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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION – 2024


DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

REPORT

ON
CONSIDERATION OF THE GOLD PROCESSING BILL (NATIONAL ASSEMBLY BILL NO.
46 OF 2023)

PARLIAMENT
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 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 17 OCT 2024	DAY.
TABLED BY:	Hon. David Gikaria.
CLERK-AT THE-TABLE:	TRACY CHERET

DIRECTORATE OF DEPARTMENTAL COMMITTEES,
CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.

OCTOBER, 2024

LIST OF ABBREVIATIONS AND ACRONYMS

UDA	-	United Democratic Alliance
ODM	-	Orange Democratic Movement
WDP	-	Wiper Democratic Party
KUP	-	Kenya Union Party
UPIA	-	United Party of Independent Alliance

LIST OF ANNEXURES

1. Report adoption Schedule
2. Minutes
3. Copy of the newspaper advertisement on public participation
4. Letter inviting stakeholders for meetings with the Committee
5. Stakeholder submissions

CHAIRPERSON'S FOREWORD

This report contains the Departmental Committees on Environment, Forestry and Mining proceedings on its consideration of the Gold Processing Bill, 2023 published on 11th August 2023. The Bill went through the First Reading on 28th October 2023, thereafter, it was committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House pursuant to the provision of the National Assembly Standing Order 127.

The Bill sponsored by Hon. Bernard M. Shinali has fifty (50) clauses and *seeks to provide for the establishment, composition, functions and management of Gold Processing Corporation. It also seeks to establish a legal and institutional framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.*

The Bill concerns county governments in terms of Article 110 (1) (a) of the Constitution.

Following the placement of advertisements in the print media on Friday, 20th October 2023 seeking public and stakeholder views on the Bill pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received two (2) memoranda from the following institutions:

- i. State Department for Mining; and
- ii. National Gender and Equality Commission.

The Committee also invited the following MDAs vide a letter REF: NA/DDC/EF&M/2024/007 dated 6th March 2024 for their comments and proposals on the Bill:

- i. Ministry of Mining, Blue Economy and Maritime Affairs; and
- ii. The State Department for Mining.

The Committee also invited the National Gender and Equality Commission vide a letter **REF: NA/DDC/EF&M/2024/008** dated **6th March 2024** for their comments and proposals on the Bill.

The Committee also conducted public participation in Kilifi, Kwale, Taita Taveta, Kericho, Kakamega and Migori counties from 2nd to 8th May 2024.

The Committee having considered the Gold Processing Bill, 2023, recommends that the House **APPROVES** the Bill without any amendments.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank the sponsor of the Bill, Hon. Bernard M. Shinali and all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and Secretariat who made useful contributions towards the consideration and production of this report.

On behalf of the Departmental Committee on Environment, Forestry and Mining and pursuant to provisions of Standing Order 127 (4), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Gold Processing Bill, 2023.

Hon. Gikaria David, CBS, M.P.
Chairperson, Departmental Committee on Environment, Forestry and Mining

PART ONE

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Environment, Forestry and Mining is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
 - iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. **To study and review all the legislation referred to it;**
 - v. *To study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *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;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on appointments);*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule to the Standing Orders, the Committee is mandated to consider matters related to Climate change, environment management and conservation, forestry, mining and natural, pollution and waste management.
3. In executing its mandate, the Committee oversees the Ministry of Environment, Climate Change and Forestry and the State Department for Mining.

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Environment, Forestry and Mining was constituted by the House on 27th October 2022 and comprises of the following Members:

Chairperson

Hon. David Gikaria, MP
Nakuru Town East Constituency

UDA Party

Vice-Chairperson

Hon. Charles Kamuren, MP
Baringo South Constituency

UDA Party

Members

Hon. Mbalu Jessica Nduku Kiko, CBS, MP
Kibwezi East Constituency

WDP Party

Hon. Mwanyanje Gertrude Mbeyu, MP
Kilifi County

ODM Party

Hon. Hiribae Said Buya, MP
Galole Constituency

ODM Party

Hon. Salim Feisal Bader, MP
Msambweni Constituency

UDA Party

Hon. Emathe Joseph Namuar, MP
Turkana Central Constituency

UDA Party

Hon. Joseph Wainaina Iraya, MP
Nominated

UDA Party

Hon. Kemei Beatrice Chepngeno, MP
Kericho County

UDA Party

Hon. Kururia Elijah Njore Njoroge, MP
Gatundu North Constituency

Independent Member

Hon. Masito Fatuma Hamisi, MP
Kwale County

ODM Party

Hon. Nguro Onesmus Ngogoyo, MP
Kajiado North Constituency

UDA Party

Hon. Titus Lotee, MP
Kachaliba Constituency

KUP Party

Hon. Mohamed Tubi Bidu, MP
Isiolo South Constituency

Jubilee Party

Hon. Yakub Adow Kuno, MP
Bura Constituency

UPIA Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff:

Ms. Hellen Ekadeli
Clerk Assistant I/Head of Secretariat

Ms. Mercy Wanyonyi
Senior Legal Counsel

Mr. Hamdi Hassan Mohamed
Clerk Assistant III

Dr. Joseph Kuria
Research Officer III

Ms. Nancy Chamunga
Fiscal Analyst III

Mr. Stephen Otieno
Senior Sergeant-At-Arms

Mr. Kevin Obilo
Media Relations Officer III

Mr. Eric Ogola
Public Communications Officer III

Mr. Meldrick Sakani
Audio Recording Officer

PART TWO

2.0 BACKGROUND OF THE GOLD PROCESSING BILL, 2023

2.1 INTRODUCTION

6. The principal object of the Bill is to provide for the establishment, composition, functions and management of Gold Processing Corporation and establish a legal and institutional framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.

2.2 SITUATIONAL ANALYSIS

7. A wide range of metallic and industrial minerals are known to occur in Kenya. These include gold, barite, gypsum, silver, lead, talc, titanium, salt, a variety of gemstones; (mainly ruby and several varieties of garnets) dimension stones, silica sand, heavy mineral sands, manganese, zinc, graphite, kaolin, copper, nickel, chromite, pyrite, various clays and rare earth elements.
8. Gold is classified as a precious metal in the First Schedule of Mining Act No. 2 of 2016. The precious metals are known to occur in the Archean Nyanzian Craton area of Western Kenya they include **gold**, **copper** and **silver** which have been mined in the past.
9. In 2022, 563.6 kilograms of gold were mined compared to 291.5 kilos in the previous year. In 2021, Kenya exported \$61.7M (Approx.) in Gold, making it the 106th largest exporter of Gold in the world. In the same year, Gold was the 23rd most exported product in Kenya. The main destinations of gold exports from Kenya are Rwanda (\$18.2M), Switzerland (\$18.2M), United Arab Emirates (\$16.1M), South Africa (\$8.69M), and Hong Kong (\$255k).
10. Gold mining in Kenya is largely carried out by artisanal and small-scale operators in an informal process that is risky such as the use of mercury, dangerous working conditions and illegal child labour.
11. Section 22 of the Mining Act Cap 306, provides for the establishment National Mining Corporation. The functions of the Corporation are—
 - a) engage in *mineral prospecting and mining*; and any other related activities;
 - b) invest on behalf of the national government;
 - c) acquire by agreement or hold interests in any undertaking, enterprise or project associated with the exploration, prospecting and mining;
 - d) acquire shares or interest in any firm, company or other body of persons, whether corporate or unincorporated which is engaged in the mining, prospecting, refining, grading, producing, cutting, processing, buying, selling or marketing of minerals; and
 - e) carry on its business, operations and activities whether as a principal agent, contractor or otherwise, and either alone or in conjunction with any other persons, firms or bodies corporate.

2.3 COMPARATIVE ANALYSIS

2.3.1 CHINA

12. China was the largest producer of gold in the world, mining 330 MT in 2022, nearly on par with 2021's 329 MT. The country has held its top position for more than a decade.
13. The regulatory framework is primarily governed by the Mineral Resources Law of the People's Republic of China, which sets out the principles, procedures, and requirements for mining activities. The law covers various aspects, such as exploration, mining rights, environmental protection, and mine safety.
14. Additionally, there are specific regulations and guidelines issued by relevant government agencies to ensure responsible and sustainable gold mining practices.

2.3.2 AUSTRALIA

15. Australia is a country with vast natural resources, including large mineral reserves of coal, metal ores, and non-metallic minerals, among others. It was the second-largest gold-producing country in 2022, reaching 320 MT.
16. Gold is mined at major operations throughout the country, with the top five gold-producing mines being located in five different states.
17. The regulatory landscape for the mineral sector in Australia is complex, as multiple jurisdictions have a role to play. Australian Commonwealth government administers policy for mineral exploration in offshore areas through the Offshore Mineral Act of 1994.
18. Each state/territory (New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia, and Northern Territory) has its legislative framework for the granting of rights, provision of permits, licenses or lease titles for exploration. The states and territories.
19. Mineral exploration and mining activities can only happen in Australian waters with approval from the relevant Joint Authority composed of the federal minister and the relevant state or Northern Territory minister.

2.3.3 SOUTH AFRICA

20. About one-tenth of global gold reserves are located in the country, with the Witwatersrand Basin considered one of the largest gold resources in the world. In 2022, South Africa produced 110 MT of gold.
21. In South Africa, the mining industry is regulated primarily under the Mineral and Petroleum Resources Development Act (MPRDA), enacted in 2002. This Act establishes the framework for mineral resource management and equitable access to the country's mineral wealth, which is considered a common heritage of all South Africans.
22. In addition, South Africa has Precious Metals Act, 2005 provides for the acquisition, possession, smelting, refining, beneficiation, use and disposal of precious metals. The Act regulates the

acquisition, possession, smelting refining, manufacturing, and trading of precious metals such as gold, silver, platinum, and palladium.

23. It also establishes the South African Diamond and Precious Metals Regulator (SADPMR) as the regulatory authority. The act aims to ensure responsible and transparent practices, prevent illegal activities, and maximize economic benefits from precious metal resources.

PART THREE

3.0 OVERVIEW OF THE GOLD PROCESSING BILL, 2023.

3.1 INTRODUCTION

24. The Gold Processing Bill, 2023 is a Bill sponsored by Hon. Bernard M. Shinali, seeking to provide for the establishment, composition, functions and management of the Gold Processing Corporation.
25. The Bill also seeks to establish a legal and institutional framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.

3.2 REVIEW OF THE BILL

26. **PART I: Clauses 1-5** of the Bill contain provisions relating to preliminary provisions including the short title, interpretation, object of the Act, guiding principles and provisions on exploration and exploitation.
27. **PART II: Clauses 6-24** of the Bill contain the provisions of the Gold Processing Corporation including establishment of the Corporation; headquarters of the Corporation; functions of the Corporation; powers of the Corporation; delegation by the Corporation; Board of the Corporation; vacation of office; term of office; conduct of business and affairs of the Board; remuneration; Director-General; qualification of the Director-General; functions of the Director-General; removal of the Director-General; staff; experts; common seal; protection from personal liability; and liability for damages.
28. The functions of the Corporation include collecting, sampling, purifying, smelting, fabricating, homogenizing, sampling, registering, refining, monitoring and transporting gold or products of gold; to develop, maintain and regulate national standards that comply with international standards for collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold; to regulate national standards for operating a gold refinery; to facilitate international accreditation for operating a gold refinery; to regulate registration and licensing of operating a gold refinery; and to regulate the registration and licensing of laboratory that analyses, tests and grades the properties of gold for purposes of collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold.
29. **PART III: Clauses 25-28** of the Bill contains provisions relating to financial provisions including the funds, the financial year, the annual estimates, accounts and audit of the Corporation.

30. The Funds of the Corporation shall consist of such monies as may be appropriated by the National Assembly for the purposes of the Corporation; gifts, grants, donations or endowments as may be given to the Corporation; monies that may accrue to or vest in the Corporation in the course of the exercise of its functions; fees for services rendered by the Corporation; and monies from any other lawful source provided for the Corporation.
31. **PART IV: Clauses 29-43** of the Bill contains provisions relating to processing licence including application for processing licence; restrictions in respect of processing licences; consideration of applications; application by holder of processing licence; notice of refusal; form of processing licence; term of processing licence; rights conferred by processing licence; obligations under processing licence; record-keeping and reporting requirements; amendment of programme of processing operations; cessation, suspension, or curtailment of production in respect of processing licences; renewal of processing licence; application for renewal of processing licence; and term of renewal
32. A person or a company may apply to the Cabinet Secretary for a processing licence in the prescribed form and accompanied by the prescribed fee and the Cabinet Secretary shall grant a processing licence to an applicant where the applicant has satisfied the requirements prescribed.
33. The term of a processing licence shall not be less than twenty-five years while the term of renewal of a processing licence shall not exceed fifteen years. The holder of a processing licence is required to among other things commence processing operations within six months of the grant of the licence, or as may be specified in the approved program for processing operations or in any relevant gold agreement; conduct processing operations in compliance with the approved programme for processing operations; and to comply with the terms and conditions of the approved environmental impact assessment licence, social heritage assessment and environmental management plan relating to the operations to be carried out under the processing licence.
34. Additionally, the holder of a processing licence is required to give the Cabinet Secretary a notice of any intention to cease or suspend or curtail processing operations carried on pursuant to the processing licence.
35. **PART V: Clause 44-47** of the Bill contains provisions on miscellaneous provisions including annual report; request for information; limitation of the right to access information; and offences and penalties.
36. **PART VI: Clause 48** of the Bill contains provisions on regulations.
37. **PART VII: Clause 49 and 50** contains provisions on consequential amendments to the Mining Act, Cap 306. The Bill provides that the Mining Act, Cap 306 shall not apply to matters relating to the exploration, exploitation and processing of gold. The Bill further seeks to delete gold from the list of minerals appearing in Part C of the First Schedule to the Mining Act, Cap 306.

PART FOUR

4.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

38. Following the call for memoranda from the public through placement of adverts in the print media on **20th October 2023** and vide a letter **REF: NA/DDC/ EF&M/2024/007** dated **6th March 2024** inviting stakeholders for a meeting, the Committee received memoranda from the following stakeholders:
- i. State Department for Mining; and
 - ii. National Gender and Equality Commission.
39. The Committee also invited the State Department for Mining vide a letter **REF: NA/DDC/EF&M/2024/007** dated **6th March 2024** for its comments and proposals on the Bill:
40. The stakeholders submitted as follows:

4.1 STATE DEPARTMENT FOR MINING

41. In a meeting with the Committee held on Thursday, **14th October 2024**, representatives from the State Department for Mining made the following submissions on the Bill:

Long Title

The Mining Act, 2016 long title provides that the Act was enacted to provide for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals and for connected purposes.

Justification:

The Mining Act regulates any dealings in gold including the prospecting, extraction, refining and treating of gold and the Bill creates an overlap of functions.

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 2

42. The Bill does not introduce any new or unique provisions for the processing of gold which has not already been provided for in law.

Justification:

The processing of gold has already been provided for under the long title of the Mining Act and in the definition of "mineral dealing" which includes, polishing, processing, refining and treating minerals.

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 3

43. The Mining Act, 2016 has already provided for the legal and institutional framework for the licensing and processing of all minerals including gold. The mandate to issue licences and permits is exercised by the Cabinet Secretary through the advice of the Mineral Rights Board in accordance with section 30 of the Mining Act, 2016.
44. The Director of Mines and Director of Geological Survey are separately responsible for the regulation, collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of minerals and mineral products including gold and gold products as per section 22 of the Mining Act.

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Justification:

The establishment of another parallel entity for exclusive licensing will result in area overlaps of issued licence/permits, disputes, loss of government revenue, disorganization in the sector and mineral smuggling.

In addition, the implementation; monitoring, and evaluation of separate legislation would become strenuous and confusing for stakeholders.

There would also be significant financial impact of duplicating public entities and the investment in the sector will be affected due to an assortment of similar legal regimes.

Clause 4

45. The provisions are ambiguous since what is outlined as guiding principles are not guiding principles as per the Constitution.
46. Further, Clause 4(2) contradicts Clause 4(1) by providing that the Gold Processing Act shall prevail in case of any inconsistency between the Act and any other legislation.

Justification:

The guiding principles and values under the Mining Act are enshrined in the Constitution, particularly, Articles 10, 66(2), 201(c) ad (d) and 232.

If the Bill is enacted, there would be two conflicting Acts of Parliament regulating the processing of gold.

Committee's Observation/Recommendation

The Committee observed that The Bill in clause 4(2) provides that its provisions, if enacted into law shall prevail in the case of inconsistency in its provisions and any other legislation on matters collecting, purifying, smelting fabricating, homogenizing, sampling, registering,

monitoring and transporting of gold and gold products. This therefore provides for a clear way for the resolution of conflict of laws and cures the need to have consequential amendments to the Mining Act (No. 12 of 2016).

Clause 5

47. This will lead to conflict in the issuance of licenses between the proposed entity and the Director of Geological Survey and Directorate of Mines that are established under the Mining Act, 2016, as the latter has the function of exercising regulatory administration and supervision over all prospecting and mining operations and the technical capacity to enforce the same.

Justification:

Clause 5 seems to address the large prospectors and not the small-scale prospectors.

48. The Mining Act establishes the online mining cadastre which efficiently handles the application and processing of mineral rights, ensuring the exclusivity of the areas applied for. Managing specific minerals outside this system could result in overlapping applications and lead to disputes.
49. Further, minerals frequently exist in combination with other minerals, and it is often impractical to license a single specific mineral to the exclusion of all others.
50. Further, the Ministry through the Cabinet Secretary has since developed the Mining (Licence and Permit) Regulations, 2017 which has substantive provisions for the issuance of permits and licenses for minerals including gold.

Committee's observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 6

51. The National Mining Corporation was established by the Mining Act, 2016 to perform the functions that the proposed Gold Processing Corporation seeks to carry out, such as exploration, exploitation, dealing and processing of gold and other minerals.

Justification:

To empower the governing structure with regulatory powers over all aspects of gold mining, processing and marketing.

52. The establishment of two corporations carrying out the same functions only seeks to create an overlap and opens up the sector to anyone who wishes to develop statutes for the processing of all other minerals hence creating confusion and over-regulation of the sector.

Committee's observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 8

53. The Bill establishes the Corporation as a regulator and an industry player at the same time and this will result in conflict of interest and unfair competition between the corporation and other independent dealers.
54. The Gold Processing Corporation does not introduce new functions that the National Mining Corporation does not already undertake.

Justification:

The Mining Act, 2016 provides for/establishes the offices of the Directorate of Geological Survey (on exploration), the Directorate of Mines, (which regulates mining and related activities) and the Mineral Rights Board, which advises the Cabinet Secretary on licensing of all minerals, including gold.

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 28

55. The Gold Processing Bill has not provided for several areas of the regulation of gold such as:
 - ✓ Categories of mineral rights
 - ✓ Feedback on status of applications except mining lease.
 - ✓ Mineral rights applications.
 - ✓ Form of mineral right.
 - ✓ Mineral rights in excluded and restricted areas.
 - ✓ Mineral rights on private land.
 - ✓ Mineral rights on community land.
 - ✓ Consent or otherwise.
 - ✓ Compulsory acquisition of land for prospecting and mining.
 - ✓ Tendering for mineral rights.
 - ✓ Conditions attaching to mineral rights.
 - ✓ Directions concerning good mining practices.
 - ✓ Mineral rights to be exercised reasonably and responsibly.
 - ✓ Registered address.
 - ✓ Employment and training of Kenyans.
 - ✓ Preference in employment.
 - ✓ Government participation in mining Licence.

- ✓ Local equity participation.
- ✓ Preference for local products.
- ✓ Assignments, transfers, mortgage and trade of mineral rights.
- ✓ Preparation of reports.
- ✓ Annual financial reports.
- ✓ Power to require additional information.
- ✓ Report by the Cabinet Secretary.
- ✓ Priority of applications.
- ✓ Treatment of applications.
- ✓ Conditions for grant of mineral rights for large-scale operations.
- ✓ Withdrawal of an application

Justification:

The Mining Act and its Regulations have extensively and sufficiently provided for the licensing of exploration, mining, processing and refining for all minerals, including gold.

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 49

56. The Bill only proposes to exclude the exploration, exploitation and processing of gold from the Mining Act. There is no justification why gold as a mineral should be administered in isolation or to the exclusion of all other minerals. If enacted, there would be two conflicting Acts of Parliament regulating the processing of gold.

Justification:

The Cabinet Secretary is responsible for the general administration of the Mining Act, 2016 which provides for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals including gold.

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

4.2 NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)

57. The National Gender and Equality Commission submitted the following amendments to the Bill:

Long Title

58. Substitute the name “Corporation” with “Authority”.

Justification:

To empower the governing structure with regulatory powers over all aspects of gold mining, processing and marketing.

Committee’s Observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 2

59. Define the terms “small-scale” and “large-scale” in the interpretation section.

Justification:

Most of the small-scale gold prospectors are youth who put in a lot of effort but are exploited by the large processors. In the same breath, small-scale prospectors are engaged in a lot of mining activities that degrade the environment. There is a need to regulate small-scale mining because of among others the many untimely deaths witnessed in the mines.

Committee’s Observation/Recommendation

The Committee observed that the terms have already been defined in the the Mining Act, 2016 which regulates dealings in all minerals including the processing of gold.

Clause 5

60. There is a need to create categories of gold processors so that conditions of licenses in Part V and penalties vary depending on the category.

Justification:

Clause 5 seems to address the large prospectors and not the small-scale prospectors.

Committee’s Observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 6

61. Amend “Corporation” to “Authority.”

Justification:

To empower the governing structure with regulatory powers over all aspects of gold mining, processing and marketing.

Committee's Observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 8

62. Delete clause 8(a) without replacement.
63. Insert a new paragraph (h) as follows—
 - (h) To regulate the framework for small-scale gold prospectors.

Justification:

The functions of the Gold Processing Bill overlap with those of the Authority established under sections 30 and 31 of the Mining Act.

64. The functions in sub-clause (a) sought to be deleted are the responsibilities of the stakeholders in the gold processing sector and not the regulator.

Committee's Observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 11

65. Amend the clause to insert new provisions on—
 - a. appointment to take into account the principle of gender balance and inclusion of persons with disability.
 - b. appointment of the members to be staggered to ensure continuity of the Board business at all times.
 - c. Appointment of a Corporation Secretary.
66. Propose to amend 11(f) by substituting “Attorney-General” with “a representative of small-scale prospectors”

Justification:

To comply with the principles in the Mwongozo code of governance.

There needs to be a representation of small-scale prospectors on the Board.

Committee's Observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 13

67. Proposed to amend the term from five years to three years.

Justification:

The proposed amendment is in line with the Mwongozo code of governance on the term of Board Members.

Committee's Observation/Recommendation

The Committee observed that the term of office as provided for in the Bill is reasonable

Clause 19(1)

68. Delete Clause 19(1) (a) without replacement.

Justification

The proposed amendment is in line with the Mwongozo code of governance on the term of Board Members.

Committee's Observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

4.3 SUBMISSIONS IN MEETINGS HELD BETWEEN 2ND AND 8TH MAY 2024 IN KERICHO, KAKAMEGA AND MIGORI COUNTIES.

69. The following submissions were made during the meetings:

Clause 7

70. That the headquarters of the Gold Processing Corporation shall be in Kericho.

71. The Corporation shall establish offices in all counties.

Justification:

To ensure that youth in the County get job opportunities in the Corporation.

The Corporation shall establish offices in all counties.

Committee's Observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 7

72. Proposes that years of experience be amended to 2 or 3 years. Further, the provision to include 2/3 gender rule and representation by youth on the Board.

Justification:

To ensure that youth get opportunities for jobs.

73. The Gold Processing Corporation should be established in such a way that Government to Government relationship can be enhanced.

Committee's observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 3

Clause 3(b) of the Bill is seeking for the provision of exploration and exploitation of gold licence. Exploration has no relationship to gold processing. Further, licenses for exploration is already provided for in the Mining Act.

Justification:

The Bill seeks to regulate gold processing and not exploration.

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 5

74. Clause 5(1) prohibits exploration and exploitation operations of gold without a permit. There is no relationship between exploration or exploitation and processing. Exploration is the study of geological features and composition of the earth in search of gold. Exploitation is where gold is leached from the by treatment with the solution of cyanide.

Justification:

The Bill seeks to regulate "gold processing" and not "gold exploration or exploitation".

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 8

75. On clause 8(a), the Corporation should not be a player in the gold processing process.
On clause 8(a), the Corporation should not be involved in the actual mining or processing activities.
76. On Clause 8(d) (e) (f) (g) and (h), a local mwananchi may not afford a refinery and its licences

Justification:

The Bill establishes the Corporation as a regulator.

Only a few fortunate people can afford the necessary laboratory equipment.

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 11

77. The Bill needs to incorporate representatives of the community such as land owners, miners, investors, and small-scale and artisanal miners and the Chairperson be appointed from among these persons.

Justification:

The Board is composed mainly of representatives from the government.

Committee's Observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 11(1)

78. There should be a representative of artisanal miners on the Board.
The Board should have representation of the mining area communities and a representative of the Council of Elders.

The Gold Processing Corporation should have representation from the local community.

Justification:

To ensure representation of Ikolomani artisanal miners.

Committee's Observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 11(2)

79. The qualifications of the Chairperson are so high. The position should be open to a person holding any degree recognized in Kenya.

Justification:

To ensure that youth get job opportunities.

Committee's observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 17

80. The qualifications of the Director-General should relate to a degree in finance, human resources, law or accounts and be open to a relevant managerial qualification.

Justification:

This is because the Director-General will perform managerial and administrative functions and not technical functions.

Committee's Observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 29(e)

81. The Bill concerns gold processing and not mining and therefore a person or a company applying for a processing licence under the Act should not be required to submit a statement regarding the gold in the area of land over which the licence is sought as this would apply in mining operations.
82. Further submits that the provision 29 (f) locks out common mwananchi who has no finances from engaging in gold processing.

Justification:

The Bill seeks to regulate gold processing and not mining.

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 30

83. The reconnaissance, retention and mining license are provided for under the Mining Act and have no correlation with processing of gold. Further, the said licenses are issued for purposes of mining.

Justification:

The three licenses create confusion as they are not necessary to be issued to a person engaged in gold processing.

Committee's observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 37(d)

84. Demarcation of an area for purposes of processing of gold is unnecessary since the gold being processed has already been mined.

4.4 SUBMISSIONS IN MEETINGS HELD IN KILIFI, TAITA TAVETA AND KWALE COUNTIES.

85. The following submissions were made during the meetings:

Clause 11(2)

86. The Chair of the Gold Processing Board should have at least five years instead of 10 years which will lock out many youths.

87. Further, members of the Board should have at least 2 years of experience instead of five.

Justification:

To ensure that youth get job opportunities.

Committee's Observation/Recommendation

The Committee observed that the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

Clause 37(d)

88. Proposed that the license for mining should be issued for 20 years instead of 15 years as proposed in the Act.

General comment

89. The Bill should be rejected in totality since the gold processing corporation will require funding which will burden taxpayers.

90. The Gold Processing Bill will cause an increase in the wage bill and thus should be rejected.

91. There is no need for the Gold Processing Bill since the Mining Act is sufficient.

92. The provisions of the Bill are similar to the provisions of the Mining Act and the Bill thus should be rejected.

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

4.5 SUBMISSIONS BY KENYA CHAMBER OF MINES

93. The Kenya Chamber of Mines made the following submission:

Clause 8

94. The functions of the Gold Processing Bill can be vested in the existing regulatory authority under the Mining Act and this consolidation would streamline processes and avoid duplication of efforts.

Justification:

The Mining Act, 2016 also establishes the National Mining Corporation which is structured and empowered in similar terms as the Gold Processing Corporation with attendant regulations to support its functions.

Committee's Observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

General comments

95. Enactment of the legislation may lead to overregulation and unnecessary fragmentation of regulatory frameworks within the mining industry.
96. The matters related to gold processing can be adequately addressed within the existing regulatory framework governing the mining industry.
97. Gold naturally coexists with other elements in mineral deposits and miners often extract multiple metals as by-products during the mining process. In such cases, it is unclear which regulatory framework would apply between the Mining Act and the Gold Processing Act.

Justification:

98. The enactment of the Act will lead to ambiguity, confusion and inefficiencies in regulatory enforcement.
99. The existing regulatory frameworks under the Mining Act are sufficient to address concerns relating to gold processing and fragmentation of regulatory bodies may hinder rather than facilitate effective oversight of the mining sector.
100. The Bill selectively replicates the contents of the Mining Act whilst gold processing can be operationalized through the regulations that are in place, for instance, the National Mining Corporation can perform the functions suggested for the Gold Processing Corporation.
101. The Bill to be redrafted to become regulation under the Mining Act if it has to exist.
102. The laws be harmonized because gold mining will be regulated under two laws meaning that different licences will be issued for the same gold mineral discovered in the same site but regulated under different laws.

103. There should be a restructuring of the operationalization of gold mining activities in Ikolomani.
104. Where multi-national companies operate, they must partner with locally registered companies/groups.
105. Compensation/royalties should be well assessed to pay locals for the use of land under gold mining activities.
106. A modern geological survey should be undertaken to determine the quality of gold. Geological mining training colleges should be established to train youth.
107. To avoid exploitation, the Kenyan government should link local communities to multinational companies.
108. The Bill should therefore include other minerals not only gold.

Justification:

Where there is gold, we have other minerals accompanying the gold, for instance, diamond in Ikolomani.

109. The Bill is majorly favoring a specific cadre of investors and locks out local artisanal miners.
110. The Bill should be clear on the roles of all persons involved in earning a living in the process in gold mining and processing.

Justification:

The Bill is silent and lacks clarity on the roles of persons involved in gold mining and processing such as the artisanal miners, the crushers, *mama mkokoteni*, *mama karai*, *mama vidimbwi*, the community and all those involved in earning a living in the process.

111. The Bill does not protect local mwananchi and therefore should be withdrawn.
112. The word “exploration” should be expunged from the Bill.
113. After mining, companies should be obligated to take care of the environment and compensate the local community through CSR.

Justification:

Mining has adverse effects on environmental degradation and water supply. Further, it is important to protect locals.

114. The provincial administration and police should closely monitor the activities of foreign companies.

Justification:

To protect the local community.

115. The small-scale and artisanal miners should be incorporated in businesses where multi-national companies are engaged in mining operations.
116. There needs to be a clear framework of how royalties will benefit the community.
117. The Bill should require that an investor deposits some money with the Corporation to take care of the environment so that if the investor fails to rehabilitate the environment, that money be used towards that purpose.
118. An application for a gold processing license should be accompanied by a plan proposed for land recovery.
119. A comprehensive law that covers other minerals should be enacted because, in the process of exploring, one may find other poly-metallic deposits.
120. Further, the function of the Gold Processing Corporation to approve and give direction to laboratories on gold processing should be extended to other minerals.

Justification:

Gold and other minerals often coexist amongst other minerals.

121. The Bill should provide for rehabilitation of mined areas.
122. The Bill should contain clauses to protect landowners so that miners are required to cover up the mines and give back to the community. Further, environmental damage is done without compensation to the community.
123. The Bill should also require miners to be insured for purposes of compensation in case of injury.
124. Licensing should be a power vested in the county since the Cabinet Secretary has too many powers.
125. Tax paid on mining should be ploughed back to the community and the Bill should provide a clear framework for determining how much was extracted and what should be ploughed back.
126. The people involved in mining should be insured.

Committee's observation/Recommendation

The Committee observed that the Mining Act, 2016 regulates dealings in all minerals including the processing of gold. However, the legal and institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability.

PART FIVE

5.0 COMMITTEE OBSERVATIONS



127. Having considered the Bill, the Committee made the following observations:

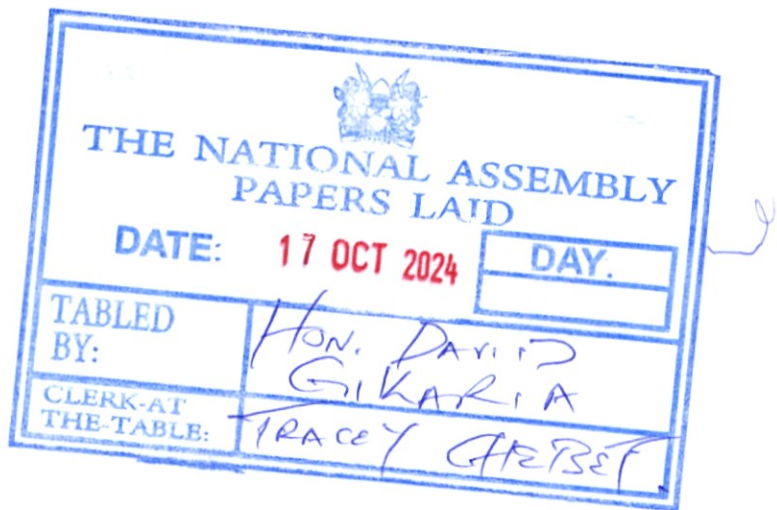
1. The principal object of the Bill is to provide for the establishment, composition, functions and management of the Gold Processing Corporation. The Bill seeks to establish a legal and institutional framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.
2. Artisanal and small-scale gold mining and processing methods are most vulnerable to illegal trafficking, smuggling, counterfeit and fraud. The establishment of a Gold Processing Corporation to deal with the regulation of collecting, purifying, smelting, fabricating, homogenizing, refining, registering, sampling, monitoring and transporting of gold and gold products will provide safeguards against illegal trafficking, smuggling, counterfeit and fraud, therefore encouraging investor confidence.
3. The institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability. This framework aligns with Kenya's Bottom-Up Economic Transformation Agenda by promoting local value addition, creating employment opportunities, and empowering small-scale miners to actively participate in and benefit from the gold value chain.
4. The Bill in clause 4(2) provides that its provisions, if enacted into law shall prevail in the case of inconsistency in its provisions and any other legislation on matters collecting, purifying, smelting fabricating, homogenizing, sampling, registering, monitoring and transporting of gold and gold products. This therefore provides for a clear way for the resolution of conflict of laws and cures the need to have consequential amendments to the Mining Act (No. 12 of 2016).
5. The current gold deposits in Kenya support an industry of artisanal and small-scale gold mining which occurs mostly in vast and remote areas. The Bill therefore seeks to provide for proper infrastructure for enforcement and incentives for artisanal and small-scale miners, addressing the gap between policy and reality in the sector.
6. Comprehensive regulation of the gold sector in Kenya will enable the country to accumulate a gold reserve and eventually benefit from it. Gold reserves attract foreign exchange, contribute to financial stability, unify exchange rates and contribute to the global influence of a country.
7. The Gold Processing Bill, 2023 if enacted will mirror the South Africa Precious Metals Act, 2005 which provides for the acquisition, possession, smelting, refining, beneficiation, use and disposal of precious metals (gold, silver, platinum, and palladium). The South African Diamond and Precious Metals Regulator (SADPMR) is responsible for ensuring compliance with licensing conditions for these activities.

PART SIX

6.0 COMMITTEE RECOMMENDATION

128. The Committee having facilitated public participation and considered the *Gold Processing Bill (National Assembly Bills No. 46), 2023* by Hon. Bernard M. Shinali, the stakeholder's comments and from the above observations, recommends that the House APPROVES the Bill without any amendments.

SIGNED.......... DATE..........
HON. GIKARIA DAVID, CBS, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING



Report adoption Schedule



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION, 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

**DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING
ADOPTION OF THE REPORT ON THE GOLD PROCESSING (NATIONAL ASSEMBLY BILL
NO. 46 OF 2023) SPONSORED BY HON. BERNARD MASAKA SHINALI, MP**

We, the undersigned Honorable Members of the Departmental Committee on Environment, Forestry and Mining today Tuesday, 15th October 2024 do hereby affix our signatures to the Report on consideration of the Gold Processing Bill (National Assembly Bill No. 46 of 2023) sponsored by Hon. Bernard Masaka Shinali, MP, to affirm our approval and confirm its accuracy, validity and authenticity.

NO.	NAME	SIGNATURE
1.	The Hon. Gikaria David, CBS, MP - Chairperson	
2.	The Hon. Charles Kamuren, MP - Vice-Chairperson	
3.	The Hon. Mbalu Jessica Nduku Kiko, CBS, MP.	
4.	The Hon. Mwanyanje Gertrude Mbeyu, MP.	
5.	The Hon. Hiribae Said Buya, MP.	
6.	The Hon. Salim Feisal Bader, MP.	
7.	The Hon. Emathe Joseph Namuer, MP.	
8.	The Hon. Joseph Wainaina Iraya, OGW, MP.	
9.	The Hon. Kemei Beatrice Chepngeno, MP.	
10.	The Hon. Kururia Elijah Njore Njoroge, MP.	
11.	The Hon. Masito Fatuma Hamisi, MP.	
12.	The Hon. Mohamed Tubi Bidu, MP.	
13.	The Hon. Nguro Onesmus Ngogoyo, MP.	
14.	The Hon. Yakub Adow Kuno, MP.	
15.	The Hon. Titus Lotee, MP.	

Minutes



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION, 2024
DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 45th SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY, AND MINING HELD IN COMMITTEE ROOM 17 SECOND FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS ON TUESDAY, 15th OCTOBER, 2024 AT 9.00 AM.

PRESENT.

1. **The Hon. David Gikaria, CBS, MP** -Chairperson
2. **The Hon. Charles Kamuren, MP** -Vice-Chairperson
3. The Hon. Mwanyanje Gertrude Mbeyu, MP
4. The Hon. Salim Feisal Bader, MP
5. The Hon. Titus Lotee, MP
6. The Hon. Onesmus Ngogoyo Nguro, MP
7. The Hon. Kemei, Beatrice Chepngeno, MP
8. The Hon. Joseph Wainaina Iraya, OGW, MP

APOLOGY

1. The Hon. Mbalu, Jessica Nduku Kiko, CBS, MP
2. The Hon. Tubi Bidu Mohamed, MP
3. The Hon. Masito Fatuma Hamisi, MP
4. The Hon. Yakub Adow Kuno, MP
5. The Hon. Emathe Joseph Namuar, MP
6. The Hon. Elijah Njore Njoroge, MP

ABSENT

The Hon. Hiribae Said Buya, MP.

IN-ATTENDANCE: SECRETARIAT

- | | | |
|--------------------------|---|-------------------------|
| 1. Ms. Hellen Ekadeli | - | Clerk Assistant I |
| 2. Mr. Hamdi H. Mohamed | - | Clerk Assistant III |
| 3. Mr. Clinto Sindiga | - | Legal Counsel |
| 4. Dr. Joseph Kuria, PhD | - | Research Officer III |
| 5. Ms. Nancy Chamunga | - | Fiscal Analyst |
| 6. Ms. Kevin Ojiambo | - | Media Relations Officer |
| 7. Mr. Stephen Otieno | - | Serjeant-At-Arms |

AGENDA:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. Communication from the Chair
5. **Consideration and Adoption of the Report on the Gold Processing (National Assembly Bill No.46 of 2023) Sponsored by Hon. Bernard Shinali, MP**
6. Any other Business
7. Adjournment/Date of the next meeting
8. Adjournment/Date of the next meeting

MIN/NO.NA/DC/EF&M/254/2024: PRELIMINARIES & ADOPTION OF AGENDA

The Chairperson called the meeting to order at ten minutes past nine o'clock followed by a prayer said by Hon. Charles Kamuren, MP. The agenda of the meeting was adopted as listed above having been proposed and seconded by the Hon. Joseph Wainaina Iraya, OGW, MP and the Hon. Charles Kamuren, MP respectively.

MIN/NO.NA/DC/EF&M/255/2024: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

This agenda was deferred to the sitting

MIN/NO.NA/DC/EF&M/256/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON THE GOLD PROCESSING (NATIONAL ASSEMBLY BILL NO.46 OF 2023) SPONSORED BY HON. BERNARD SHINALI, MP

Having considered the Bill, the Committee made the following observations:

1. The principal object of the Bill is to provide for the establishment, composition, functions and management of the Gold Processing Corporation. The Bill seeks to establish a legal and institutional framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.
2. Artisanal and small-scale gold mining and processing methods are most vulnerable to illegal trafficking, smuggling, counterfeit and fraud. The establishment of a Gold Processing Corporation to deal with the regulation of collecting, purifying, smelting, fabricating, homogenizing, refining, registering, sampling, monitoring and transporting of gold and gold products will provide safeguards against illegal trafficking, smuggling, counterfeit and fraud, therefore encouraging investor confidence.
3. The institutional framework outlined in the Bill comprehensively streamlines all facets of the gold processing sector, ensuring efficiency, transparency, and sustainability. This framework aligns with Kenya's Bottom-Up Economic Transformation Agenda by promoting local value addition, creating employment opportunities, and empowering small-scale miners to actively participate in and benefit from the gold value chain.
4. The Bill in clause 4(2) provides that its provisions, if enacted into law shall prevail in the case of inconsistency in its provisions and any other legislation on matters collecting, purifying, smelting fabricating, homogenizing, sampling, registering, monitoring and transporting of gold and gold products. This therefore provides for a clear way for the resolution of conflict of laws and cures the need to have consequential amendments to the Mining Act (No. 12 of 2016).
5. The current gold deposits in Kenya support an industry of artisanal and small-scale gold mining which occurs mostly in vast and remote areas. The Bill therefore seeks to provide for proper infrastructure for enforcement and incentives for artisanal and small-scale miners, addressing the gap between policy and reality in the sector.
6. Comprehensive regulation of the gold sector in Kenya will enable the country to accumulate a gold reserve and eventually benefit from it. Gold reserves attract foreign exchange, contribute to financial stability, unify exchange rates and contribute to the global influence of a country.

7. The Gold Processing Bill, 2023 if enacted will mirror the South Africa Precious Metals Act, 2005 which provides for the acquisition, possession, smelting, refining, beneficiation, use and disposal of precious metals (gold, silver, platinum, and palladium). The South African Diamond and Precious Metals Regulator (SADPMR) is responsible for ensuring compliance with licensing conditions for these activities.

MIN/NO.NA/DC/EF&M/257/2024: ADOPTION OF THE REPORT

The Committee unanimously adopted its report having been proposed and seconded by the Hon. Charles Kamuren, MP and the Hon. Gertrude Mwanyanje Mbeyu, MP respectively

MIN/NO.NA/DC/EF&M/258/2024: ADJOURNMENT AND DATE OF THE NEXT SITTING

There being no other business, the meeting was adjourned at quarter past noon. The next meeting is to be held on notice.

Signed.....  Date..... 

(HON. GIKARIA DAVID, CBS, M.P. CHAIRPERSON)

PART FIVE

5.0 COMMITTEE OBSERVATIONS

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PART SIX

6.0 COMMITTEE RECOMMENDATION

128. The Committee having facilitated public participation and considered the *Gold Processing Bill (National Assembly Bills No. 46), 2023* by Hon. Bernard M. Shinali, the stakeholder's comments and from the above observations, recommends that the House APPROVES the Bill without any amendments.

SIGNED..... DATE.....
HON. GIKARIA DAVID, CBS, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	17 OCT 2024
	DAY.
TABLED BY:	HON. DAVID GIKARIA
CLERK-AT THE-TABLE:	TRACY CHEBET

**Copy of the
newspaper
advertisement on
public
participation**



A bulldozer demolishes a house on land that belongs to the East African Portland Cement Company in Athi River on Monday. [Peterson Gitthaiga, Standard]

Court declines to stop Portland land house demolitions

► Judge says Aimi ma Lukenya society had not proved that they bought the land in 2019.

► Court also says the society continued selling the land to third party buyers.

KAMAU MUTHONI, NAIROBI

The Environment Court has declined to block ongoing demolitions at the East Africa Portland Cement Company's land in Mavoko.

Justice Annet Nyukuri in her ruling yesterday said a group claiming to be squatters, Aimi ma Lukenya, had not proved that they had legitimately bought the land in 2019.

She observed that despite Aimi producing the title document, the group did not attach vital evidence to show how it acquired the document.

Aimi had filed a fresh application seeking to stop the demolitions.

But Justice Nyukuri observed that Aimi's conduct after it got temporary orders in 2015 was against its plea for fresh orders.

She said there was evidence to show the group went ahead to sell the contested property to third-party buyers, even as late as this year.

At the same time, she said the group on the other hand never served the court papers as ordered, despite enjoying the court's shield.

The judge allowed objections filed by East Africa Portland Cement, Kenya Railways Corporation, Grain Bulk Handlers, Superior Homes Limited, Chief Land Registrar, and the National Land Commission.

Not only did Justice Nyukuri decline to intervene, she ordered Aimi to shoulder the cost of the application.

"There is absolutely no merit in the application filed on October 11, 2023, and I dismiss the same with costs to the defendants," ruled Justice Nyukuri.

In the case, Superior Homes lawyer Phillip

Nyachoti argued that the application was incompetent and an abuse of the court process. According to Nyachoti, Aimi never revealed to the court that they had filed a similar case in Nairobi. At the same time, he said, the second case filed before the same court in Machakos was struck out by the court.

"The application is gravely misconceived, grossly misplaced, mischievous, frivolous, scandalous, vexatious, and therefore an abuse of the process of this honourable court and should be dismissed forthwith. The application as drawn, filed, and served is hopelessly incompetent in so far as a title known as L.R 10424 Athi-River and the fourth respondent's interest therein is concerned and or related," argued Nyachoti.

While seeking the court's intervention, Aimi argued the demolitions were against United Nation's convention on eviction.

They asserted that demolishing the properties built on the contested land was heartless and had rendered the occupants homeless without adequate notice.

According to them, their case on whether the title was valid, has never been determined. However, Portland, argued that Aimi and third-party buyers should leave as they hindered it from enjoying its right to property.

Two weeks ago, Justice Nyukuri struck out the case filed 10 years ago for failing to comply with the court orders.

The judge observed that the court had accommodated Aimi officials several times but they never served their court parties to all the parties in the case.

On May 17, 2023, a dispute was mentioned before the same judge. She directed the squatters to physically serve the court papers to all the parties who they had listed, failure to which, the court would strike out the case.

The judge set October 9 as the mention date to confirm whether Aimi officials had obeyed the orders. When they appeared on the 9th, Aimi informed the court that they were unable to serve the court papers.

fmuthoni@standardmedia.co.ke



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT-SECOND SESSION 2023

IN THE MATTER OF ARTICLE 118(1)(B) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2023);
2. THE MINING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 51 OF 2023);
3. THE GOLD PROCESSING BILL (NATIONAL ASSEMBLY BILL NO. 46 OF 2023); AND
4. THE UNIVERSITIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2023)

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

WHEREAS Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS, the Mining (Amendment) Bill (National Assembly Bill No. 51 of 2023) was read a First Time on **Thursday, 12th October 2023** while the Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 50 of 2023), the Universities (Amendment) Bill (National Assembly Bill No. 38 of 2023) and the Gold Processing Bill (National Assembly Bill No. 46 of 2023) were read a First Time on **Wednesday, 18th October 2023** and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. **The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 50 of 2023)** is a Bill sponsored by **Hon. Mwangi Kiunjuri, MP** with the principal object being to amend the Independent Electoral and Boundaries Commission Act, 2011 to ensure equal franchise amongst constituencies and ensure the use of other non-population criteria considerations in review of Electoral Boundaries is in line with the principles of fair representation and equality of vote;
2. **The Mining (Amendment) Bill (National Assembly Bill No. 51 of 2023)** is a Bill sponsored by **Hon. David Gikaria, MP** seeking to amend the Mining Act No. 12 of 2016 in order to provide for separate implementation of the three key functions in the Act: policy formulation, administrative and dispute resolution functions; and
3. **The Gold Processing Bill (National Assembly Bill No. 46 of 2023)** is a Bill sponsored by **Hon. Benard Shinali, MP** with the principal object being to provide for the establishment, composition, functions and management of the Gold Processing Corporation; provide for application, cancellation and renewal of a gold processing license; and for connected purposes.
4. **The Universities (Amendment) Bill (National Assembly Bill No. 38 of 2023)** is a Bill sponsored by **Hon. Wanami Wamboka, MP** which seeks to provide a framework on the exclusive placement of government sponsored students in public universities. Further, it seeks to remove private universities board representation in the Board of Management of Kenya Universities and Colleges Central Placement Service (KUCCPS) to safeguard the Universities Fund in line with the constitutional principles of public finance.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the following Departmental Committees invite the public and stakeholders to submit Memoranda on the Bills as follows:

SCHEDULE

S/NO.	BILL	COMMITTEE
1.	The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 50 of 2023)	Justice and Legal Affairs
2.	The Mining (Amendment) Bill (National Assembly Bill No. 51 of 2023)	Environment, Forestry and Mining
3.	The Gold Processing Bill (National Assembly Bill No. 46 of 2023)	Environment, Forestry and Mining
4.	The Universities (Amendment) Bill (National Assembly Bill No. 38 of 2023)	Education

The Memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to cna@parliament.go.ke to be received on or before **Monday 7th November, 2023** at **5.00 p.m.**

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
20th October 2023

"For the Welfare of Society and the Just Government of the People"

**Letter inviting
stakeholders for
meetings with the
Committee**



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DDC/EF&M/2024/007

6th March, 2024

Mr. Elijah Mwangi, CBS
Principal Secretary
State Department for Mining
Ministry of Mining, Blue Economy and Maritime Affairs
Works Building, Ngong Road
P.O. Box 30009-00100
NAIROBI

Dear

RE: CONSIDERATION OF THE MINING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.51 OF 2023 AND THE GOLD PROCESSING BILL (NATIONAL ASSEMBLY BILL NO.46 OF 2023)

The Departmental Committee on Environment, Forestry and Mining is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and is mandated to, *inter alia*, "*study and review all legislation referred to it*".

The Mining (Amendment) Bill (National Assembly Bill No. 51 of 2023 and the Gold Processing Bill (National Assembly Bill No. 46); were read a First Time on **Thursday, 12th October 2023** and **Wednesday, 18th October 2023** respectively. The Bills were thereafter referred to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House.

The National Assembly is required under Article 118 of the Constitution and Standing Order 127(3) to carry out Public Participation on the Bills.

Pursuant to the above stated provisions, the National Assembly placed an advert calling for submission of memorandum from the public on the Mining (Amendment) Bill (National Assembly Bill No. 51 of 2023) and the Gold Processing Bill (National Assembly Bill No.46 of 2023) on **20th October 2023**. In this regard, the Committee has scheduled a Public Hearing and stakeholders' engagement on **Tuesday, 14th March 2024 at 10.00 am** at a venue to be communicated in due course. *Thursday*

As the Ministry/Department/Agency that may directly be concerned with matters concerning minerals, the Committee resolved to invite the Cabinet Secretary to the meeting to provide comments and proposals on the Bills.

The purpose of this letter therefore is to invite the Cabinet Secretary accompanied by a **maximum of five (5)** technical officers including the Accounting Officer for a meeting with the Committee to submit comments and proposals to the Bills.

The officers responsible for the coordination of the registration and accreditation of the above participants are **Ms. Hellen Ekadeli** who may be contacted on **Tel. No. 0733132322** or email address hellen.ekadeli@parliament.go.ke, **Mr. Hamdi Mohamed**, **Tel. No. 0724742973** or email address hamdi.mohamed@parliament.go.ke.

Yours

JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to:

Hon. Salim Mvurya, EGH,
Cabinet Secretary,
Ministry of Mining, Blue Economy and Maritime Affairs,
Works Building, Ngong Road,
P.O. Box 30009-00100
NAIROBI.

Ms. Aurelia Rono
Principal Secretary for Parliamentary Affairs
Office of the Prime Cabinet Secretary
National Treasury Building
NAIROBI





THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
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www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DDC/ EF&M/2023/015

24th April, 2024

Mr. Elijah Mwangi, CBS.
Principal Secretary
State Department for Mining,
Ministry of Mining, Blue Economy and Maritime Affairs
Works Building, Ngong Road,
P.O. Box 30009-00100
NAIROBI

Dear

M. Mwangi

RE: PUBLIC HEARINGS BY THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING ON THE MINING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 51 OF 2023) AND THE GOLD PROCESSING BILL (NATIONAL ASSEMBLY BILL 46 OF 2023)

The Departmental Committee on Environment, Forestry and Mining is mandated under Standing Order 216 (5) (c) to, among others, "*study and review all legislation referred to it*".

Pursuant to the provisions of Standing Order 127 (1), the Mining (Amendment) Bill (National Assembly Bill No. 51 of 2023) and the Gold Processing Bill (National Assembly Bill No. 46 of 2023) were read a First time and committed to the Departmental Committee on Environment, Forestry and Mining for consideration and thereafter report to the House.

The Mining (Amendment) Bill (National Assembly Bill No. 51 of 2023) seeks to amend the Mining Act No. 12 of 2016 in order to provide for separate implementation of the three key functions in the Act: policy formulation, administrative and dispute resolution functions; and

The Gold Processing Bill (National Assembly Bill No. 46 of 2023) seeks to provide for the establishment, composition, functions and management of the Gold Processing Corporation; provide for application, cancellation and renewal of a gold processing license; and for connected purposes.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3) which provides for public participation, the Committee resolved to hold public hearings in the counties of **Kilifi (Malindi), Tana River (Bura), Taita Taveta (Voi), Kwale, Migori (Nyatike), Kericho and Kakamega (Ikolomani)** to collate the views and submissions of the public on the Bills on the dates indicated in the attached schedule.

The purpose of this letter is therefore, to request you to inform the Chairperson, National Mining Cooperation, the Chairperson, Mineral Rights Board, Directorate of Mines and the Regional Mining officers of the scheduled public hearings in their respective areas of coverage.

The officers responsible for coordination of these activities are **Ms. Hellen Ekadeli** who may be contacted on **Tel. No. 0733132322** or email address: hellen.ekadeli@parliament.go.ke, **Mr. Hamdi Mohamed**, **Tel. No. 0724742973** or email address: hamdi.mohamed@parliament.go.ke.

Yours



JEREMIAH W. NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to:

Hon. Salim Mvurya, EGH,
Cabinet Secretary,
Ministry of Mining, Blue Economy and Maritime Affairs,
Works Building, Ngong Road,
P.O. Box 30009-00100
NAIROBI.

Ms. Aurelia Rono
Principal Secretary for Parliamentary Affairs
Office of the Prime Cabinet Secretary
National Treasury Building
NAIROBI

Hon. Joseph K. Lagat,
Chairperson,
National Mining Corporation,
KWFT Centre, 3rd Floor, Kiambere - Masaba Road,
P.O. Box 115-00100
NAIROBI.

The Chairperson,
Mineral Rights Board,
Ministry of Mining, Blue Economy and Maritime Affairs,
Works Building, Ngong Road,
P.O. Box 30009-00100
NAIROBI

Stakeholders submissions

② Fred Okeno
Beal
21/11/23



② DDC
&
9/11

**MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS
STATE DEPARTMENT FOR MINING
OFFICE OF THE PRINCIPAL SECRETARY**

Email: ps@mining.go.ke
Telephone: 020-2727434
Fax (020) 2737659

WORKS BUILDING
NGONG ROAD
P.O. Box 30009-00100
NAIROBI

Ref: MIBEMA/LEG/3/7/23

Date: 7th November, 2023

Mr. Samuel Njoroge

Clerk of the National Assembly
Office of the Clerk
Main Parliament Buildings
P.O. Box 41842-00100
NAIROBI



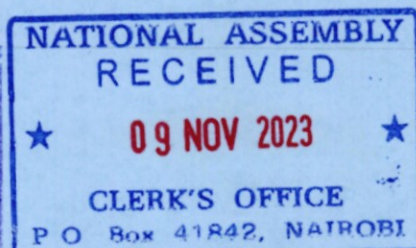
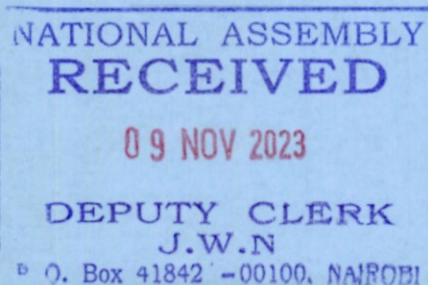
Dear

**RE: SUBMISSION OF MEMORANDA ON THE GOLD PROCESSING BILL
(NATIONAL ASSEMBLY BILL NO.46 OF 2023)**

We refer to the invitation for public participation and submission of Memoranda dated 20th October 2023.

As you are aware, the Ministry of Mining, Blue Economy and Maritime Affairs through the State Department for Mining's mandate is to develop and implement the national mining policy, overall supervision and regulation of the sector, among others. The Ministry draws its mandate from the Mining Act, 2016 where the Cabinet Secretary is responsible for the general administration of the Act and the Constitution of Kenya.

We have gone through the proposed Gold Processing Bill and wish to present our memoranda through the following comments and attached Matrix;



1. A detailed review of the proposed Bill reveals a selective replication of the provisions of the Mining Act. The Gold Processing Bill and the gold licensing procedures proposed to be established under the Bill appear to borrow the functions of the existing mining institutions selectively. Enclosed herewith, please find a matrix cross-referencing proposed provisions of the Bill and similar existing provisions of the Act. **(Encls)**.
2. The Bill establishes the Corporation as a regulator and an industry player at the same time. The Corporation is mandated to collect, sample, purify, smelt, fabricate, homogenize, register, monitor, and transport gold or products of gold. The Corporation is also supposed to regulate national standards for operating gold refineries and laboratories and to register and license gold refineries and laboratories. Establishing the Corporation as a regulator and a player in the gold processing industry would result in a conflict of interest and unfair competition between the corporation and other independent dealers.
3. Cadastre/Exclusivity- The Mining Act establishes the Online Mining Cadastre which efficiently handles the application and processing of mineral rights, ensuring the exclusivity of the areas applied for. Managing specific minerals outside this system could result in overlapping applications and lead to disputes.
4. Further, minerals frequently exist in combination with other minerals, and it is often impractical to isolate one without the presence of the others. Licensing a single specific mineral to the exclusion of all others is generally unfeasible. Mineral occurrences associating gold and some minerals such as copper have been discovered in many commercially viable ores. At one end of the spectrum is the predominantly copper or other associated mineral ore, which contains levels of gold mineralization. It would be uneconomic to explore and mine/exploit only gold content in such an ore.

- a) The Cabinet Secretary is empowered by section 16 of the Mining Act to declare some minerals as strategic, which gives the state the right of pre-emption. The Mining (Strategic Minerals) Regulations provide the process for the declaration of strategic minerals. The Mining Act therefore already offers an alternative approach for the management of specialized mineral resources. This is achieved by designating such minerals as "strategic minerals" and entrusting their management to the National Mining Corporation.

5. The Bill does not propose any consequential amendments except to exclude the processing of gold from the Mining Act. If the Bill is enacted, there would be two conflicting acts of Parliament regulating the processing of gold. There would be no clarity as to which act of Parliament regulates the processing of Gold.

6. It is this Ministry's considered view that enacting separate Acts for different minerals notwithstanding the existence of the Mining Act would not be in keeping with established legislative principles. In addition, the implementation, monitoring, and evaluation of separate legislation would become strenuous and confusing for stakeholders. There would also be a significant financial impact of duplicating public entities and the investment in the sector will be affected due to a diversity of similar legal regimes.

In conclusion, the Ministry has been progressively reviewing the Mining Act and come up with a draft Mining (Amendment) Bill that seeks to introduce value addition of all minerals. Paragraph 47 of the amendment Bill (attached) provides for the processing and beneficiation of minerals subject to conditions that include the availability of processing and beneficiation facilities. The Ministry is in the process of developing the Kakamega Gold refinery among other value addition plants for different minerals which will greatly benefit miners once the amendment bill is passed into law.

The Ministry therefore prays that the Gold Processing Bill having been taken into consideration by the Mining (Amendment) Bill, 2023 be withdrawn to ensure that the Mining Act continues to be the only overarching statute for the development of all minerals in Kenya.

Your continued support is appreciated.

Yours Sincerely



Elijah Mwangi
PRINCIPAL SECRETARY

Copy to: Hon. Salim Mvurya, EGH
Cabinet Secretary
Ministry of Mining, Blue Economy and Maritime Affairs
NAIROBI



MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS

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STATE DEPARTMENT FOR MINING

Comments on the Proposed Gold Processing Bill, 2023

NOVEMBER, 2023

S/No.	Section of the Gold Processing Bill, 2023	Provision of the Gold Processing Bill, 2023	Section of the Mining Act, 2016	Existing Comparable Provision of the Mining Act, 2016	COMMENTS AND RECOMMENDATIONS
1.	Long title	AN ACT of Parliament to provide for the establishment, composition, functions and management of the Gold Processing Corporation; provide for the application, cancellation and renewal of a gold processing license; and for connected purposes	Long title	AN ACT of Parliament to give effect to Articles 60, 62 (1)(f), 66 (2), 69 and 71 of the Constitution in so far as they apply to minerals; provide for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals and for related purposes	Section 2 of the Mining Act provides that the Act shall apply to the minerals specified in the First Schedule. Gold is classified as a mineral in the First Schedule. The Mining Act therefore regulates any dealings in gold including the prospecting, extraction, refining and treating of gold. The Bill seeks to regulate dealings in gold by regulating the collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold which is simply an overlap of functions. It does not address any new proposals
2.	2 Interpretation	"Gold processing" ■gold processing means collecting, purifying, smelting, fabricating.	4	AN ACT of Parliament to give effect to Articles 60, 62 (1)(f), 66 (2), 69 and 71 of the Constitution in so far as they apply to minerals; provide for prospecting, mining, processing, refining, treatment, transport and any	The processing of gold has already been provided for under the long title of the Mining Act and in the definition of mineral dealing which includes, polishing, processing, refining and treating minerals. Gold is listed as a mineral under the first schedule of the Mining Act and the

		<p>homogenizing , sampling , registering, monitoring and transporting of gold or products of gold:</p>		<p><i>dealings in minerals and for related purposes.</i></p> <p><i>Section 2 of the Act defines mineral dealings as follows—</i></p> <p><i>"mineral dealings" means—</i></p> <p><i>(a) buying minerals;</i></p> <p><i>(b) selling minerals;</i></p> <p><i>(c) bartering minerals;</i></p> <p><i>(d) depositing or receiving minerals as a pledge or security; or</i></p> <p><i>(e) cutting, polishing, processing, refining and treating minerals;</i></p>	<p>provisions of the Mining Act therefore apply to it.</p> <p>The Bill therefore does not therefore introduce any new or unique provisions for the processing of gold which has not already been provided for in law.</p>
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<p>3 Objectives</p>	<p>3 The object of this Act is to — (a) establish a legal framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold; (b) provide for licensing of exploration and exploitation of gold ; and (c) establish an institutional framework for collecting, purifying, smelting, fabricating, homogenizing, sampling,</p>	<p>Long Title</p> <p>Section 30</p> <p>Section 22</p>	<p>AN ACT of Parliament to give effect to Articles 60, 62 (1)(f), 66 (2), 69 and 71 of the Constitution in so far as they apply to minerals; provide for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals and for related purposes</p> <p>30 (1) There is a Mineral Rights Board which is mandated to advise and give recommendations, in writing, to the Cabinet Secretary on the grant, rejection, retention, renewal, suspension, revocation, variation, assignment, trading, tendering, or transfer of Mineral Rights Agreements</p> <p>22. (1) There is established the National Mining Establishment of National Mining Corporation, which shall be the investment arm of the Corporation. national government in respect of minerals</p>	<p>The Mining Act has already provided for the legal and institutional framework for the licensing and processing of all minerals including gold.</p> <p>The mandate to issue licences and permits is exercised by the Cabinet Secretary through the advice of the Mineral Rights Board In addition, the implementation; monitoring, and evaluation of separate legislation would become strenuous and confusing for stakeholders. There would also be significant financial impact of duplicating public entities and the investment in the sector will be affected due to an assortment of similar legal regimes.</p> <p>If we have two parallel entities for exclusive licensing it will result in area overlaps of issued licence/permits, disputes, loss of government revenue, disorganization in the sector and mineral smuggling.</p> <p>The Director of Mines and Director of Geological Survey are separately responsible for the regulation, collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of minerals and mineral products including gold and gold.</p>
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		registering, monitoring and transporting of gold or products of gold	section 20	20. provides the functions of the director of mines which includes exercising regulatory administration and supervision over all prospecting, mining, processing, refining and treatment operations, transport and any dealings in minerals, including import and export of minerals;	products.
4(1) Guiding principles	4. (1) The Corporation shall operate subject to the Guiding principles and the Standards Act when performing functions or exercising powers under this Act . (2) This Act shall prevail in the case of any inconsistency between this Act and any	Section 12	The Cabinet Secretary, the Principal Secretary and any person administering this Act shall be guided by the values and principles enshrined in the Constitution and in particular Articles 10, 66 (2), 201 (c) and (d), and 232 of the Constitution and the principles of leadership and integrity set out under Chapter Six of the Constitution.	This section of the proposed bill is ambiguous since what is outlined as guiding principles in the administration of the proposed bill are not really guiding principles which should be outlined as per the Constitution of Kenya, 2010. Clause 4(2) contradicts clause 4 (1) of the Bill by providing that the Gold Processing Act shall prevail in case of any inconsistency between the Act and any other legislation on the collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold. If the Bill is enacted, there would be two acts of Parliament regulating the processing of gold.	

		<p>other legislation, on the matters relating to collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold</p>			
	5(1) Exploration and exploitation	<p>5. (1) A person shall not engage in the exploration and exploitation, operations of gold without obtaining a permit in accordance with the Act .</p> <p>(2) A person who wishes to undertake</p>	<p>Section 21</p> <p>Section 32</p>	<p><i>Section 21 of the Mining Act provides the functions of geological survey which includes providing support to the Director of Mines in relation to exercising regulatory administration and supervision over all prospecting and mining operations</i></p> <p><i>The following licences and permits may be granted for a mineral right under this Act to</i></p>	<p>Where two authorities issue licences over the same area and the licences are exclusive, it will lead to conflict between the licensed entities.</p> <p>Further the Mining Act provides for an Online Mining system/cadastre that is designed to issue exclusive licences/permits without creating overlaps on areas. This is due to the fact that minerals frequently exist in combination with other minerals, and it is often impractical to isolate one without the presence of the others. Licensing a single specific mineral to the exclusion of all others is generally unfeasible. For example Mineral</p>

		<p>exploration and exploitation of gold shall apply to the Cabinet Secretary for a permit for the exploration and exploitation operations of gold.</p> <p>(3) An application under this section shall be done in the prescribed form as shall be specified in the Regulations.</p> <p>(4) A person who engages in exploration and exploitation of gold without a permit commits an offence and shall upon conviction be liable to fine not exceeding ten million shillings or to</p>	<p>Section 223</p>	<p><i>authorize a mineral right holder to engage in— (a) large scale operations which shall include -</i></p> <ul style="list-style-type: none"> <i>- a reconnaissance licence;</i> <i>a prospecting licence;</i> <i>a retention licence;</i> <i>a mining licence; or</i> <p><i>(b) small scale operations, which shall include -</i></p> <ul style="list-style-type: none"> <i>a prospecting permit;</i> <i>or a mining permit.</i> <p><i>The Cabinet Secretary may make Regulations necessary or convenient for the proper regulations administration and implementation of the Mining Act.</i></p>	<p>occurrences associating gold and some minerals such as copper have been discovered in many commercially viable ores.</p> <p>The Director of Geological Survey and Directorate of Mines in the act have the function of exercising regulatory administration and supervision over all prospecting and mining operations and the technical capacity to enforce the same;</p> <p>Further, the Ministry through the Cabinet Secretary has since developed the Mining (Licence and Permit) Regulations, 2017 which has substantive provisions for the issuance of permits and licenses for minerals including gold.</p>
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		<p>imprisonment for a term not exceeding ten years, or to both.</p> <p>(5) The Cabinet Secretary may, in consultation with the Corporation, make regulations for the better carrying into effect the provisions of this section.</p>			
	6(1)	Establishment of Gold Processing Corporation	Section 22(1)	<p><i>There is established the National Mining Corporation, which shall be the investment arm of the national government in respect of minerals.</i></p>	<p>The National Mining Corporation was established to perform the functions that the proposed Gold Processing Corporation seeks to carry out, such as exploration, exploitation, dealing and processing of gold and other minerals.</p> <p>The establishment of two corporations carrying out the same functions only seeks to create an overlap and opens up the sector to anyone who wishes to develop statutes for the processing of all other minerals hence creating confusion and over regulation of the sector.</p>

	7 to 27	Functions and structure of Gold Processing Corporation	12(1), 17(1), 17(2), 20, 21 and 30	<p>12. (1) The Cabinet Secretary shall be responsible for the general administration of the Mining Act.</p> <p>17. (1) There is established—</p> <p>(a) the Directorate of Mines; and</p> <p>(b) the Directorate of Geological Survey.</p> <p>20. (1) The Director of Mines shall, through the Principal Secretary, be responsible to the Cabinet Secretary for —</p> <p>(a) the day to day operation of the Directorate of Mines;</p> <p>(b) promoting the effective and efficient management and the development of mineral resources, and the mining sector;</p> <p>(c) exercising regulatory administration and supervision over all prospecting, mining, processing, refining and treatment operations, transport and any dealings in minerals, including import and export of minerals;</p>	<p>The Cabinet Secretary under the Mining Act is the administrator of the act.</p> <p>Further, the Mining Act provides for/establishes the offices of the Cabinet Secretary, Directorate of Geological Survey (on exploration), Directorate of Mines, (which regulates mining and related activities) and the Mineral Rights Board, which advises the Cabinet Secretary on licensing of all minerals , including gold.</p> <p>The Bill establishes the Corporation as a regulator and an industry player at the same time. The Corporation is mandated to collect, sample, purify, smelt, fabricate, homogenize, register, monitor and transport gold or products of gold. The Corporation is also supposed to regulate national standards for operating gold refineries and laboratories and to register and license gold refineries and laboratories. Establishing the Corporation as a regulator and a player in the gold processing industry would result in conflict</p>

			<p>(1) The Director of Geological Survey shall, through the Principal Secretary, be responsible to the Cabinet Secretary for —</p> <p>(a) the day to day operation of the Directorate of Geological Survey;</p> <p>(b) providing geoscience expertise and data to the government on all matters related to geology and the development of minerals;</p> <p>(h) promoting private sector interest and investment in mineral exploration by providing geological information and services to prospective investors,</p> <p>30. (1) There is established a Mineral Rights Board.</p> <p>31 (1) The functions of the Mineral Rights Board shall be to advise and give recommendations, in writing, to the Cabinet Secretary on-</p> <p>(a) the grant, rejection, retention, renewal, suspension, revocation, variation, assignment, trading, tendering, or transfer of Mineral Rights Agreements;</p>	<p>of interest and unfair competition between the corporation and other independent dealers</p>
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		<p>22, 24 to 27 Mining (National Mining Corporati on) Regulation s, 2017</p>	<p>22. (1) <i>There is established the National Mining Corporation, which shall be the investment arm of the national government in respect of minerals.</i></p> <p>24. <i>The functions of the Corporation shall be to —</i></p> <p>(a) <i>engage in mineral prospecting and mining; and any other related activities;</i></p> <p>(b) <i>invest on behalf of the national government;</i></p> <p>(c) <i>acquire by agreement or hold interests in any undertaking, enterprise or project associated with the exploration, prospecting and mining;</i></p> <p>(d) <i>acquire shares or interest in any firm, company or other body of persons, whether corporate or unincorporated which is engaged in the mining, prospecting, refining, grading, producing, cutting, processing, buying, selling or marketing of minerals; and</i></p> <p>(e) <i>carry on its business, operations and activities</i></p>	<p>Establishes the National Mining Corporation which is the investment/commercial arm of the government for minerals, including gold.</p> <p>The National Mining Corporation is structured and empowered in similar terms with the Gold Processing Corporation with attendant regulations to support the functions of the National Mining Corporation and well equipped to perform the functions.</p> <p>Further, the Mining Act has subsidiary legislation including the Mining (National Mining Corporation) Regulations, 2017 which provides for the functions, structure, governance, finances of the National Mining Corporation.</p> <p>The Gold Processing Corporation does not introduce new functions which the National Mining Corporation does not already undertake.</p>
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			<p><i>whether as a principal agent, contractor or otherwise, and either alone or in conjunction with any other persons, firms or bodies corporate.</i></p> <p><i>27. The Cabinet Secretary shall make Regulations generally for purpose of the operationalization of the Corporation</i></p>	
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8.	28 to 42	Gold licensing	Parts VI to XV Sections 32 to 224 Regulations under the Mining Act	<p>12. (1) The Cabinet Secretary shall be responsible for the general administration of this Act.</p> <p>32(3) The following licences and permits may be granted for a mineral right under this Act to authorise a mineral right holder to engage in—</p> <p>(a) large scale operations which shall include —</p> <p>(i) a reconnaissance licence;</p> <p>(ii) a prospecting licence;</p> <p>(iii) a retention licence;</p> <p>(iv) a mining licence; or</p> <p>(b) small scale operations, which shall include –</p> <p>(i) a prospecting permit; or</p> <p>(ii) a mining permit.</p> <p>33. (1) A person shall make an application for a mineral right in the prescribed manner to the Cabinet Secretary.</p> <p>(2) The Cabinet Secretary shall, on the recommendation of the Mineral Rights Board, approve or reject an application-</p> <p>(a) within ninety days in the case of an application for prospecting licence or</p>	<p>The Mining Act and its Regulations have extensively provided for the licensing of exploration, mining, processing and refining for all minerals, including gold.</p> <p>The Gold Processing Bill has not provided for (or sufficiently provided) for several areas of the regulation of gold such as: Categories of mineral rights.</p> <ul style="list-style-type: none"> ✓ Feedback on status of applications except mining lease. ✓ Mineral right applications. ✓ Form of mineral right. ✓ Mineral rights in excluded and restricted areas. ✓ Mineral rights on private land. ✓ Mineral rights on community land. ✓ Consent or otherwise. ✓ Compulsory acquisition of land for prospecting and mining. ✓ Tendering for mineral rights. ✓ Conditions attaching to mineral rights. ✓ Directions concerning good mining practice. ✓ Mineral rights to be exercised reasonably and responsibly. ✓ Registered address. ✓ Employment and training of Kenyans. ✓ Preference in employment. ✓ Government participation in mining licence.
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			<p>reconnaissance licence; or (b) within one hundred and twenty days in the case of an application for a mining licence. 35. (1) A mineral right issued under this Act or any other written law, shall be evidenced by a licence or permit 158. (1) A person shall not dispose of minerals, whether for sampling, assay, analysis or otherwise except-</p> <p>(a) with the written consent of the Cabinet Secretary; (b) where the person is the holder of a mineral right, in accordance with the conditions of the mineral right; (c) where the person is the holder of a mineral dealer's licence or a diamond dealer's licence in accordance with the conditions of the licence; or (d) in any other case, as otherwise permitted by or under this Act. (2) No title to minerals shall pass in any case where a person disposes of mineral</p>	<ul style="list-style-type: none"> ✓ Local equity participation. ✓ Preference for local products. ✓ Assignments, transfers, mortgage and trade of mineral rights. ✓ Preparation of reports. ✓ Annual financial reports. ✓ Power to require additional information. ✓ Report by the Cabinet Secretary. ✓ Priority of applications. ✓ Treatment of applications. ✓ Conditions for grant of mineral rights for large scale operations. ✓ Withdrawal of an application. <p>The exploration, exploitation and processing of gold is therefore sufficiently provided for under the Mining Act.</p> <p>Further, since the enactment of the Mining Act, in 2016, the National Government has highly invested in its implementation through the establishment of institutions and formulation of the following requisite regulations which apply to all minerals;</p> <ol style="list-style-type: none"> 1. The Mining (Licence and Permit) Regulations, 2017 2. The Mining (Community Development Agreement) Regulations, 2017 3. The Mining (Dealing in Minerals) Regulations, 2017 4. The Mining (Employment and Training) Regulations, 2017
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			<p>otherwise than in accordance with subsection (1).</p> <p>159. (1) A person shall not engage in mineral dealings, either as principal or agent, except with and in accordance with a mineral dealer's licence or a mineral dealer's permit.</p> <p>(2) Notwithstanding subsection (1), the holder of a mineral right may deal in minerals lawfully acquired in accordance with the terms and conditions of the mineral right.</p> <p>160. (1) An application for a mineral dealer's licence shall be made to the Cabinet Secretary in the prescribed form and shall be accompanied by the prescribed fee.</p> <p>(2) An application made under subsection (1) shall be accompanied by evidence sufficient to show that the applicant is in possession of, or commands, either sufficient knowledge, experience, or working capital to ensure that the applicant can carry on the business that would be permitted under the licence.</p>	<p>5. The Mining (Mine Support Service) Regulations, 2017</p> <p>6. The Mining (National Mining Corporation) Regulations, 2017</p> <p>7. The Mining (Reporting of Mining and Mineral Related Activities) Regulations, 2017</p> <p>8. The Mining (State Participation) Regulations, 2017</p> <p>9. The Mining (Award of Mineral Rights by Tender) Regulations, 2017</p> <p>10. The Mining (Use of Assets) Regulations, 2017</p> <p>11. The Mining (Strategic Minerals) Regulations, 2017</p> <p>12. The Mining (Use of Local Goods and Services) Regulations, 2017</p> <p>13. The Mining (Work Programs and Exploration Reports) Regulations, 2017</p> <p>14. The Mining (Community Mineral Royalty Sharing) Regulations, 2023 (Draft)</p> <p>15. The Mining (Mineral Royalty Sharing) Regulations, 2023 (Draft)</p>
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9	49	Amendment of Section 2 of No 12 of 2016	section 2(3)	3. Save to the extent provided for in this Act, this Act shall not apply to matters relating to petroleum and hydrocarbon gases.	<p>The bill seeks to exclude minerals from the Mining Act like petroleum and hydrocarbon gases. It should be noted that Petroleum and hydrocarbon gases being energy minerals were best fitted to be administered under the Petroleum Act and Energy Act which are implemented by the Ministry of Energy and Petroleum. Energy for a nation has a security significance which cannot be understated due to its role in industrialization. However, there's no justification as to why gold should be isolated from other minerals in its administration since if the justification is the value of gold there are other minerals which are of higher value and significance than gold.</p> <p>Further, the Mining Act allows the Cabinet Secretary through requisite provisions to declare some minerals as strategic. The Mining Act through the Mining (Strategic Minerals) Regulations provided for the procedure and manner of dealing with strategic minerals. Recently 14 minerals were declared as strategic and the state has a right of pre-emption in those minerals. There is no justification or reason why gold to the exclusion of all other minerals should be administered in isolation.</p> <p>The State Department's prayer therefore is that gold should be retained and administered under the Mining Act</p>
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National Gender and Equality Commission

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*D/DO
Please deal
15/03/24*

13th March, 2024

*Hellen Ekadeli
to facilitate
18/3/24*



NGEC/Ag.CS/NAS/VOL.1/(05)

NATIONAL GENDER AND EQUALITY COMMISSION

Mr. Samuel Njoroge
The Clerk of the National Assembly
Clerk's Chambers
Parliament Building
P.O. Box 41842-00100
NAIROBI

Att:
hamdi.mohamed@parliament.go.ke
hellen.ekadeli@parliament.go.ke

Dear *Mr. Njoroge*

MEMORANDA ON THE GOLD PROCESSING BILL (NATIONAL ASSEMBLY BILL NO 46 OF 2023)

Reference is made to the call for submission of memoranda on the Gold Processing Bill 2023, (National Assembly Bill No 46 Of 2023).

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting gender equality and freedom from discrimination, for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, *'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions'*;

In line with its mandate, the Commission presents to you a memoranda analyzing the proposed Bill and making proposals where necessary.

Yours sincerely,

Paul Kuria, OGW
Ag. COMMISSION SECRETARY/ CEO



**MEMORANDUM BY THE KENYA CHAMBER OF MINES ON THE MINING
AMENDMENT BILL 2023**

07TH MAY 2024

BACKGROUND

The Kenya Chamber of Mines (KCM) is the main mining industry organization that represents the interests of miners, exploration companies, mineral traders, suppliers, and professionals in Kenya; promoting the sustainable growth of the industry for Kenya's economic transformation. Formed in 2000, KCM is the principal advocate lobby body for mining industry stakeholders in Kenya. KCM participates in structured engagements with the government, communicates major policies endorsed by its members and advocates and lobbies for the development of the industry.

Enclosed in this document are the consolidated submissions from various industry stakeholders regarding the Mining (Amendment) Bill (National Assembly Bill No. 51 of 2023), sponsored by Honorable David Gikaria, MP. This memorandum aims to provide comprehensive insights into the proposed amendments to the Mining Act No. 12 of 2016 and the perspectives of industry stakeholders. Firstly, it is imperative to acknowledge and commend all stakeholders who participated in the development of the amendment bill. Their contributions have been instrumental in shaping the proposed changes to the legislative framework governing the mining sector.

One of the primary concerns highlighted by industry stakeholders is the concentration of powers within the Office of the Cabinet Secretary, which has led to delays in various regulatory and licensing processes. The extensive responsibilities entrusted to the Cabinet Secretary have hindered the expeditious implementation of key policies and regulations essential for the efficient functioning of the mining sector. This single action has made it impossible to have efficient roll out of the Mining Act 2016 and must be addressed if Kenya's mining sector is expected to contribute 10% to Kenya's GDP. To address this issue, industry stakeholders unanimously support the establishment of the Mining Regulatory Authority (MRA). This is premised on the fact that transparency and accountability in resource governance works best when vested in institutions not political office holders. The MRA will create confidence that will attract investments in the sector buoyed by predictable and stable objective licensing.

Drawing inspiration from the successful regulatory model employed in the energy sector, where the Energy and Petroleum Regulatory Authority (EPRA) oversees all aspects from exploration and licensing to production and export, stakeholders advocate for a similar approach in the mining sector. The MRA would assume the pivotal role of administering the Mining Act and ensuring compliance by mineral rights holders with its

provisions. Additionally, stakeholders propose that the MRA be empowered to handle disputes, thereby integrating the functions of the Mining Rights Tribunal. This action will further enhance and stimulate investments as the MRT will offer a level playing ground.

In conclusion, the submissions provided herein reflect the collective stance of industry stakeholders on the proposed amendments to the Mining Act. The establishment of the Mining Regulatory Authority is viewed as a crucial step towards enhancing regulatory efficiency and promoting sustainable development within the mining sector, offering a window for Kenyan's to contribute to the growth of their motherland.

Thank you for considering these submissions. We remain committed to actively engaging in constructive dialogue and collaboration towards the advancement of the mining industry in our nation.

Yours Faithfully,



Dr. Kanyoro Patrick

Chairman - Kenya Chamber of Mines

4	<p>“community” means– (a) a group of people living around an exploration and mining operations area; or (b) a group of people who may be displaced from land intended for exploration and mining operations;</p>	<p>b) in the definition of "community" by inserting the following new paragraph immediately after paragraph (b)- (c) the people living in a sub-county in which a mineral resource is situated and are affected by the exploitation of such resources</p>	<ul style="list-style-type: none"> - It is not clear if the whole sub-county becomes ‘the community’, or just those who are affected. This will lead to arguments from those within a subcounty who are not affected - Therefore define the community as ‘the people living in a ward in which a mineral resource is situated’ - Introduce those affected directly and indirectly by the exploitation of such resources. The word affected people can be affected differently, e.g road corridors, dust emissions, etc
31		<p>31. A (l) impose such sanctions and fines not exceeding one hundred thousand shillings per violation per day for a maximum of thirty days; (m) impose such sanctions and civil fines not exceeding five hundred thousand shillings per violation per day to secure compliance with orders issued under the law relating to mining; and</p>	<ul style="list-style-type: none"> - The industry proposes a penalty not exceeding Ksh. 10,000 per day and this after granting the miner at least 90 days formal notice to comply.
		<p>31. A (n) take or remove, for analysis, testing or for use in evidence in connection with the commission of an offence under the law relating to mining, samples of</p>	<ul style="list-style-type: none"> - The sample shouldn't exceed Ksh.100,000, since if it exceeds it attracts royalties.


Section	Mining Act of 2016	Mining Amendment Bill 2024	Industry Position
4	<p>“artisanal mining” means traditional and customary mining operations using traditional or customary ways and means;</p> <p>“artisanal mining permit” means a permit issued under section 95;</p>	<p>“ artisanal mining” means mining operations—</p> <p>(a) that are carried out by a person, groups or cooperatives using mostly basic equipment and methods, without necessarily any formal training;</p> <p>(b) whose capital investment is not more than one million Kenya shillings; and</p> <p>(c) where the vertical depth of exploration or excavation is up to thirty meters deep,</p>	<p>“ artisanal mining” means mining operations—</p> <p>(a) that are carried out by a person, groups or cooperatives using mostly basic equipment and methods, without necessarily any formal training;</p> <p>(b) Carried out by a citizen of Kenya;</p> <p>(c) Carried out within Not more than 2 mining blocks</p> <p>(d) Carried out within one’s own or hired piece of land and</p> <p>(e) Has a production capacity of Not more than 20 tones per hour.</p> <ul style="list-style-type: none"> - The issue is on the definition of artisanal mining, particularly on the basic education (not explicitly defined) The basic education of an artisanal miner should be explicitly defined, yet better still left out as it has no significant bearing on capacity to mine. - Since cooperatives can access financing and have large numbers of members the capital investment is too low. The capital investment should be capped at at least KSh. 10M. - Remove basic equipment and rather use equipment not exceeding Kshs. 10M in total

		minerals or other substances from any area where any mining operations are being carried on .	
31	<p>(1) The functions of the Mineral Rights Board shall be to advise and give recommendations, in writing, to the Cabinet Secretary on-</p> <p>(a) the grant, rejection, retention, renewal, suspension, revocation, variation, assignment, trading, tendering, or transfer of Mineral Rights Agreements;</p> <p>(b) the areas suitable for small-scale and artisanal mining;</p> <p>(c) the areas where mining operations may be excluded and restricted;</p> <p>(d) the declaration of certain minerals as strategic minerals;</p> <p>(e) cessation, suspension, or curtailment of production in respect of mining licenses;</p> <p>(f) fees, charges, and royalties payable for a mineral right or mineral; and</p> <p>(g) any matters which under this Act, are required to be referred to the Mineral Rights Board.</p> <p>(2) The Mineral Rights Board may for the purpose of facilitating the performance of its functions establish such number of committees to advise the Mineral Rights Board on matters relating to mining and minerals.</p>	<p>31. B</p> <p>(g) one person has relevant qualifications or experience in mining, geology, geophysics, or engineering, nominated by the Council of Governors;</p> <p>(h) two persons, not being public officers, with professional qualifications and experience in the mining industry, one representing civil society; and</p>	<ul style="list-style-type: none"> - One person has relevant qualification or experience in Mining Engineering, mineral processing Engineering & technologies, metallurgy, Mineral law, mineral economies, or any mineral-related field, nominated by the Council of Governors - Two persons not being public officers, representing Mining professionals/ National Association of Miners, Private Sector(Kenya Chamber of Mines) - Since this is an authority that seeks to regulate the Mining sector both mining (extraction) and dealings, and not exploration (non-extraction) as in Geology, the membership should NOT be restrictive

		31. B. 3.b) holds a degree from a university, in geology, geophysics, mining, engineering, economics, business administration or law;	<ul style="list-style-type: none"> - One person with relevant qualification or experience in Mining Engineering, mineral processing Engineering & technologies, metallurgy, Mineral law, mineral economics or any mineral-related field - Since this is an authority that seeks to regulate the Mining sector both mining (extraction) and dealings, and not exploration (non-extraction) as in Geology, the membership should NOT be restrictive
		31. N c) three persons with demonstrated competency in mining including land, energy, mining, water and maritime affairs.	<ul style="list-style-type: none"> - The Mining Rights Tribunal should have a total of seven persons and should include: <ul style="list-style-type: none"> o persons with demonstrated Competency in mining and mineral technologies o A religious leader o At least one to be a female with equal competencies o Member of the Civil Society o Private Sector Representative – Kenya Chamber of Mines
		31. R) (I) A person aggrieved by a decision or order of the Tribunal may, within fourteen days of such decision or order, appeal against such decision or order to the High Court.	<ul style="list-style-type: none"> - The time frame given to prefer an appeal is too remote, appeal should be 30 days and not 14 days. - The decision of the high court is subject to an appeal in the court of appeal and its decision shall be final.
		31. T) 1. The chairperson or other Members of the Tribunal shall not be liable To be sued in a civil court for an act done or Omitted to be done or ordered to be done by	<ul style="list-style-type: none"> - The chairperson or other members of the tribunal should be liable to be sued in a civil court for any act done or omitted to be done; or the court may also discharge them of their duties as members of the tribunal

		<p>Them in the discharge of their duty as Members of the Tribunal , whether or not Within the limits of their jurisdiction, Provided they, at the time, in good faith, believed themselves to have Jurisdiction to do or order the act Complained of ; and no offer of the Tribunal Or other person bound to execute the lawful Warrants, orders or other process of the Tribunal shall be liable to be sued in any Court for the execution of a warrant, order Or process which he would have been bound To execute if within the jurisdiction of the tribunal</p>	
32	<p>32. 3 (a) large-scale operations which shall include —</p> <ul style="list-style-type: none"> (i) a reconnaissance license; (ii) a prospecting license; (iii) a retention license; (iv) a mining license; or 		<ul style="list-style-type: none"> - Perceived gap for processing in the Mining Act 2016. - Add v) A processing license - Make regulations for processing, refining and smelting similar to Tanzania’s Mining (Mineral Beneficiation) Regulations, 2018
72	<p>72.2. An applicant for a prospecting licence shall provide the following information to the Cabinet Secretary</p> <ul style="list-style-type: none"> - (a) the mineral or minerals in respect of which the licence is sought; (b) the area in respect of which the licence is sought; 	<p>Section 72 of the principal Act is amended by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “ Authority”</p>	<ul style="list-style-type: none"> - It should be amended to include two classes of licensees. <ul style="list-style-type: none"> 1) The first class is Kenyan citizens. Any Kenyan citizen should be eligible to apply for a prospecting license in the prescribed form and for the prescribed fee. A Kenyan applicant for a prospecting license shall provide the following information: lines (a) - (d).

	<p>(c) particulars of the proposed programme for prospecting operations to be carried out under the licence;</p> <p>(d) details of the experience and financial resources available to the applicant to be able to conduct the prospecting operations;</p> <p>(e) a plan giving particulars of the proposals by the applicant with respect to the employment and training of Kenyan citizens; and</p> <p>(f) a plan giving particulars of the proposals by the applicant with respect to the procurement of local goods and services.</p>		<p>2) The next class of licensees should be foreign investors. Who must provide information from a)</p> <p>– f) “or must be able to demonstrate the expertise, experience and capacity to develop a project and demonstrable record of good practices and/or acceptable reputation in the jurisdictions in which they have done business.”</p>
	72. (3) The Cabinet Secretary shall not grant a prospecting licence unless he is satisfied that—		<p>– Insert the words “to a foreign investor” after “licence” and before the word “unless”</p>
74	The term of a prospecting licence shall be specified in the licence, and in any case shall not exceed three years.		<p>– License tenure should be clarified to indicate that a license is issued for a term of three years and can be extended twice, for a total of nine years.</p> <p>– The initial term of a prospecting license is four years, with an option to renew two additional terms, at three years and two years respectively”.</p> <p>– The rationale for this alternative is simply that the first licensing period requires the most caution and should therefore provide the most time to adequately assess the potential of the license.</p> <p>– Much of this initial period is consumed by seeking, securing, and reviewing relevant data, administrative and planning work.</p>

75	(4) In the event of change of land rights, a prospecting licence holder shall maintain mineral rights over the licence area unless fully compensated by the new land rights holder.		<ul style="list-style-type: none"> - It is worth considering deleting this provision or providing clarity to ensure that investors investment is protected. - Neither the objective or implications of this provision are clear. It does not clarify the meaning of fully compensated. - Should be clarified as to whether it is costs to-date or the valuation of the overall project because of what has been spent to date?
77	<p>77. (1) The holder of a prospecting licence shall—</p> <p>(a) commence prospecting operations within three months of the grant of the prospecting licence or a period specified in the approved programme for prospecting operation;</p> <p>(b) undertake prospecting operations in accordance with the approved programme of prospecting operations;</p> <p>(c) ensure that the amount of work and expenditure specified in the approved programme of prospecting operations is actually expended in the course of undertaking prospecting operations within the deadlines stipulated;</p> <p>(d) comply with the terms and conditions of the</p>		<ul style="list-style-type: none"> - Deleting provisions (a) – (e). These are activities best negotiated at the mining application stage

	<p>environmental rehabilitation and restoration plan;</p> <p>(e) without any unreasonable delay, notify the Cabinet Secretary of the discovery of any mineral deposit of potential commercial value including mineral deposits for which the holder of the licence was not authorised to prospect;</p>		
77	<p>(2) Where the expenditure specified in the approved programme for prospecting operations in subsection (1)</p> <p>(c) is not expended during the term of a prospecting licence, it shall be paid to the ministry in a manner as may be prescribed by Regulations made under this Act.</p>		<p>– Clause should be deleted to be consistent with the previous recommended edits to the section. This provision has the potential for abuse and does nothing to further the development of a project. Any issues in that regard can be addressed as a part of the reporting process and can be a consideration at the point of license renewal(s)</p>
78	<p>A prospecting licence issued in accordance with this Act shall include the following information in addition to the information referred to in section 72–</p> <p>(a) an approved programme for prospecting operations, including expenditure estimates;</p> <p>(b) an approved plan for the procurement of local goods and services;</p> <p>(c) an approved plan to employ and train citizens of Kenya; and</p> <p>(d) an approved environmental impact assessment report, a social heritage impact</p>		<p>– At the exploration stage activities listed in (a) to (d) should be “encouraged” and not required as a part of the licensing process. These are elements that should most definitely be included as a part of the application and retention process for a mining license</p>

	assessment and environmental management plan, where required.		
80	The holder of a prospecting licence may make a written application in the prescribed form to the Cabinet Secretary for approval to amend the approved programme for prospecting operations.		The holder of a prospecting licence may make a written application in the prescribed form to the Cabinet Secretary for approval to amend the approved programme – for prospecting operations.
81	(1) The holder of a prospecting licence may apply to the Cabinet Secretary for the renewal of the prospecting licence in respect of an area of land that forms part of the prospecting area.		– Renegotiating the tenement size is best left to the mining application stage
82	(1) An application for the renewal of a prospecting licence shall be accompanied by – (a) a report on the progress of the prospecting operations; (b) a statement of the costs incurred in the course of undertaking prospecting operations; (c) particulars of the programme for prospecting operations that the applicant proposes to carry out during the renewal period, including an estimate of expenditure; (d) a plan showing the area of land in respect of which renewal is sought; and (e) proof of submission and approval of environmental audit reports relating to the initial application and the application for renewal, to the National Environmental Management Authority.		– The two clauses 82 and 83 should be deleted as the terms for renewal were detailed earlier. – These provisions are in some cases redundant and in other cases contradictory.

	<p>(2) Where an applicant does not provide a plan in accordance with subsection (1) (d), the Cabinet Secretary shall determine the area in respect of which renewal shall be granted.</p> <p>(3) The Cabinet Secretary shall only renew a prospecting licence, where the applicant demonstrates compliance with this Act.</p>		
83	<p>(1) The term for renewal of a prospecting licence shall be specified in the licence and in any case shall not exceed three years.</p> <p>(2) A prospecting licence shall not be renewed for more than two times after the initial grant of the licence.</p>		<ul style="list-style-type: none"> - The two clauses 82 and 83 should be deleted as the terms for renewal were detailed earlier. - These provisions are in some cases redundant and in other cases contradictory.
85	<p>85 1. b) the deposit cannot be developed immediately due to temporary adverse market conditions, economic factors, technical constraints, or other factors beyond the reasonable control of the holder of the licence.</p>		<ul style="list-style-type: none"> - Amend to insert at the end of the sentence, “and after all options to renew the license have been exhausted.”
94	<p>94. (3) The Committee shall advise the representative of the Director of Mines in the granting, renewal or revocation of artisanal mining permits.</p>		<ul style="list-style-type: none"> - The Committee shall; <ul style="list-style-type: none"> (1) Collect, maintain and manage data on minerals and mining activities at the county on behalf of the national government (2) issue, renew, modify, suspend or revoke artisanal and small scale permits for all undertakings and activities in the mining sector at the county - Industry proposes a National Forum for Artisanal Mining Committees

96	(1) A permit granted under this Act shall be valid for a period three years from the date of issue and shall be renewable upon application for one more term.		- In order to avoid infringing into artisanal miner's freedom of choice, artisanal miner should be free to choose whether to remain artisanal or to graduate to another level of mining. Number of times for renewal to be indefinite.
98	(1). A holder of an artisanal permit may mine and produce minerals in an effective and efficient method. (2) The holder of an artisanal permit shall observe good mining practices, health and safety rules and pay due regard to the protection of the environment. (3) The Cabinet Secretary shall prescribe Regulations for the protection, health and safety of artisanal mining operations	Section 98 of the principal Act is amended in subsection (2) by deleting the words " good mining practices, health and safety rules and pay due regard to the protection of the environment" and substituting therefore the words "good mining practices, international best standards, environment and health and safety laws"	- A holder of artisanal and small scale permit may mine, produce, process and dispose of mined minerals in an effective and efficient method.
102	The Cabinet Secretary shall not grant a mining licence in respect of land which is the subject of a prospecting licence, reconnaissance licence, a retention licence or a mining licence unless – (a) the applicant is the holder of that licence; or (b) the applicant, with the consent of the licence holder, is applying for a licence that would permit the applicant to work a mine dump or mine waste and tailings on the land but not to undertake any other mining operation on the land.	Section 102 of the principal Act is amended by deleting the words "Cabinet Secretary" and substituting therefore with the word "Authority"	- To provide more clarity to the clause, it should be amended to state: "The Cabinet Secretary [or whatever applicable body] acknowledges the right of a licensee with reconnaissance, prospecting, or retention license as the entitled applicant for a mining license for the land covered by those licenses."

103	103.(b) the applicant has adequate financial resources, technical competence and mining industry experience to carry out the proposed programme of mining operations;	Section 103 of the principal Act is amended by deleting the words “ Cabinet Secretary” and substituting therefore with the word “Authority”	<ul style="list-style-type: none"> - Delete “adequate financial resources”. The overwhelming majority of mining projects are financed with debt. Debt instruments can’t be negotiated, structured, and completed without the mining license.
108	108.1. (1) The holder of a mining licence shall enjoy the exclusive right to carry out mining operations in respect of the mineral or mineral deposit specified in the licence within the area specified subject to the provisions of this Act and the terms and conditions set out in the licence.		<ul style="list-style-type: none"> - There needs to be a clause in this paragraph that protects the interest of an investor that puts millions of dollars in a project and it’s determined there is a minable resource of another sort. A clause along the following lines might be inserted: “or an exclusive right to mine another mineral found in the license area upon application”
109	The holder of a mining licence shall— (a) commence mining operations within six months of the grant of the licence, or as may be specified in the approved program for mining operations or in any relevant minerals agreement;		<ul style="list-style-type: none"> - Subclause (a) should be deleted. There are too many contingent factors to lock in on this time frame. At this stage, the incentive to mine are considerable, substantial amounts of money have been invested. Investors are applying significant pressure to bring projects to completion.
117	117. 2. (i) resolution of disputes through an international arbitration or a sole expert; and	74: Section 117 of the Principal Act is amended- (b) in subsection (2) (i) by deleting the words ‘an international’	<ul style="list-style-type: none"> - Industry stakeholders are of the view that international arbitration may be the only way to achieve a fair, unbiased hearing in the event of dispute. Therefore, leave the clause as is.
122		The principal Act is amended by inserting the following new section immediately after section 122- 122A (1) A holder of a mining license to a large-scale operation	<ul style="list-style-type: none"> - Substitute the words ‘mining license to a large scale operation’ to prospecting license - The potential for coexistence primarily resides within Prospecting licenses rather than mining

		may sub-contract a segment of a block to a small-scale operator upon notification to and approval from the Authority	licenses. Once a large-scale mining license is granted, operators are typically less inclined to entertain any form of coexistence with other operators.
Third Schedule		1. (1) The Board shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Board in any financial year.	- We propose that there should be at least one meeting a month due to the serious bottlenecks to licensing caused by the Mineral Rights Board having insufficient meetings. There should be a Rapid Results Initiative to facilitate review and issuance of licenses.

Additional Note:

The Kenya Chamber of Mines (KCM) notes with concern that the Mining Amendment Bill (2023) does not have provisions on how staff from the various directorates at the State Department of Mining will transition to the Mineral Regulatory Authority. Their skills and expertise will be key in the effective and efficient operations of the Authority. It will be critical to the National Assembly to make this provision as the success of the mining sector will largely depend on how professional and efficient the Authority will be. As industry, we persuade The National Assembly to engage the staff at the State Department of Mining and obtain their input for so as to have them own the proposed changes for a more vibrant mining sector in Kenya.



KENYA CHAMBER OF MINES



DEPUTY CLERK

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Ngong Road, Nairobi, Kenya

DDC
28/05

Hon. David Gikaria,
Chairperson,
Departmental Committee on Environment, Forestry and Mining,
The National Assembly of the Republic of Kenya,
P.O. Box 41842- 00100, Nairobi

*Ms Ekadeli
Please deal
AKM 21/5/24* 07/05/2024

Dear Hon. Gikaria,

RE: Industry Concerns Regarding the Proposed Gold Processing Bill (National Assembly Bill No. 46 of 2023)

The Kenya Chamber of Mines, representing stakeholders in the mining industry, wishes to convey the concerns of industry stakeholders regarding the proposed Gold Processing Bill(National Assembly Bill No. 46 of 2023) sponsored by Hon. Bernard Shinali, MP.

While we acknowledge the importance of regulating the gold processing sector to ensure environmental sustainability and proper management of resources, industry stakeholders believe that the current proposal may lead to overregulation and unnecessary fragmentation of regulatory frameworks within the mining industry.

The primary concern among industry stakeholders is the potential for overregulation of the sector. The proposed bill seeks to establish a separate regulatory body, the Gold Processing Corporation, to oversee the processing of gold and manage associated licensing procedures. However, industry stakeholders question the need for a standalone regulatory body dedicated solely to gold processing. We believe that matters related to gold processing can be adequately addressed within the existing regulatory framework governing the mining industry.

Furthermore, the functions outlined for the Gold Processing Corporation in the proposed bill overlap with those of the Authority established under Sections 30 and 31 of the Mining Act. Instead of creating a separate entity, we suggest that the functions of the Gold Processing Corporation be vested in the existing regulatory authority under the Mining Act. This consolidation of regulatory functions would streamline processes and avoid duplication of efforts.

Another issue of concern is the separation of gold processing regulation from that of other minerals. Gold naturally coexists with other elements in mineral deposits, and miners often extract multiple metals as by-products during the mining process. In such cases, it is unclear which regulatory framework would apply— the Mining Act or the proposed Gold Processing Bill. This ambiguity could lead to confusion and inefficiencies in regulatory enforcement.

In light of these concerns, industry stakeholders urge the Committee to reconsider the necessity and implications of the proposed Gold Processing Bill. We believe that existing regulatory frameworks under the Mining Act are sufficient to address concerns related to gold processing

and that fragmentation of regulatory bodies may hinder rather than facilitate effective oversight of the mining sector.

Thank you for considering our concerns regarding this important legislative matter. We are committed to collaborating with the committee to ensure that any proposed legislation promotes sustainable development and responsible resource management in the mining sector. The Kenya Chamber of Mines is available to provide further input or clarification on this matter if needed.

Yours Faithfully,



Dr. Patrick Kanyoro,
Chairman,
Kenya Chamber of Mines

Cc: Clerk of the National Assembly

LEGAL BRIEF ON STAKEHOLDER SUBMISSIONS
ANALYSIS OF PROPOSED AMENDMENTS AND MEMORANDA

THE GOLD PROCESSING BILL, 2023

NATIONAL ASSEMBLY BILLS NO. 46 OF 2023 BY HON. BERNARD MASAKA SHINALI, MP

CLAUSE	PROVISION IN THE BILL	STAKEHOLDER SUBMISSIONS	JUSTIFICATION	COMMITTEE OBSERVATIONS/ RESOLUTION
Long Title	AN ACT of Parliament to provide for the establishment, composition, functions and management of the Gold Processing Corporation; application, cancellation and renewal of a processing licence; and for connected purposes.	NATIONAL GENDER AND EQUALITY COMMISSION (NGEC) Propose to substitute the name “Corporation” with “Authority” STATE DEPARTMENT FOR MINING The Mining Act, 2016 long title provides that the Act was enacted to provide for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals and for connected purposes.	To empower the governing structure with regulatory powers over all aspects of gold mining, processing and marketing. The Mining Act regulates any dealings in gold including the prospecting, extraction, refining and treating of gold and the Bill creates an overlap of functions.	
Clause Interpretation	2- “gold processing” means collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold	STATE DEPARTMENT FOR MINING The Bill does not introduce any new or unique provisions for the processing of gold which has not already been provided for in law.	The processing of gold has already been provided for under the long title of the Mining Act and in the definition of “mineral dealing” which includes, polishing, processing, refining and treating minerals.	
Clause 3-Objects of the Act	3. The object of this Act is to— (a) establish a legal framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring	STATE DEPARTMENT FOR MINING The Mining Act, 2016 has already provided for the legal and institutional framework for the licensing and processing of all minerals including gold.	The establishment of another parallel entity for exclusive licensing will result in area overlaps of issued licence/permits,	

	<p>and transporting of gold or products of gold;</p> <p>(b) provide for licensing of exploration and exploitation of gold; and</p> <p>(c) establish an institutional framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.</p>	<p>The mandate to issue licences and permits is exercised by the Cabinet Secretary through the advice of the Mineral Rights Board in accordance with section 30 of the Mining Act, 2016.</p> <p>The Director of Mines and Director of Geological Survey are separately responsible for the regulation, collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of minerals and mineral products including gold and gold products as per section 22 of the Mining Act.</p>	<p>disputes, loss of government revenue, disorganization in the sector and mineral smuggling.</p> <p>In addition, the implementation; monitoring, and evaluation of separate legislation would become strenuous and confusing for stakeholders.</p> <p>There would also be significant financial impact of duplicating public entities and the investment in the sector will be affected due to an assortment of similar legal regimes.</p>	
Clause 4- Guiding principles	<p>4. (1) The Corporation shall operate subject to the provisions of the Mining Act and the Standards Act when performing functions or exercising powers under this Act.</p> <p>(2) This Act shall prevail in the case of any inconsistency between this Act and any other legislation, on the matters relating to collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.</p>	<p>STATE DEPARTMENT FOR MINING</p> <p>The provisions are ambiguous since what is outlined as guiding principles are not guiding principles as per the Constitution.</p> <p>Further, Clause 4(2) contradicts Clause 4(1) by providing that the Gold Processing Act shall prevail in case of any inconsistency between the Act and any other legislation.</p>	<p>The guiding principles and values under the Mining Act are enshrined in the Constitution, particularly, Articles 10, 66(2), 201(c) ad (d) and 232.</p> <p>If the Bill is enacted, there would be two conflicting Acts of Parliament regulating the processing of gold.</p>	
Clause 5- Exploration and Exploitation	<p>5. (1) A person shall not engage in the exploration and exploitation operations of gold without obtaining a permit in accordance with this Act.</p> <p>(2) A person who wishes to undertake exploration and exploitation of gold shall apply to the Cabinet Secretary for a permit for the exploration and exploitation operations of gold.</p>	<p>NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)</p> <p>There is need to create categories of gold processors so that conditions of licenses in Part V and penalties vary depending on the category.</p> <p>Also, define the terms “small-scale” and “large-scale” in the interpretation section.</p>	<p>Clause 5 seems to address the large prospectors and not the small scale prospectors.</p>	

	<p>(3) An application under this section shall be done in the prescribed form as shall be specified in the Regulations.</p> <p>(4) A person who engages in exploration and exploitation of gold without a permit commits an offence and shall upon conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both.</p> <p>(5) The Cabinet Secretary may, in consultation with the Corporation, make regulations for the better carrying into effect the provisions of this section.</p>	<p>STATE DEPARTMENT FOR MINING</p> <p>This will lead to conflict in issuance of licences between the proposed entity and the Director of Geological Survey and Directorate of Mines that are established under the Mining Act, 2016, as the latter have the function of exercising regulatory administration and supervision over all prospecting and mining operations and the technical capacity to enforce the same.</p>	<p>The Mining Act establishes the online mining cadaster which efficiently handles the application and processing of mineral rights, ensuring the exclusivity of the areas applied for. Managing specific minerals outside this system could result in overlapping applications and lead to disputes.</p> <p>Further, minerals frequently exist in combination with other minerals, and it is often impractical to license a single specific mineral to the exclusion of all others.</p> <p>Further, the Ministry through the Cabinet Secretary has since developed the Mining (Licence and Permit) Regulations, 2017 which has substantive provisions for the issuance of permits and licenses for minerals including gold.</p>	
<p>Clause 6- Establishment of a Corporation</p>	<p>6 (1) There is established a corporation to be known as the Gold Processing Corporation.</p> <p>(2) The Corporation shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—</p> <ul style="list-style-type: none"> (a) suing and being sued; (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property; (c) borrowing money or making investments; (d) entering into contracts; and 	<p>NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)</p> <p>Propose to amend “Corporation” to “Authority”</p> <p>STATE DEPARTMENT FOR MINING</p> <p>The National Mining Corporation was established by the Mining Act, 2016 to perform the functions that the proposed Gold Processing Corporation seeks to carry out, such as exploration, exploitation, dealing and processing of gold and other minerals</p>	<p>To empower the governing structure with regulatory powers over all aspects of gold mining, processing and marketing.</p> <p>The establishment of two corporations carrying out the same functions only seeks to create an overlap and opens up the sector to anyone who wishes to develop statutes for the processing of all other minerals hence creating confusion and over regulation of the sector.</p>	

	(e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.			
Clauses 7 to 27	Functions and structure of the Gold Processing Corporation	<p>STATE DEPARTMENT FOR MINING</p> <p>The Bill establishes the Corporation as a regulator and an industry player at the same time and this will result in conflict of interest and unfair competition between the corporation and other independent dealers.</p> <p>The Gold Processing Corporation does not introduce new functions which the National Mining Corporation does not already undertake.</p>	<p>The Mining Act, 2016 provides for/establishes the offices of Directorate of Geological Survey (on exploration), Directorate of Mines, (which regulates mining and related activities) and the Mineral Rights Board, which advises the Cabinet Secretary on licensing of all minerals, including gold.</p> <p>The Mining Act, 2016 also establishes the National Mining Corporation which is structured and empowered in similar terms as the Gold Processing Corporation with attendant regulations to support its functions.</p>	
Clause 8-Functions of the Corporation	<p>The functions of the Corporation shall be—</p> <p>(a) to collect, sample, purify, smelt, fabricate, homogenize, sample, register, refine, monitor and transport gold or products of gold;</p> <p>(b) to develop, maintain and regulate national standards that comply with international standards for collecting, sampling, purifying, smelting, fabricating, homogenizing, refining,</p>	<p>NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)</p> <p>Propose to delete clause 8(a) without replacement</p> <p>Propose to insert a new paragraph (h) as follows—</p> <p>(h) To regulate the framework for small scale gold prospectors</p>	<p>The functions in sub-clause (a) sought to be deleted are the responsibilities of the stakeholders in the gold processing sector and not the regulator.</p>	



	<p>registering, monitoring and transporting of gold or products of gold;</p> <p>(c) to maintain a database for collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold;</p> <p>(d) to regulate national standards for operating a gold refinery;</p> <p>(e) to facilitate international accreditation for operating a gold refinery;</p> <p>(f) to regulate registration and licensing of operating a gold refinery;</p> <p>(g) to regulate the registration and licensing of laboratory that analyses, tests and grades the properties of gold for purposes of collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold;</p> <p>(h) to facilitate international accreditation for a laboratory that that analyses, tests and grades the properties of gold for purposes of collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold;</p> <p>(i) to undertake research on matters relating to gold and gold processing including collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold; and</p>			
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	(j) to perform such other functions as may be necessary for the exercise of its powers and functions under this Act.			
Clause 11- Board of the Corporation	<p>11. (1) The management of the Corporation shall vest in a Board which shall comprise of—</p> <ul style="list-style-type: none"> (a) a chairperson appointed by the President; (b) the Principal Secretary responsible for mining or a representative appointed in writing; (c) the Principal Secretary responsible for National Treasury or a representative appointed in writing; (d) the Principal Secretary responsible for lands or a representative appointed in writing; (e) the Principal Secretary responsible for environment or a representative appointed in writing; (f) the Attorney General or a representative appointed in writing; (g) two persons, not being public officers, appointed by the Cabinet Secretary representing persons dealing with matters relating to processing of gold in the private sector; (h) one person with relevant qualifications or experience in matters relating to mining, geology, geophysics or 	<p>NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)</p> <p>Propose to amend the clause to insert new provisions on—</p> <ul style="list-style-type: none"> a. appointment to take into account the principle of gender balance and inclusion of persons with disability b. appointment of the members to be staggered to ensure continuity of the Board business at all times. c. Appointment of a Corporation Secretary <p>Propose to amend 11(f) by substituting “Attorney-General” with “a representative of small-scale prospectors”</p>	<p>To comply with the principles in the Mwangozo code of governance.</p> <p>There needs to be representation of small-scale prospectors in the Board.</p>	

	<p>engineering, nominated in writing by the Council of Governors; and</p> <p>(i) the Director General of the Corporation, who shall be an <i>ex-officio</i> member of the Board.</p>			
Clause 12 - Vacation of office	<p>12. (1) A member of the Board, other than an <i>ex-officio</i> member, shall cease to be a member of the Board if such person—</p> <p>(a) is unable to perform the functions of the office by reason of mental or physical infirmity;</p> <p>(b) is adjudged bankrupt;</p> <p>(c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;</p> <p>(d) is absent from three consecutive meetings of the Board without good cause;</p> <p>(e) resigns in writing by a notice addressed to the Cabinet Secretary;</p> <p>(f) dies; or</p> <p>(g) is removed in accordance with the provisions of the Constitution.</p>	<p>NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)</p> <p>Propose to delete Clause 12(1)(a) without replacement</p>	<p>The provision is prejudicial and discriminatory to persons with various forms of disability and contrary to the provisions of the Convention on the Rights of Persons with Disabilities (CRPD) on reasonable accommodation.</p>	
Clause 13 - Term of office.	<p>13. The Chairperson and members appointed under section 10 (h) shall hold office for a term of five years renewable for one further term only.</p>	<p>NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)</p> <p>Propose to amend the term from five years to three years</p>	<p>The proposed amendment is in line with the Mwongozo code of governance on the term of Board Members.</p>	
Clause 19 (1) - Removal of the Director-General.	<p>19 (1) The Board may remove the Director-General from office in accordance with the terms and conditions of service on grounds of—</p>	<p>NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)</p> <p>Propose to delete Clause 19(1) (a) without replacement</p>	<p>The provision is prejudicial and discriminatory to persons with various forms of disability and contrary to the</p>	

	<p>(a) inability to perform the functions of the office arising out of physical or mental incapacity;</p> <p>(b) gross misconduct or misbehavior;</p> <p>(c) incompetence or neglect of duty;</p> <p>(d) any other ground that would justify the removal from office under the terms and conditions of service.</p>		<p>provisions of the Convention on the Rights of Persons with Disabilities (CRPD) on reasonable accommodation.</p>	
<p>Clauses 28 to 42</p>	<p>Gold Processing</p>	<p>STATE DEPARTMENT FOR MINING</p> <p>The Gold Processing Bill has not provided for several areas of the regulation of gold such as:</p> <ul style="list-style-type: none"> ✓ Categories of mineral rights ✓ Feedback on status of applications except mining lease. ✓ Mineral right applications. ✓ Form of mineral right. ✓ Mineral rights in excluded and restricted areas. ✓ Mineral rights on private land. ✓ Mineral rights on community land. ✓ Consent or otherwise. ✓ Compulsory acquisition of land for prospecting and mining. ✓ Tendering for mineral rights. ✓ Conditions attaching to mineral rights. ✓ Directions concerning good mining practice. ✓ Mineral rights to be exercised reasonably and responsibly. ✓ Registered address. ✓ Employment and training of Kenyans. ✓ Preference in employment. ✓ Government participation in mining Licence ✓ Local equity participation. 	<p>The Mining Act and its Regulations have extensively and sufficiently provided for the licensing of exploration, mining, processing and refining for all minerals, including gold.</p>	

		<ul style="list-style-type: none"> ✓ Preference for local products. ✓ Assignments, transfers, mortgage and trade of mineral rights. ✓ Preparation of reports. ✓ Annual financial reports. ✓ Power to require additional information. ✓ Report by the Cabinet Secretary. ✓ Priority of applications. ✓ Treatment of applications. ✓ Conditions for grant of mineral rights for large scale operations. ✓ Withdrawal of an application 				
Clause 49 Consequential Amendments	<p>49. The Mining Act is amended by deleting section 3 and inserting the following new section—</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; padding: 5px;">Act not to apply to gold, petroleum and hydrocarbon gases.</td> <td style="padding: 5px;"> <p>3. Save to the extent provided for in this Act, this Act shall not apply to—</p> <p>(a) matters relating to petroleum and hydrocarbon gases; and</p> <p>(b) matters relating to the exploration, exploitation and processing of gold.</p> </td> </tr> </table>	Act not to apply to gold, petroleum and hydrocarbon gases.	<p>3. Save to the extent provided for in this Act, this Act shall not apply to—</p> <p>(a) matters relating to petroleum and hydrocarbon gases; and</p> <p>(b) matters relating to the exploration, exploitation and processing of gold.</p>	<p>STATE DEPARTMENT FOR MINING</p> <p>The Bill only proposes to exclude the exploration, exploitation and processing of gold from the Mining Act. There is no justification why gold as a mineral should be administered in isolation or to the exclusion of all other minerals. If enacted, there would be two conflicting Acts of Parliament regulating the processing of gold.</p>	<p>The Cabinet Secretary is responsible for the general administration of the Mining Act, 2016 which provides for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals including gold.</p>	
Act not to apply to gold, petroleum and hydrocarbon gases.	<p>3. Save to the extent provided for in this Act, this Act shall not apply to—</p> <p>(a) matters relating to petroleum and hydrocarbon gases; and</p> <p>(b) matters relating to the exploration, exploitation and processing of gold.</p>					
GENERAL COMMENTS	General comments	<p>NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)</p> <p>The Bill should put an emphasis on the importance of regulating the small-scale gold prospectors who are beneficiaries of gold mining.</p>	<p>The small-scale prospectors are also beneficiaries in the sector.</p>			

SPECIAL ISSUE

Kenya Gazette Supplement No. 132 (National Assembly Bills No. 46)



REPUBLIC OF KENYA

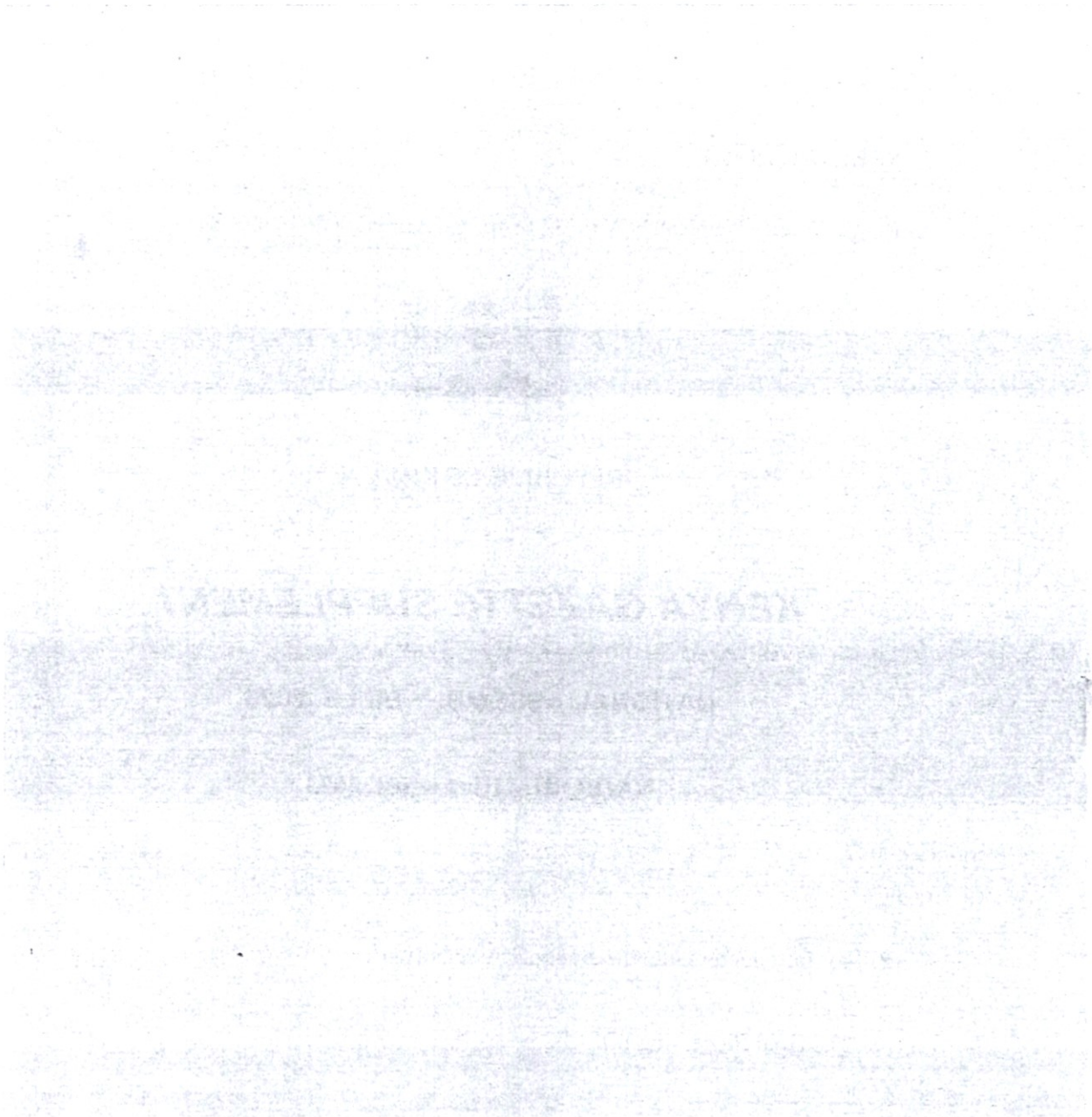
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 11th August, 2023

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**SCHEDULE—CONDUCT OF
BUSINESS AND
AFFAIRS OF THE
BOARD**

THE GOLD PROCESSING BILL, 2023

A Bill for

AN ACT of Parliament to provide for the establishment, composition, functions and management of the Gold Processing Corporation; provide for the application, cancellation and renewal of a gold processing licence; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Gold Processing Act, 2022.

Short title.

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

Interpretation.

“Corporation” means the Gold Processing Corporation established by section 6;

“Board” means the Board of the Corporation provided for in section 11;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to mining; and

“gold processing” means collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold:

3. The object of this Act is to—

Object of the Act.

(a) establish a legal framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold;

(b) provide for licensing of exploration and exploitation of gold; and

(c) establish an institutional framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.

4. (1) The Corporation shall operate subject to the provisions of the Mining Act and the Standards Act when performing functions or exercising powers under this Act.

Guiding principles.
No. 12 of 2016.
Cap. 496.

(2) This Act shall prevail in the case of any inconsistency between this Act and any other legislation, on the matters relating to collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.

5. (1) A person shall not engage in the exploration and exploitation operations of gold without obtaining a permit in accordance with this Act.

Exploration and exploitation.

(2) A person who wishes to undertake exploration and exploitation of gold shall apply to the Cabinet Secretary for a permit for the exploration and exploitation operations of gold.

(3) An application under this section shall be done in the prescribed form as shall be specified in the Regulations.

(4) A person who engages in exploration and exploitation of gold without a permit commits an offence and shall upon conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years, or to both.

(5) The Cabinet Secretary may, in consultation with the Corporation, make regulations for the better carrying into effect the provisions of this section.

PART II – THE GOLD PROCESSING CORPORATION

6. (1) There is established a corporation to be known as the Gold Processing Corporation.

Establishment of the Corporation.

(2) The Corporation 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 money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper performance of its

functions under this Act, which may lawfully be done or performed by a body corporate.

7. (1) The headquarters of the Corporation shall be in Nairobi. Headquarters of the Corporation.

(2) The Corporation may establish offices in other counties.

8. The functions of the Corporation shall be— Functions of the Corporation.

- (a) to collect, sample, purify, smelt, fabricate, homogenize, sample, register, refine, monitor and transport gold or products of gold;
- (b) to develop, maintain and regulate national standards that comply with international standards for collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold;
- (c) to maintain a database for collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold;
- (d) to regulate national standards for operating a gold refinery;
- (e) to facilitate international accreditation for operating a gold refinery;
- (f) to regulate registration and licensing of operating a gold refinery;
- (g) to regulate the registration and licensing of laboratory that analyses, tests and grades the properties of gold for purposes of collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold;
- (h) to facilitate international accreditation for a laboratory that that analyses, tests and grades the properties of gold for purposes of collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold;

- (i) to undertake research on matters relating to gold and gold processing including collecting, sampling, purifying, smelting, fabricating, homogenizing, refining, registering, monitoring and transporting of gold or products of gold; and
- (j) to perform such other functions as may be necessary for the exercise of its powers and functions under this Act.

9. The Corporation shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Corporation shall have the power to—

Powers of the Corporation.

- (a) manage, control and administer its assets in such a manner and for such purposes as best promotes the purpose for which the Corporation is established;
- (b) open such bank accounts for its funds as may be necessary;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Corporation;
- (d) subject to approval of the Cabinet Secretary for the time being responsible for matters relating to finance, invest any of the Corporation's funds not immediately required for the purposes of this Act, as it may determine;
- (e) receive gifts, grants, donations or endowments made to the Corporation and make disbursements therefrom;
- (f) enter into association with such other bodies or organisations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Corporation is established; and
- (g) undertake any activity necessary for the fulfilment of any of its functions.

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

Delegation by the Corporation.

11. (1) The management of the Corporation shall vest in a Board which shall comprise of—

Board of the Corporation.

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary responsible for mining or a representative appointed in writing;
- (c) the Principal Secretary responsible for National Treasury or a representative appointed in writing;
- (d) the Principal Secretary responsible for lands or a representative appointed in writing;
- (e) the Principal Secretary responsible for environment or a representative appointed in writing;
- (f) the Attorney General or a representative appointed in writing;
- (g) two persons, not being public officers, appointed by the Cabinet Secretary representing persons dealing with matters relating to processing of gold in the private sector;
- (h) one person with relevant qualifications or experience in matters relating to mining, geology, geophysics or engineering, nominated in writing by the Council of Governors; and
- (i) the Director-General of the Corporation; who shall be an *ex officio* member of the Board.

(2) A person shall be qualified for appointment as Chairperson or member under sub-section (1)(g) if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree in geology, geophysics, mining, engineering, economics, business administration or law from a recognized university; and
- (c) has experience in the mining sector of not less than ten years in the case of the chairperson and five years in the case of any other member.

(4) A person shall not be qualified for appointment as Chairperson or member of the Board under sub-section (1)(g) if the person—

- (a) is a State or public officer;
- (b) is a member of a governing body of a political party;
- (c) is an undischarged bankrupt; or
- (d) has been removed from public office for contravening the Constitution or any other law.

12. (1) A member of the Board, other than an *ex-officio* member, shall cease to be a member of the Board if such person—

Vacation of office.

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is adjudged bankrupt;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) is absent from three consecutive meetings of the Board without good cause;
- (e) resigns in writing by a notice addressed to the Cabinet Secretary;
- (f) dies; or
- (g) is removed in accordance with the provisions of the Constitution.

(2) The Board shall be properly constituted notwithstanding a vacancy in its membership.

13. The Chairperson and members appointed under section 10 (h) shall hold office for a term of five years renewable for one further term only.

Term of office.

14. The Board shall conduct its affairs in accordance with the provisions of the Schedule, but subject thereto, the Board may regulate its own procedure.

Conduct of business and affairs of the Board.

15. The members of the Board shall be paid such remuneration, allowances and disbursements for expenses as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Remuneration.

16. (1) There shall be a Director-General who shall be the Chief Executive Officer of the Corporation and the

Director-General.

Secretary to the Board appointed by the Board through a competitive recruitment process.

(2) The Director-General shall be an *ex officio* member of the Board but shall have no right to vote.

17. (1) A person shall qualify for appointment as the Director-General if that person—

Qualification of the Director-General.

- (a) is a citizen of Kenya;
- (b) holds a masters' degree in in geology, geophysics, mining, engineering, economics, business administration or law; and
- (c) has the relevant expertise qualification and experience in management in geology, geophysics and mining of not less than ten years.

(2) The Director-General shall hold office on such terms and conditions of employment as the Board may determine.

18. The Director-General shall be responsible for the—

Functions of the Director-General.

- (a) day-to-day operations of the Corporation;
- (b) administration, organisation and control of the staff of the Corporation;
- (c) management of funds, property and affairs of the Corporation;
- (d) implementation of the policies and programmes of the Corporation;
- (e) development of an operations plan for achieving the Corporation's objectives; and
- (f) performance of any other duty necessary for the implementation of this Act as may be assigned to the Director-General by the Board.

19. (1) The Board may remove the Director-General from office in accordance with the terms and conditions of service on grounds of—

Removal of the Director-General.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;

- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify the removal from office under the terms and conditions of service.

(2) Before removal under subsection (1), the Director-General shall be—

- (a) informed in writing of the reasons for the intended removal; and
- (b) given an opportunity to put in a defence against the allegations.

20. The Board may appoint such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Corporation under this Act, upon such terms and conditions of service as the Board may determine in consultation with the Salaries and Remuneration Commission.

Staff.

21. The Corporation may engage the services of such experts in respect of any of its functions in which they are considered to have special competence.

Experts.

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

Common seal.

(2) The affixing of the common seal of the Corporation shall be authenticated by the signature of the Chairperson and the Secretary.

(3) The Board shall in the absence of either the Chairperson or the Director-General, in any particular matter, nominate one member of the Board to authenticate the seal of the Board on behalf of either the Chairperson or the Director-General.

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

23. (1) No matter done by a member of the Corporation or by any officer, member of staff, or agent of the Corporation shall, if the matter or thing is done *bona fide* for the purpose of executing the functions, powers or duties of the Corporation under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable in an action, claim or demand whatsoever.

Protection from personal liability.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Corporation, shall, if the court holds that such act was done *bona fide*, be paid out of the funds of the Corporation, unless such expenses are recovered by him or her in such suit or prosecution.

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

Liability for damages.

PART III – FINANCIAL PROVISIONS

25. The Funds of the Corporation shall consist of—

Funds of the Corporation.

- (a) such moneys as may be appropriated by the National Assembly for the purposes of the Corporation;
- (b) gifts, grants, donations or endowments as may be given to the Corporation;
- (c) monies that may accrue to or vest in the Corporation in the course of the exercise of its functions under this Act;
- (d) fees for services rendered by the Corporation; and
- (e) monies from any other lawful source provided for the Corporation.

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

Financial year.

27. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure of the Corporation for that year. Annual estimates.

(2) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.

(3) No expenditure shall be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under subsection (2), or in pursuance of an authorization of the Board given with the prior written approval of the Cabinet Secretary.

28. (1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities of the Corporation. Accounts and Audit.

(2) Within the period of three months after the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Corporation in respect of that year together with—

- (a) a statement of income and expenditure during the year; and
- (b) a balance sheet of the Corporation on the last day of that year.

(3) The accounts of the Corporation shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2015. No. 34 of 2015.

PART IV—PROCESSING LICENCE

29. (1) A person or a company may apply for a processing licence in the prescribed form and accompanied by the prescribed fee. Application for processing licence.

(2) An application for a processing licence under subsection (1) shall be in the prescribed form and addressed to the Cabinet Secretary and shall provide information on—

- (a) the area in respect of which the licence is sought;
- (b) a proposed programme of processing operations that outlines the refinery forecasts and operation plans;

- (c) a feasibility study;
- (d) a statement regarding the gold in the area of land over which the licence is sought, including details of all known gold as well as probable gold reserves;
- (e) a statement of the financial and technical resources available to the applicant to carry out the proposed processing operations and to comply with the conditions of the licence;
- (f) a plan giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens;
- (g) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services;
- (h) proof of submission and approval of an environmental and social impact assessment report and environmental management plan for the term of the processing licence to the National Environment Management Authority; and
- (i) a plan giving particulars of the applicant's proposals with respect to social responsible investments for the local community.

30. The Cabinet Secretary shall not grant a processing licence in respect of land which is the subject of a processing licence or reconnaissance licence, a retention licence unless the applicant is the holder of that licence.

Restrictions in respect of processing licences.

31. The Cabinet Secretary, on recommendation of the Corporation, may grant a processing licence if satisfied that—

Consideration of applications.

- (a) the area of land over which the processing licence is sought is reasonable having regard to the applicant's proposed programme of processing operations;
- (b) the applicant has adequate financial resources, technical competence and processing industry experience to carry out the proposed programme of processing operations;

- (c) the applicant has obtained an approved environmental impact assessment licence, a social heritage assessment and environmental management plan in respect of the applicant's proposed processing operations;
- (d) the applicant's proposal with respect to the procurement of local goods and services is acceptable;
- (e) the applicant's proposal with respect to employment and training of Kenyan citizens is acceptable;
- (f) the project is feasible based on the feasibility study; and
- (g) the applicant's proposal with respect to engaging in community investments is socially responsible.

32. The Cabinet Secretary shall grant a processing licence to an applicant where the applicant has satisfied the requirements prescribed by this Act for the grant of a processing licence.

Application by holder of processing licence.

33. The Cabinet Secretary shall not reject an application for a processing licence unless —

Notice of refusal.

- (a) the Cabinet Secretary has given the applicant a notice of the intention to reject the application stating the grounds for rejecting the application;
- (b) the Cabinet Secretary has specified in the notice a period within which the applicant may make appropriate proposals to remedy the grounds stated in the notice of intention to reject the application; and
- (c) the Applicant has failed, within the specified period, to make appropriate proposals.

34. A processing licence shall contain the following information in addition to any other information provided for under this Act—

Form of processing licence.

- (a) the name and address of the holder;
- (b) the date of grant and expiry of the licence;
- (c) the area in respect of which the licence issued;

- (d) the approved programme for processing operations;
- (e) the approved plan for the procurement of local goods and services;
- (f) the conditions subject to which the licence is issued;
- (h) the approved plan to employ and train citizens of Kenya;
- (i) the details of the approved environmental impact assessment report, social heritage impact assessment and environmental management plan; and
- (j) such other information as the Cabinet Secretary may consider necessary.

35. The term of a processing licence shall be for a period not less than twenty five years.

Term of processing licence.

36. (1) The holder of a processing licence shall enjoy the exclusive right to carry out processing operations in respect of the gold or the gold deposit specified in the licence within the area specified subject to the provisions of this Act and the terms and conditions set out in the licence.

Rights conferred by processing licence.

(2) In the exercise of the rights referred to in subsection (1), the holder of a processing licence may—

- (a) enter the area of land specified in the licence and take all reasonable measures on or under the surface of the land to carry out processing operations; or
- (b) erect equipment, plant and buildings necessary to mine the specified gold and to transport, dress or treat the golds so recovered.

(3) A person appointed by the holder of a processing licence to act as an agent of the holder may exercise the rights of the licensee under the licence, subject to any limitations on the powers of the agent contained in the instrument of appointment.

37. The holder of a processing licence shall—

Obligations under processing licence.

- (a) commence processing operations within six months of the grant of the licence, or as may be

- specified in the approved program for processing operations or in any relevant gold agreement;
- (b) conduct processing operations in compliance with the approved programme for processing operations;
 - (c) comply with the terms and conditions of the approved environmental impact assessment licence, social heritage assessment and environmental management plan relating to the operations to be carried out under the processing licence;
 - (d) demarcate the processing area in the prescribed manner;
 - (e) comply with the conditions of the licence, any applicable gold agreement and any directions issued by the Cabinet Secretary or an authorized officer in accordance with this Act;
 - (f) provide the government with the right of first refusal of processed gold at market price;
 - (g) submit to the Cabinet Secretary up to date quarterly returns of gold processing;
 - (h) stack or dump any gold or waste products in the manner provided for in the licence or as otherwise prescribed, having regard to good processing industry practice;
 - (i) carry out processing and processing activities in accordance with international best practice and the prescribed guidelines; and
 - (i) sign a community development agreement with the community where processing operations are to be carried out in such a manner as shall be prescribed in Regulations.
- 38.** (1) The holder of a processing licence shall keep a complete and accurate record of the processing operations in the prescribed form at the registered office.
- (2) For the purpose of subsection (1) records shall include—

Record-keeping
and reporting
requirements.

- (a) copies of all maps, geological reports, sample analysis, aerial photographs, cores, logs and tests and other data obtained and compiled by the licence holder;
- (b) financial statements and such other books of account as the Cabinet Secretary may prescribe; and
- (c) such other reports and information as may be prescribed or otherwise determined by the Cabinet Secretary.

39. (1) Subject to the terms and conditions of the licence, the holder of a processing licence shall notify the Cabinet Secretary of any proposed amendment to the approved programme for processing operations.

Amendment of programme of processing operations.

(2) Unless the Cabinet Secretary rejects the proposed amendment, the amendment shall take effect three months after the date of notification under subsection (1).

(3) A proposed amendment which is likely to substantially alter the approved programme of processing operations shall not take effect unless expressly approved by the Cabinet Secretary.

40. (1) The holder of a processing licence shall give the Cabinet Secretary a notice of any intention to cease or suspend or curtail processing operations carried on pursuant to the processing licence.

Cessation, suspension, or curtailment of production in respect of processing licences.

(2) For the purposes of subsection (1), the holder shall give notice of at least —

- (a) six months, for cessation of processing operation;
- (b) three months, for suspension of processing operations; or
- (c) one month, for curtailment in production.

(3) A notice given under this section shall include a statement that sets out the technical and economic basis for the proposed cessation, suspension or curtailment of production.

(4) Upon receipt of a notice given in accordance with this section, the Cabinet Secretary shall investigate the circumstances leading to the proposed cessation,

suspension or curtailment of processing and if the Cabinet Secretary is satisfied, the cessation, suspension or curtailment of processing should be granted.

(5) The Cabinet Secretary may approve the cessation, or suspension of processing operations or curtailment of production proposed by the licence holder subject to the holder complying with such conditions as the Cabinet Secretary may determine.

(6) The Cabinet Secretary shall prescribe the period within which a suspension allowed under this section may be acceptable.

(7) Where the holder is unable to give the required notice as provided under subsection (1) and the holder suspends or curtails processing from a refinery, the holder shall, within three days of the suspension or curtailment, notify the Cabinet Secretary.

(8) The Cabinet Secretary shall make Regulations to provide for the conditions to manage a refinery and the licence area where a cessation notification has been approved.

41. (1) The holder of a processing licence may apply to the Cabinet Secretary for the renewal of the licence.

Renewal of processing licence.

(2) An application under subsection (1) shall be made in the prescribed form and be accompanied by the prescribed fee in respect of all or part of the licence area.

(3) An application for the renewal of a processing licence shall be made at least one year before the expiry of the licence.

42. An application for the renewal of a processing licence shall contain the information or be accompanied by the following documents—

Application for renewal of processing licence.

- (a) a proposed programme of processing operations to be carried out during the term of renewal;
- (b) a plan of the area in respect of which renewal of the processing licence is sought;
- (c) an approved environmental impact assessment licence, social heritage assessment, environmental management plan in respect of the applicant's proposals, where required under the

Environmental Management and Coordination Act and Community Development Agreement; and

- (d) such additional information as the Cabinet Secretary may prescribe.

43. The term of renewal of a processing licence shall not exceed fifteen years.

Term of renewal.

PART V – MISCELLANEOUS PROVISIONS

44. (1) The Board shall, not more than three months after the end of each financial year, prepare a report setting out the operations of the Corporation for the preceding year.

Annual Report.

(2) The Cabinet Secretary shall, within thirty days of receipt of the annual report, submit the report to Parliament and the county assemblies.

(3) Parliament or a county assembly may at any time require the Corporation to submit a report on a particular issue.

45. Any person may request for information from the Corporation and such request for information—

Request for information.

(a) shall be addressed to the Chief Executive Officer;

(b) may be subject to the payment of the prescribed fee; and

(c) may be subject to confidentiality requirements of the Corporation.

46. (1) The right of access to information guaranteed under Article 35 of the Constitution is hereby limited under Article 24 of the Constitution to the nature and extent specified in subsection (2).

Limitation of the right to access information.

(2) The Corporation may decline to give information to an applicant where in its opinion the divulging of the information would compromise the integrity of the Corporation.

47. A person who—

Offences and penalties.

- (a) without lawful excuse ignores or fails to obey any instruction issued by a member of the Board or an employee or agent of the Corporation in the exercise of the powers or the performance of functions of the Corporation under this Act;

- (b) wilfully obstructs a member of the Board or an employee or agent of the Corporation in the discharge of their lawful duties; or
- (c) misrepresents, knowingly submits false or misleading information to a member of the Board or an employee or agent of the Corporation in exercise of the powers or the performance of the functions of the Corporation under this Act,

commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding five years or to both.

PART VI- REGULATIONS

48. (1) The Cabinet Secretary may in consultation with the Cabinet Secretary responsible for mining, the Cabinet Secretary responsible for standards, and the Corporation, make regulations for the better carrying into effect the functions of the Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

- (a) collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting gold or products of gold;
- (b) regulating national standards for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold;
- (c) maintaining a database for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold;
- (d) operating and maintaining a national laboratory to analyse, test and grade the properties of gold including the standard of gold;
- (e) application for a processing licence;
- (f) restrictions in respect of processing licences;
- (g) consideration of applications for a processing licence;

- (h) application by holder of a processing licence;
- (i) notice of refusal of a processing licence;
- (j) form of processing licence;
- (k) term of processing licence;
- (l) rights conferred by processing licence;
- (m) obligations under processing licence;
- (n) record-keeping and reporting requirements;
- (o) amendment of programme of processing operations;
- (p) cessation, suspension, or curtailment of production in respect of processing licences;
- (q) renewal of a processing licence;
- (r) application for renewal of processing licence; and
- (s) term of renewal of a processing licence.

(3) For the purpose of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect the provisions of this Act;
- (b) the Corporation of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the rules made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Cap. 2.

No. 23 of 2013.

PART VII—CONSEQUENTIAL AMENDMENTS

49. The Mining Act is amended by deleting section 3 and inserting the following new section—

Amendment of section 2 of No. 12 of 2016.

Act not to apply to gold, petroleum and hydrocarbon gases.

3. Save to the extent provided for in this Act, this Act shall not apply to—

- (a) matters relating to petroleum and hydrocarbon gases; and
- (b) matters relating to the exploration, exploitation and processing of gold.

50. The Mining Act is amended in the First Schedule by deleting the word “Gold” appearing in Part C.

Amendment of the First Schedule of No. 12 of 2016.

SCHEDULE s. 14**CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD**

1. (1) The Board shall meet not less than four times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) A meeting of the Board shall be held on such date and at such time as the Chairperson shall appoint.

(3) Unless the majority of the membership of the Board otherwise agree, at least fourteen days notice of every meeting shall be given to every member.

(4) The Chairperson shall on the written application of at least one-third of the members, convene a special meeting of the Board.

(5) The quorum for the conduct of the business of the Board shall be one half of all the members.

(6) The Chairperson shall, when present, preside at every meeting of the Board but the members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(7) Unless an unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(8) Subject to subparagraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

2. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

Disclosure of interest by Board members.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

3. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board.

Execution of instruments.

4. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

Minutes.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the establishment, composition, functions and management of the Gold Processing Corporation. The Bill seeks to establish a legal and institutional framework for collecting, purifying, smelting, fabricating, homogenizing, sampling, registering, monitoring and transporting of gold or products of gold.

Part I (Clauses 1-2) of the Bill contains provisions relating to preliminary provisions including the short title, interpretation, object of the Act and guiding principles.

Part II (Clauses 5-23) of the Bill contains the provisions of the Gold Processing Corporation including establishment of the Corporation; headquarters of the Corporation; functions of the Corporation; powers of the Corporation; delegation by the Corporation; Board of the Corporation; vacation of office; term of office; conduct of business and affairs of the Board; remuneration; Director-General; qualification of the Director-General; functions of the Director-General; removal of the Director-General; staff; experts; common seal; protection from personal liability; and liability for damages.

Part III (Clauses 24-27) of the Bill contains provisions relating to financial provisions including the funds, the financial year, the annual estimates, accounts and audit of the Corporation.

Part IV (Clauses 28-42) of the Bill contains provisions relating to application for processing licence; restrictions in respect of processing licences; consideration of applications; application by holder of processing licence; notice of refusal; form of processing licence; term of processing licence; rights conferred by processing licence; obligations under processing licence; record-keeping and reporting requirements; amendment of programme of processing operations; cessation, suspension, or curtailment of production in respect of processing licences; renewal of processing licence; application for renewal of processing licence; and term of renewal

Part V (Clause 42-47) of the Bill contains provisions on miscellaneous provisions including annual report; request for information; limitation of the right to access information; and, offences and penalties

Part VI (Clause 47) of the Bill contains provisions on regulations.

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

The Bill delegates legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill concerns county governments in terms of Article 109(5) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Paragraph 10 of Part 2 of the Fourth Schedule to the Constitution provides that the implementation of specific national government policies on natural resources and environment conservation is a function of the county governments.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill will occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 7th August, 2023.

BERNARD MASAHA SHINALI,
Member of Parliament.

