for deposit with the Provincial Commissioner of the Province in which mineral resource is to be prospected;
 - ii. A written consent from the land owner;
 - iii. A properly acquired written consent from the County Council of the mineral prospecting area;
 - iv. A detailed work programme;
 - v. An expenditure proposal for implementing the work programme;

2. The Ministry of Environment and Mineral Resources in conjunction with the Ministry of Lands should with immediate effect investigate the land disputes and alleged fraudulent acquisition of title deeds by Mid Migori Mining Company Limited. The matter should be resolved and necessary action taken including revoking the licenses held by Mid Migori Mining Company Limited if culpability is established.
3. The Director General, National Management Environment Authority, should with immediate effect carry out an Environmental Impact Assessment audit on Mid Migori Mining Company Limited, and subject it to public scrutiny and consultations pursuant to the provisions of Environment Management & Coordination Act, 1999.
4. The Minister for Environment & Mineral Resources, should without further delay cause the proposed Mining Bill, to be tabled in Parliament for consideration by end of September 2012;