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Response by the Chair of the Dept Committee on E of W.K on a Statement requested by Hon. Base Shill on Export of Gold. 2/4/14

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

ELEVENTH PARLIAMENT- SECOND SESSION

REPORT

ON

THE INVESTIGATION INTO THE GOLD MINING AND EXPORT BY USHINDI EXPORTS LTD AND SKYHAWK INTERNATIONAL LTD

CLERKS CHAMBERS

MARCH 2014

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## **PREFACE**

### **Honorable Speaker,**

The Environment and Natural Resources Committee is a Departmental Committee established under the National Assembly Standing Orders No. 216(1). The functions and mandate of the Committee are also contained under the National Assembly Standing Orders, No. 216(5), most notably, 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 and make reports and recommendations to the House as often as possible, including recommendations on proposed legislation.**

The procedure of a select Committee and other related matters thereto are covered under the National Assembly Standing Orders No. 173-203. The Committee has the powers under the provision of Article 125 of the Constitution and the National Assembly (Powers and Privileges) Act (CAP 6) to summon witnesses, examine them on oath and receive evidence.

### **Current Committee Membership**

1. Hon. Amina Abdalla, M.P., **Chairperson**
2. Hon. A. K. Kosgey, M.P., **Vice Chairperson**
3. Hon. Alice Ng'ang'a, M.P.
4. Hon. Samuel Ndiritu, M.P.
5. Hon. Aisha Jumwa Karisa, M.P.
6. Hon. Ejidius Njogu Barua, M.P.
7. Hon. Jude Njomo, M.P.
8. Hon. Moitalel Ole Kenta, M.P.
9. Hon. Kathuri Murungi, M.P.
10. Hon. Sunjeev Birdi, M.P.
11. Hon. Jackson K. Rop, M.P.
12. Hon. Abdi Noor Ali, M.P.
13. Hon. Joyce Emanikor, M.P.
14. Hon. Abdulaziz Farah, M.P.
15. Hon. Ronald Tonui, M.P.
16. Hon. (Dr.) R. Wanyonyi, M.P.
17. Hon. Gideon Mwiti, M.P.
18. Hon. Hassan Dukicha, M.P.

19. Hon. Zainab Chidzuga, M.P.
20. Hon. Chachu Ganya, M.P.
21. Hon. Opiyo Wandayi, M.P
22. Hon. Charles G Mongare, M.P.
23. Hon. (Dr.) Wilber K Ottichilo, M.P.
24. Hon. Khatib Mwashetani, M.P.
25. Hon. George O.ogalo, M.P.
26. Hon. (Major) Muluvi Mutua, M.P.
27. Hon. Mohamed, Diriye M.P.
28. Hon, Peter Kinyua, MP.
29. Hon. Shukra Hussein Gure, M.P

### **Terms of Reference**

On 4 June 2013, Pursuant to the National Assembly Standing Orders No. 44 (2) (c), the **Hon. Elias Bare Shill**, Member of Parliament for Fafi Constituency, sought a Statement from the Chairpersons of the Departmental Committees on Environment and Natural Resources and that of Finance Planning and Trade regarding the mining of Gold in Kenya. The Member stated that there were two companies mining gold in the country namely, Karelian Gold Mine Limited in Natiki and Kilimapesa Gold Mine Limited in Lolgorian. He further added that the amount of gold produced by those two companies was approximately 50 kilogrammes per year; however, two private companies Sky Hawk International Limited and Ushindi Exports Limited were allegedly exporting 1,200 kilogrammes of gold per month out of the country. He further expounded that according to available documents, those two companies purport to be exporting gold to United Arab Emirates.

In his request the Member asked the two Committees in their response to provide details on the following:-

- 1) The total amount of gold exported by Ushindi Exports Limited and Skyhawk International Limited since 2005 to now, with receipts showing where they are bought and sold;
- 2) The companies in the United Arab Emirates that Skyhawk International Limited and Ushindi Exports Limited trade with;
- 3) The amount of duty and tax paid by Ushindi Exports Limited and Skyhawk International Limited to KRA from 2005 to date, indicating date of last returns made by both companies as required by Law;



- 4) The reasons for those companies exporting gold and transacting in cash instead of transferring funds through banks as it is the norm for any exports proceeds;
- 5) Why the two companies are not using official monetary instrument declaration form at the Jomo Kenyatta International Air port, but are using counterfeit forms which are not quadrupled as required by Law;
- 6) Whether as shown by those counterfeit forms, the agents of those companies are Menephis Stores of Airlines EK 721 and 722 which they claim to have used frequently to enter the country;
- 7) An explanation for cash amounting to US\$ 40 million per month transited through Jomo Kenyatta International Airport without security and those sums of cash being banked;
- 8) An explanation of a possibility for those large quantities of dollars being used to fund terrorism, purchase or smuggle arms or launder money.

### **Committee Proceedings**

In the exercise of its mandate the Committee held sittings during which it examined and heard evidence from witnesses and reviewed documents.

In its inquiry into Gold Mining business by two companies, the Committee heard and received written submissions from the Cabinet Secretary for Treasury and Cabinet Secretary for Mining. The Committee also received oral evidence from the Commissioner of Mines and Geology, Director of department for Criminal Investigations, the Directors of Ushaindi ltd and Skyhawk International ltd, the Executive Director, Concern Citizens NGO and Member of Parliament Fafi Constituency.

The Records of evidence adduced, documents and notes received by the Committee form the basis of the Committee Observations, Conclusions and Recommendations.

The Committee would like to acknowledge the time and considerable effort that stakeholders invested in this Inquiry, through submissions, hearings and additional information. I express my thanks to my colleagues for their thoughtful and engaged contributions to this Inquiry. Our work has benefited immensely from both our individual perspectives and our cooperative approach. Further the Committee is indebted to the Staff of National Assembly for their commitment and dedication to duty that made the work of the Committee and the production of the report possible.

**Honorable Speaker,**

It is now my pleasant duty to table the Report of the Departmental Committee on Environment and Natural Resources, on the investigation into gold mining and exports in Kenya for debate and adoption by the House.

**Signed:**



**HON. AMINA ABDALLA, MP**

**CHAIRPERSON, DEPARTEMENTAL COMMITTEE ON ENVIRONMENT AND  
NATURAL RESOURCES**

**Date:**

## **CHAPTER 1**

### **INTRODUCTION**

#### **1.0 Establishment of the Inquiry**

On 4 June 2013, the Member of Parliament for Fafi Hon. Bare Shill asked for a Statement from the two Departmental Committees of Environment and Natural Resources and that of Finance Planning and Trade regarding Gold Mining and export in Kenya. The Speaker of the National Assembly consequently allowed the two Committees to inquire and present a response to the issues the Member raised within one month.

After two joint meetings the Departmental Committee on Finance had five Bills committed to it, which required urgent and comprehensive scrutiny and unanimously resolved to let the Committee on Environment and Natural Resources to pursue the matter on their own owing to the Full text of the Terms of Reference is on **Page 3** of this report.

#### **1.1 Submissions**

The Committee invited submissions by writing directly to individuals and organizations with a likely interest in the Inquiry, including government agencies, community organizations, and experts in the mining industry. These submissions were done on varied dates during the period of investigation by the Committee.

#### **1.2 Hearings**

The Committee held 5 hearings at Parliament Buildings on July 11, July 29, August 1, August 6, and August 28 2013.

#### **1.3 Report Structure**

Chapter 2 sets the context for the Inquiry by providing background information on the statutory framework for trading of gold in Kenya and gives Summary of evidence received by the Committee from the Government agencies and evidence received from other witnesses.

Chapter 3 Prescribes the Summary of the Observations and Recommendation of the Committees



## **CHAPTER 2**

### **EVIDENCE FROM INQUIRY PARTICIPANTS**

This section sets the context for the Committee's Inquiry by providing background information on the issues raised by the Member in his statement: The statutory frameworks underpinning mining and export of Gold in Kenya and other precious metals; evidence received by Committee in the Inquiry concerning gold mining and export by the two firms in the country.

#### **2.0 The Statutory Framework for Gold Trade in Kenya**

The Trading in Unwrought Precious Metals Act cap 309 of the laws of Kenya is the regulatory framework for mining and trading of gold in Kenya. Section 3 of the Act specifies the actions that render trading in unwrought precious metals illegal while section 11 of the Act requires register of transactions involving these unwrought precious metals. The Act prescribes the penalties for violation of any section of the Trading in Unwrought Precious Metals Act. All traders operating in Kenya are therefore expected to abide by the laws that have been put in place to regulate the sector. The Customs Act also exempt export duties from the exportation of gold but companies have to file returns and pay income tax to the Government as required by law

#### **Evidence by Government Institutions**

In its investigation the committee received evidence from Government institutions and officers that may have had information on the matter under inquiry. The Committee received three written submissions; from the Cabinet Secretary, Ministry of Mining, the Cabinet Secretary, National Treasury and from the Commissioner of Mines and Geology. The Key highlights of their reports and submissions are summarized in this section.

#### **2.1 The Cabinet Secretary- Ministry of Mining**

On 5, July 2013 the Cabinet Secretary, Ministry of Mining submitted a written submission to the Committee and gave the following information regarding the matter:-

- i. That, Gold occurs in a number of places in the gold bearing greenstone rocks of the Nyanzian Craton of the Western Kenya, stretching from Transmara and Kuria districts, at the border with Tanzania, through Migori, Nyatike, Rongo, Nandi South ( at Chemesi and Kibigori), Bondo, Siaya, Vihiga, Kaka mega, Busia, West Pokot, Turkana and Moyale districts.
- ii. Gold mining in the western part of the country started before independence but stopped after the mineable deposits in the specific mines' sites were exhausted based on economics



and technology at the time. It became uneconomical for the companies that were mining to sustain their operations. However, local artisanal miners have continued to exploit alluvial gold and near surface rick gold veins in the greenbelt areas.

- iii. Gold exploration by various companies has continued in these areas, whereby two companies namely; Kilimapesa Gold (Pty) Limited and Karebe Gold Mining Limited were able to commence medium gold mining operation in Lolgorain, Transmara district and Chemesi / Kibigori in South Nandi district respectively.
- iv. The Ministry also gave a summary of exports by the two local companies below;

Company/ Year	2009		2010		2011		2012			
	Qty (Gms)	Value (Kshs)	Quantity (Gms)	Value (Kshs)	Quantity (Gms)	Value (Kshs)	Quantity (Gms)	Value (Kshs)	Quantity (Gms)	Value (Kshs)
Kilimapesa Gold (Pty) Limited	3,814	7,627,020	-	-	-	-		68952		
Karebe Gold Mining Limited	-	-	52,016	119,470,193	40,370	136,236,628				

- v. The two companies namely; Ushindi Exporters Limited and Sky hawk International Limited have had Special Dealers and Exporters licenses to trade in and export Unwrought Precious Metals (which include gold) in accordance with The Trading in Unwrought and Precious Metals Act Cap 309, since 2005- 2013 and 2010- 2013 respectively as shown below:-

Year	Ushindi Exports Limited	Sky hawk International Limited
	License No	License No
2005	1 of 2005	-
2006	1 of 2006	-

2007	1 of 2007	-
2008	2 of 2008	-
2009	1 of 2009	-
2010	3 of 2010	4 of 2010
2011	5 of 2011	4 of 2011
2012	2 of 2012	1 of 2012
2013	6 of 2013	5 of 2012

vi. The companies gold export since 2005 to 4<sup>th</sup> June 2013 as below:-

Year	Exports by ushindi exports limited		Exports by sky hawk limited	
	Quantity(gms)	Value(kshs)	Quantity(gms)	Value(kshs)
2005	623,679	621,957,525	-	-
2006	329,930	434,558,710	-	-
2007	1,471,362	1,618,058,999	-	-
2008	318,574	561,815,267	-	-
2009	1,035,753	2,285,536,026	-	-
2010	861,421	2,282,046,720	1,466,533	3,874,275,532
2011	806,060	2,848,952,570	784,834	2,698,143,799
2012	1,542,123	5,875,867,240	1,949,852	7,460,615,560
2013(upto 4 <sup>th</sup> June)	892,914	3,248,016,690	1,002,478	3,654,431,075

vii. Details of companies in the United Arab Emirates and other countries that Sky hawk International Limited and Ushindi Exports Limited trade with are as follows:-

	<b>Companies exported to by Ushindi Exports Limited</b>	<b>Companies exported to by Skyhawk International Limited</b>
	<p>Emirates Gold DMCC, Dubai Abu Dhabi Road, P.O Box 24305. Dubai, UAE.</p> <p>Al Fath Gold, P.O Box 21640, Sharjah, UAE.</p> <p>Metalor Technologies, SA, C/o Valimpex SA, Geneva Airport Refining Division, A. V. D. U. Vignoble- CH2009, Neuchatel- Swizerland</p> <p>Mrs. N. Vaya, P.O Box 21640, Sharjah, UAE</p> <p>Mr. N. Vaya, P.O Box 21640, Sharjah, UAE</p> <p>Mr. P. Vaya, P.O Box 21640, Sharjah, UAE</p>	
2006	Emirates Gold DMCC, Dubai Abu Dhabi Road, P.O Box 24305, Dubai, UAE	-
2007	<p>Mr. Nivat Ratanapo, 21/67 Ngamwongvan Road, Chinakiat SOI 2 , Classic Villa Donmoung10210, Thailand</p> <p>Emirates Gold DMCC, Dubai Abu Dhabi Road, P.O Box 24305, Dubai, UAE</p> <p>Mr. Ghaghada Mukesh, Sharjah, Dubai, UAE</p> <p>Mr. Vaya Kumar, Dubai, UAE</p> <p>Mr. Patel, Dubai, UAE</p> <p>Mr. Amit Kumar Dhakan, Dubai, UAE</p> <p>Mr. Suru B., Dubai, UAE</p>	-
2008	<p>Mr. Amit Kumar Dhakan Dubai, UAE</p> <p>Mr. Vaya . Piyush,. Dubai UAE</p> <p>Mr. Ghaghada M.K., Dubai, UAE</p> <p>Mr. H. Pattni, Dubai, UAE</p>	-



	Mr. H. Pattni, Dubai, UAE	
	Mr. Amit Kumar Dhakan, Dubai, UAE	
	Emirates Gold DMCC, P.O Box 24305, Dubai, UAE	
	Mr. Suru, Dubai, UAE	
09	Mr. Jitendra Ghaghada, 11498 Kalba, Sharjah, UAE	
	Mr. A Pattni, UAE	
	Mr. Bhupendra Gordhandas, 11498 Kalba, Sharjah, UAE	
	Mr. Kumar, Dubai, UAE	
10	Mr. Bhupendra Gordhandas, 11498 Kalba, Sharjah, UAE	Mr. Bhupendras Gordhandas, 11498 Kalba, Sharjah, UAE
	Mr. A Pattni, UAE	
	Mr. A Pattni, 11498 Kalba, Sharjah, UAE	Mr. J Ghaghada, 11498 Kalba, Sharjah, UAE
	Bhupendra Gordhandas, 11498 Kalba Sharjah,	Mr Bhupendra Gordhandas, 11498 Kalba Sharjah, UAE
		Mr. A Pattni, 11498 Kalba Sharjah, UAE
	Gordhandas, 11498 Kalba, Sharjah,	Mr. Sagar Manoj Bharatbhai, 532, Fujera, UAE
	hanek, 11498, Kalba, Sharjah,	Mr. Jitendra Ghaghada, 11498, Kalba, Sharjah, UAE
	Kalba Sharjah, UAE	Mr. Vishal Rasiklal, 11498, Kalba, Sharjah, UAE
	lba, Sharjah, UAE	Mr. Sunil K Vaya, 11498, Kalba, Sharjah, UAE
	va, Sharjah,	Mr. Jitendra Chandulal, 11498, Kalba, Sharjah, UAE
		Mr. Bhupendra Gordhandas, 11498, Kalba, Sharjah, UAE
	Sharjah	Mr. Piyush K Vaya, 11498, Kalba Sharjah,

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		UAE
		Mr. Vishal Rasiklal Dhanek, 11498, Kalba, Sharjah,UAE
		Mr. Sunil K Vaya,11498,Kalba, Sharjah, UAE

## 2.2 The Commissioner of Mines and Geology

On 1, July 2013 the Commissioner of Mines and Geology appeared before the committee and informed the committee that:-

- i. Gold occurs in a number of places in the gold bearing greenstone rocks of the Nyanzian Craton of the Western Kenya, stretching from Transmara and Kuria districts, at the border with Tanzania, through Migori, Nyatike, Rongo, Nandi South ( at Chemesi and Kibigori), Bondo, Siaya, Vihiga, Kakamega, Busia, West Pokot, Turkana and Moyale districts.
- ii. Gold mining in the western part of the country started before independence but stopped after the mineable deposits in the specific mine sites were exhausted based on economics and technology at the time. It became uneconomical for the companies that were mining to sustain their operations. However, local artisanal miners have continued to exploit alluvial gold and near surface rick gold veins in the greenbelt areas.
- iii. Studies have shown that the Kakamega, Migori, Siaya, Bondo, Vihiga and Kaimosi areas in Western Kenya and Nyanza have more than 200 recorded artisanal gold prospects with a recorded production of more than 200,000 ounces (6.2 tonnes) of gold in recent years.The Migori Gold Belt alone stands at 34 tonnes of gold but more gold is being mined in Turkana, west Pokot and Moyale areas.
- iv. There about 100,000 artisanal gold miners operating in Kenya. These are usually people working with simple tools and equipment, usually in informal sector, outside the legal regulatory framework and are always in conflict with the large licensed miners. On a each may extract at least one gram of gold per week, implying at least four grams a This alone translates to 4.8 tonnes of gold per year.
- v. The year 2012, about 3.7 tonnes of gold was exported which included 115 kgs the licensed mining companies- Kilimapesa and Karebe.

- vi. The neighbouring countries that share the same geological DNA, ( Uganda, Ethiopia and Tanzania) have recorded even higher gold yields than Kenya, making it justifiable that Kenya has a higher capacity to even produce more gold.
- vii. The Ministry of Mining has no data on gold mining in Kenya, and only relies on commercial explorers' research findings on available mineral resources in the country
- viii. There is no law regulating gold artisanal miners in Kenya since the enactment of the Mining Act Cap 306 in 1940
- ix. There exists no Custom Duty levied on the export of gold from Kenya and the current law is inadequate to promote and regulate mining activities in Kenya.
- x. The activities of the two companies in question- Ushindi Exports Limited and Skyhawk International Limited are above board. The companies are trading in real gold, which is weighed, tested and sealed, under supervision of authorized officers of the Ministry before any shipments of gold from Jomo Kenyatta International Airport is done. He tabled copies of gold export documents from by the two companies dating from 2005 to June 2013

In the draft Mining Bill, currently awaiting Cabinet approval, the Ministry had proposed a 1-3% royalty to be charged on all gold exports from Kenya.

### National Treasury

Cabinet Secretary, National Treasury submitted a written submission to the  
 points of the submission provided by the Cabinet Secretary are as follows:-

Company was registered in 1997 and the registered Directors are Mr. Pattni Rameshkumar Vithaldal Ghaghada. The Company holds an export licence issued by the Commissioner of Mines and Geology. It exports gold through Jomo Kenyatta International Airport to individuals in Dubai who are Mr. Pattni, Jitendra Ghaghada Sunil Vaya and Vishal Rasikal.

Company was registered in the year 2011 and the registered Directors are Mr. Ng'ang'a and Mr. Dhanek Vishal Rasikhlala. The Company exports gold through Jomo Kenyatta International Airport to Mr. Anand Prashant Gordhanas, and Mr. A.Pattini, Mr. Vishal Rasikhlal.

and average monthly

of gold by

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- iii. These two companies purchased the gold (both gold dust and gold bars) from various agents in Nairobi who supposedly buy the same from Artesinal miners from Turkana, Migori and Moyale. The same details are contained in the export permit issued by the Commissioner of mines and Geology which indicates that the said Companies have a smelter in parklands where they allege to smelt the gold into bars.
- iv. The said companies have also started filling VAT returns from January 2013 and has since then remained compliant but there are no records for any imports or export duty paid in the customs system.
- v. Ushindi Exports Ltd paid duties and taxes due and filed corporation tax returns and made the following payments detailed below:-

<b>YEAR</b>	<b>SELF ASSESED AMOUNT (KES)</b>	<b>AMOUNT PAID (KES)</b>
1997	110,740	119,000
1998	173,376	222,221
1999	129,084	115,187
2000	174,644	213,103
2001	153,926	200,000
2002	148,937	267,088
2003	1,152,873	1,695,839
2004	415,290	651,170
2005	631,369	665,318
2006	741,911	1,053,855
2007	1,506,708	1,376,104
2008	880,829	975,000
2009	-	1,400,000
2010	1,645,738	1,700,000
2011	3,052,541	3,052,562
2012	-	3,690,948
<b>2013</b>	<b>-</b>	<b>2,681,940</b>
<b>TOTAL</b>	<b>10,807,226</b>	<b>19,959,335</b>



- vi. However, the Company exported gold and gold bars whose net weight and customs values are indicated in the table below:-

YEAR	NET WEIGHT (KGS)	FOB (KES)
2009	944	2,024,001,545
2010	893	2,371,205,520
2011	756	6,783,982,972
2012	1,605	6,131,675,685
2013	860	3,010,315,280
TOTAL	5,058	16,321,181,002

- vii. Skyhawk International ltd has been filing corporation tax returns and making payments as follows:-

YEAR	SELF-ASESSED AMOUNT	AMOUNT PAID (KES)
2011	2,979,075	2,347,074
2012	1,404,148	1,511,271
2013	-	2,948,847
TOTAL	4,383,223	6,807,192

- viii. The Company exported gold and gold bars whose net weight and customs values are indicated in the table below:-

years	Net Weight(KG)	Value (Kshs)
2010	1501	4,009,695,498,961



2011	756	3,021,964,672
2012	1963	7,743,088,969
2013	1043	-
Total	5263	18,287,116,049

- ix. The two companies transact in cash since the directors of the two companies allege that the banks take time to process, charge heavy commissions and that they have to pay their suppliers in cash to avoid the charges,

However, this will be subjected to further verification by the Central Bank of Kenya.

- x. The currency declaration at the port of entry/exit is to be done using the currency declaration form CBK/C.D./1. However, the forms are no longer produced and Kenya Revenue Authority has been using photocopy forms of the same form pending issuance of new forms by the competent authority, the Financial Reporting Centre, as provided in the Proceeds of Crime and Anti Money Laundering Act (POCAMLA)
- xi. The activities of these two companies are subject of investigation currently being handled by the Directorate of Criminal Investigation and the Central Bank of Kenya.

#### 2.4 The Directorate of Criminal Investigation

The Director of Criminal Investigations (DCI) appeared before the Committee on 01, August 2013, and submitted a preliminary investigation report on the gold mining and export by the two companies and also made submissions. The Key highlights of his submissions are as follows:-

- i. On 22 ,May 2013 under the instruction of the Director the Flying Squad led by its Officer-in Charge commenced investigations into the activities of the two companies-Ushindi Limited. An enquiry file No 8/2013 was opened and a team of investigators gathered relevant documents from various parties. The findings of this preliminary investigations are as follows:
- ii. Both Ushindi Exports Limited and Skyhawk International Limited are duly registered by the Registrar of Companies and have also special dealer license issued by the Commissioner of Mines and Geology

- iii. The two are sister companies operating under the chairmanship of Mr. Nagnichandra Pattni and carry out their business from their offices located at 5<sup>th</sup> Parklands Avenue, House No.19.
- iv. In their recorded statements, the directors of the two companies alleged that they buy gold from artisanal Miners and collectors from all over the country. They also buy some of the gold from Congolese, Tanzanian and Ugandan merchants.
- v. Mr. Nagni Pattni requested and obtained from the Commissioner of Mines and Geology a letter waiving the requirement that they comply with section 11 of the Trading in Unwrought and Precious Metals Act cap 309 which requires that the trader maintains a register of all suppliers of gold. They claimed some Miners did not want their names to be disclosed since they were not licensed.
- vi. The Director of Criminal Investigation (DCI) was able to establish from the Commissioner of Mines and Geology that since 2005 the two companies had exported up to 13.08 tonnes of gold worth Kes 37.7 billion of gold bought from local artisanal miners and gold merchants from neighbouring countries.
- vii. The directives issued by the current and former Commissioners of Mines & Geology under letters ref; CONF/M/2780/VOL.X/ (38) dated 6<sup>th</sup> January, 2012 and M/748/AA-170/ (25) dated 3<sup>rd</sup> April, 1997 respectively, which contravened the provisions of Section 11 of Trading in Unwrought Precious Metal Act Cap 309 Law of Kenya, have created a situation which has made it difficult to trace the source or origin of the gold handled/ traded in the country.
- viii. The Kenya Revenue Authority has given a tax due demand note of Kes 2.8 Billion to the said companies after the DCI have commenced investigation into the activities of the two companies.
- ix. 17 Export Entries and Currency Declaration Forms obtained from JKIA in respect of export of gold by the two companies indicate that a total of 536,742.4 gms (equivalent to approximately 536 Kg) was exported on different dates between February 2013 and May 2013. Considering that these are only two companies trading with such magnitude of gold, it is apparent that there is a lot of gold being traded whose source is unknown.
- x. 17 gold export files indicate that the two companies declared a total of US Dollars 25,530,000 equivalent of Kes. 2,185,812,740/on gold export. This amount remains unaccounted for

considering no evidence was obtained by Investigation Team that the money was banked or sold to a licensed dealer.

- xi. Data obtained from Mines & Geology indicate that the two companies in the year 2013, from January to June, exported 1,895,392 gms, equivalent to approximately 1,895 Kgs. of gold
- xii. The Directors of the two companies M/S Skyhawk International Ltd and M/S Ushindi Exports Ltd which exported the gold namely: Dhanek Vishal Rasiklal and Frank Nganga Gikonyo (for M/S SKYhawk International Ltd), and Arvindkumar Pattni, Rameshkumar Vithaldas Gagada (for M/S Ushindi Exports Ltd) be charged with failing to keep registers as per provisions of Section 11 of Trading in Unwrought Precious Metal Act Cap 309 Laws of Kenya.
- xiii. The Investigations are still in progress and will be completed to the satisfaction of the Kenyan people and their parliament

## **2.5 Evidence by Directors of Ushindi Exports Ltd and Skyhawk International Ltd**

The Directors of Ushindi Exports Ltd and Skyhawk Limited, Mr. Arvind Pattni and Frank Gikonyo appeared before the Committee on Tuesday 6, August 2013 and informed the Committee that:-

- i. The Two companies are sister companies operating under the Chairmanship of Mr. Nagnichandra Pattni and are maintained as separate entities to spread risks and liabilities.
- ii. They buy Gold intermediaries and gold collectors who find their way to their premises in Parkland area
- iii. They have been given letters by three Commissioners of Mines and Geologies that suspended the provision of the Section 11 of the Trading in Unwrought and Precious metals Act that required them to keep records of those they buy gold from. These Commissioners are; Mr. Owayo, Mr. Biwott and Mr. Moses Masibo.
- iv. They have all the receipts of all gold buying and sales transactions and promised to deliver them to the committee the following day. They pledged to provide the relevant invoices, cash declaration documents from Dubai and the Dubai customs documents confirming entry of gold exports from Kenya to committee
- v. The directors of the two companies had the responsibilities of making the relevant declarations of cash (Dollars) at Jomo Kenyatta International Airport and not the agents sent to bring the cash from Dubai. They said that their contacts (accompanying the cash) from Dubai returned with gold from the airport and never entered the country.



- vi. They trade in dollars because gold prices are pegged on the dollar.
- vii. They do not use banks to cushion their monies against bank charges and commissions and also the fact that most banks do not have enough supply of dollars as may be demanded at the time of transaction.
- viii. Their companies and directors are tax-compliant and have been certified as such by Kenya Revenue Authority (KRA).
- ix. The Kenya Revenue Authority (KRA) had sent to them a tax arrears claim of Kes 2.8 billion after these investigations have started.

## **2.6 Evidence by Concern Citizens- NGO**

The Executive Director of the Concern Citizens NGO, Mr. Bradley Ouna appeared before the Committee on 6, August 2013. The Executive Director had made accusations against the Clerk of the National Assembly that his NGO had been denied a chance to give evidence to the Committee. He also alluded that some Members had been compromised by the directors of the companies under investigation. He however could not provide the written proof requesting for an opportunity to give evidence. Further the NGO Director disowned part of the document sent by the NGO to the Committee.

After deliberation on the matter Members were unanimous that the NGO had not only failed to justify the basis of his allegations, but had also cast aspersions to the credibility of the Committee. Moreover, even after being given the opportunity to appear before the Committee, he did not adduce any new evidence to the matter under investigation. He was however, asked by Committee to submit any other relevant information that he might be in his possession, which he obliged to.

## **2.7 Evidence by Hon. Elias Bare Shill, MP, Fafi Constituency**

The Member of Parliament of Fafi, Hon Elias Bare Shill whose sought the Statement from the Committee appeared before the Committee on 28 August 2013 and informed the committee that:-

- i. He is waiting for the Committee to fully investigate the matter and give the report immediately the House resumes from recess.
- ii. He was interested on certain details such as the amount of gold that Kenya produces; the issue of gold from Congo being transported through Kenya; the suspicious amount of money of such amounts to be transported through the Jomo Kenyatta Airport and within the country in cash



- iii. The forms used by the companies were photocopies and were not proper to be used
- iv. 1.9 tons of gold was exported out of the country within six months from January 2013 to May 2013 worth Kes 7 Billion- which if released to the economy would have changed the lives of those who live in this areas where the companies claim that the artisanal miners are based.
- v. He suspects that the 40 tons of gold that the UN claimed is smuggled out of Congo and other conflict regions are transported through the country.

## CHAPTER 3

### COMMITTEE FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

#### 3.0 Committee Findings

From the evidence received and written submissions provided to the this inquiry the Committee made the following Observations:-

- i. **Regarding the total Amount of gold exported since 2005**, the Committee found that the two companies allegedly exported a total of 13.8 tonnes of gold exports and their transaction recorded by the Commissioner of Mines and Geology
- ii. The Committee was furnished with the **names of companies and individuals in the United Arab Emirates, who have been trading with the two companies** as indicated on pages 11 and 12.
- iii. **On the Total amount of Duty paid by the two Companies since 2005**, the Committee established that Ushindi exports Limited had paid **Kshs 15, 824, 557**, while Skyhawk had paid **Kshs. 6,807, 192**. Both amounts were self- assessed.
- iv. **Regarding the use of Cash Transactions**, the companies alleged that they opt not to use banks in order to cushion their monies against bank charges and commissions and that most banks do not have enough supply of dollars as may be demanded at the time of transaction.
- v. **On the reason why the Companies are not using official monetary instruments declaration forms-** the Committee found out that the currency declaration at the port of entry/exit is done using the currency declaration form CBK/C.D./1. However, the forms were out of production and Kenya Revenue Authority has been using photocopy forms of

the same pending issuance of new forms by the competent authority, the Financial Reporting Centre, as provided for in the Proceeds of Crime and Anti Money Laundering Act (POCAMLA)

- vi. **Regarding their agents in the United Arab Emirates, as shown in the counterfoil forms,** the Committee could not confirm whether their only agents are Manephis Stores as in most cases gold in Dubai is sold on a open market basis
- vii. **On the claim that US\$ 40 million is transited through JKIA on monthly basis; and, the possibility that those large amounts could be used to fund terrorism, purchase or smuggle arms or launder money,** the Committee found out that the activities of the two companies are being investigated by the Directorate of Criminal Investigation and the Central Bank of Kenya.

### 3.1 Committee Observations

Alongside the Committee findings, the Committee made the following observations in respect to the role of the office of the Commissioner of Mines and Geology and the activities of the two companies;-

- i. The Ministry of Mining has no official geologically surveyed data on occurrence of Gold in the country. In the absence of this data it is difficult to ascertain the facts about the quantity and economic viability of gold in the Country.
- ii. The Trading in Unwrought Precious Metals act of 1933 and Mining Act are inadequate to regulate and promote mining activities in the country- These laws do not address the current opportunities and challenges in the sector.
- iii. There are neither royalty levies paid for Gold mining, nor export levy on the gold produced in the country and the gold transaction by the two companies did not yield significant value to the exchequer
- iv. The Commissioners of Mines and Geology as a matter of fact could not ascertain the amount of gold produced in the country and more specifically the origin and the quantity of gold exported by the two companies since he had no official data of the artisanal miners in the country

- v. The two companies self assessed their returns and hardly did the KRA conduct monitoring and auditing to ascertain the tax due to the government. It is only after the Committee started its investigation that KRA sent a demand note to the two companies for a tax arrears of Kes 2.8 Billion
- vi. While the two Companies had valid trading Licenses and Export Permits there is no evidence to suggest that the Gold claimed to have been exported by these two companies under the supervision of the Commissioner of Mines and Geology, was mined in Kenya.
- vii. The response by the Commissioner that artisanal miners can produce 4.8 tonnes of gold per year cannot be verified, as there is no evidence of corresponding rise in incomes in the respective counties.
- viii. The Commissioner had issued blanket letters to exporters allowing the exporters not to maintain the register of suppliers as provided for under section 11 of the Trading in Wrought Precious Metals Act Cap 309 laws of Kenya. This leverage allowed the two companies to bear no responsibility to document the origin of the gold and the identities of the sellers.
- ix. The Commissioner of mines and Geology violated provisions of section 3 and section 11 of the Act by irregularly and unqualifiedly granting letters suspending provisions of an Act of Parliament to benefit private companies in complete disregard of the law.
- x. The continued use of photocopies of the original official monetary instrument declaration forms took place with the full knowledge of the Central Bank and the Kenya Revenue authority. However, none of these Government agencies questioned that anomaly which suggests either laxity on the part of these agencies or a collusion to facilitate these two companies to carry out their gold export using irregular means.
- xi. The two companies and their directors knowingly violated section 3 and 11 of the Act for their own benefit. The Companies could not provide any evidence of purchase of Gold from the artisanal miners leading to the conclusion that they are dealing with and engaging in gold smuggled into the country



### 3.2 Committee Recommendations

From the Evidence adduced and the observations made the committee makes the following recommendations:-

- i. The overhaul of the Mining act and the Trading in Unwrought and precious metals act to fully explore and regulate the mining sector for the economic benefit of the people of Kenya
- ii. The Office of Director of Public Prosecutions should consider charging the Commissioners of Mines and Geology for violation of section 3(d)(3) and Section 11 of the Trading in Unwrought Precious metals Act and abuse of office contrary to section 101(1) of the Penal code; and the Director of the two companies should also be charged for failing to keep registers consistent with Section 11 of the Trading in Unwrought Precious metals Act.
- iii. The investigation being conducted by the Criminal investigation Department (CID) and the Central Bank of Kenya regarding the possibility of money laundering by the two companies be expedited and concluded in order to lift the moratorium placed on gold exports in Kenya.
- iv. The Ministry should recognize, legalize and formalize artisanal mining activities in Kenya. It should provide incentives to the miners and also guarantee their safety and security during the course of their operations.
- v. A levy on export of gold and all other minerals should be formalized and to create a watertight framework in order to prevent document manipulation, tax evasion and fraud in the sector.
- vi. The Ministry of Mining should put in place strict guidelines for the exportation of Gold and other unwrought precious metals. The officers in Mines and Geology department should also be equipped with appropriate training to be able to isolate gold from other precious metals.
- vii. Kenya Revenue Authority to re-assess the conduct and the value of the gold export transactions by the two companies to recover any taxes due to the Government.



.viii. Although the provisions of Central Bank of Kenya require that a person with Foreign Currency declares at the point of entry, the Committee recommends payment transactions involving gold exports to be channeled through Commercial Banks.

## **4.0 APPENDICE**

MINUTES OF THE FIFTEENTH SITTING OF THE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, MARCH 20<sup>TH</sup> 2014 IN THE C.P.A ROOM, MAIN PARLIAMENT BUILDING AT 11.00 A.M.

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**PRESENT**

1. Hon. Alexander Kosgey, M.P. – Vice Chairperson
2. Hon. Chachu Ganya, M.P.
3. Hon. Joyce Emanikor, M.P.
4. Hon. Diriye M. Abdullahi, MP
5. Hon. Kathuri Murungi, M.P.
6. Hon. George Oner Ogalo, M.P.
7. Hon. Sunjeev Birdi, M.P.
8. Hon. Ronald Tonui, M.P.
9. Hon. Abdulaziz Ali Farah, M.P.
10. Hon. Ejidius Njogu Barua, M.P
11. Hon. Dr. Wilber Ottichilo, M.P
12. Hon. Abdi Noor Ali, M.P.
13. Hon. Opiyo Wandayi, M.P.
14. Hon. Jude Njomo, M.P.
15. Hon. Charles Geni Mongare, M.P.
16. Hon. Shukra Hussein Gure, M.P.

**ABSENT WITH APOLOGY**

1. Hon. Amina Abdalla, M.P. – Chairperson
2. Hon. Zainab Kalekye Chidzuga
3. Hon. Hassan Dukicha, M.P
4. Hon. Moitalel Ole Kenta, M.P.
5. Hon. Gideon Mwiti Irea, M.P.
6. Hon. Major Muluvi Mutua MP
7. Hon. Richard K. Makenga, M.P.
8. Hon. Samuel Mathenge Ndiritu, M.P.
9. Hon. Jackson K. Rop, M.P.
10. Hon. Alice Ng'ang'a, M.P.
11. Hon. Aisha J. Katana, M.P.
12. Hon. Peter Kinyua, M.P.
13. Hon. (Dr) Reginalda N. Wanyonyi, M.P.

**IN-ATTENDANCE – NATIONAL ASSEMBLY**

Mr. Ahmad Kadhi - First Clerk Assistant

Mr. Ahmed Hassan Odhwa – Senior Researcher

**MIN. 53/2014 – PRELIMINARIES**

The Meeting was called to order and proceedings commenced with a word of prayer.



MIN. 54/2014 – ADOPTION OF THE REPORT OF THE INQUIRY INTO GOLD MINING IN KENYA

The Committee deliberated on the draft report on the matter regarding the request for a statement by the Hon. Bare Shill, MP and made the following observations:

- i. The Ministry of Mining has no official geologically surveyed data on occurrence of Gold in the country. In the absence of this data it is difficult to ascertain the facts about the quantity and economic viability of gold in the Country.
- ii. The Trading in Unwrought Precious Metals act of 1933 and Mining Act are inadequate to regulate and promote mining activities in the country- These laws do not address the current opportunities and challenges in the sector.
- iii. There are neither royalty levies paid for Gold mining, nor export levy on the gold produced in the country and the gold transaction by the two companies did not yield significant value to the exchequer
- iv. The Commissioners of Mines and Geology as a matter of fact could not ascertain the amount of gold produced in the country and more specifically the origin and the quantity of gold exported by the two companies since he had no official data of the artisanal miners in the country
- v. The two companies self-assessed their returns and hardly did the KRA conduct monitoring and auditing to ascertain the tax due to the government. It is only after the Committee started its investigation that KRA sent a demand note to the two companies for a tax arrears of Kes 2.8 Billion
- vi. While the two Companies had valid trading Licenses and Export Permits there is no evidence to suggest that the Gold claimed to have been exported by these two companies under the supervision of the Commissioner of Mines and Geology, was mined in Kenya.

- vii. The response by the Commissioner that artisanal miners can produce 4.8 tonnes of gold per year cannot be verified, as there is no evidence of corresponding rise in incomes in the respective counties.
- viii. The Commissioner had issued blanket letters to exporters allowing the exporters not to maintain the register of suppliers as provided for under section 11 of the Trading in Wrought Precious Metals Act Cap 309 laws of Kenya. This leverage allowed the two company to bear no responsibility to document the origin of the gold and the identities of the sellers.
- ix. The Commissioner of mines and Geology violated provisions of section 3 and section 11 of the Act by irregularly and unqualifiedly granting letters suspending provisions of an Act of Parliament to benefit private companies in complete disregard of the law.
- x. The continued use of photocopies of the original official monetary instrument declaration forms took place with the full knowledge of the Central Bank and the Kenya Revenue authority. However, none of these Government agencies questioned that anomaly. This suggests either laxity on the part of these agencies or a collusion to facilitate these two companies to carry out their gold export using irregular means.
- xi. The two companies and their directors knowingly violated section 3 and 11 of the Act for their own benefit. The Companies could not provide any evidence of purchase of Gold from the artisanal miners leaving the only option as dealing with and engaging in gold smuggled into the country.

#### **MIN NO. 55/2014 COMMITTEE RECOMMENDATIONS**

After extensive deliberations, the committee made the following recommendations:

1. The overhaul of the Mining act and the Trading in Unwrought and precious metals act to fully explore and regulate the mining sector for the economic benefit of the people of Kenya

2. The Office of Director of Public Prosecutions should consider charging the Commissioners of Mines and Geology for violation of section 3(d)(3) and Section 11 of the Trading in Unwrought Precious metals Act and abuse of office contrary to section 101(1) of the Penal code; and the Director of the two companies should also be charged for failing to keep registers consistent with Section 11 of the Trading in Unwrought Precious metals Act.
3. The investigation being conducted by the Criminal investigation Department (CID) and the Central Bank of Kenya regarding the possibility of money laundering by the two companies be expedited and concluded in order to lift the moratorium placed on gold exports in Kenya.
4. The Ministry should recognize, legalize and formalize artisanal mining activities in Kenya. It should provide incentives to the miners and also guarantee their safety and security during the course of their operations.
5. A levy on export of gold and all other minerals should be formalized and to create a watertight framework in order to prevent document manipulation, tax evasion and fraud in the sector.
6. The Ministry of Mining should put in place strict guidelines for the exportation of Gold and other unwrought precious metals. The officers in Mines and Geology department should also be equipped with appropriate training to be able to isolate gold from other precious metals.
7. Kenya Revenue Authority to re-assess the conduct and the value of the gold export transactions by the two companies to recover any taxes due to the Government.
8. Although the provisions of Central Bank of Kenya require that a person with Foreign Currency declares at the point of entry, the committee recommends payment transactions involving gold exports to be channeled through Commercial Banks.

Members present unanimously adopted recommendations contained in the report. The report was proposed for adoption by the Hon Dr. Wilber Ottichillo, M.P. and seconded by the Hon. Opiyo Wandayi, M.P.



MIN. 56/2014 – ANY OTHER BUSINESS

1. STUDY TOUR TO SEAMIC INSTITUTE AND AFRICAN BARRICK GOLD

Members were informed of the proposed invitation extended to the Committee by African Barrick Gold to visit its mines in Tanzania. Further it was proposed that the Committee uses that opportunity to Visit the SEAMIC Institute in Arusha. The Institute is a Centre of excellence in all aspects of Mining studies and research. The Committee wishes to learn best mining practices that encompass Corporate Social Responsibility, Sound Environment Management Practices as well as equitable sharing of revenues.

The Secretariat had already prepared a programme which was considered by the Committee. Members resolved that the Visit be undertaken during the third week of April, 2014.

2. CASES OF POACHING

Members expressed grave concern on the vast cases of poaching and Human/Wildlife conflicts. Having observed that the National Assembly through the Departmental Committee on Environment and Natural Resources had enacted the Wildlife Conservation and Management Act 2013, there were still challenges in its full implementation and enforcement. The Committee recalled the sufficient allocations for recruitment of rangers and equipment to tackle poaching voted in the recent supplementary Estimates 2014. Despite these efforts poaching still went on unchecked.

MIN. 57/2014 – ADJOURNEMENT

The Meeting was adjourned to Tuesday 25<sup>th</sup> March, 2014 at 11.00 am to be held in the Commonwealth Parliamentary Room (C.P.A.)

SIGNED.....

Hon. Amina A. Abdalla, MP

(Chairperson)

Committee on Environment and Natural Resources

DATE.....25/3/2014.....