



Approved
SNA
17/10/24

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)

| | |
|---|---------------------------|
|  THE NATIONAL ASSEMBLY PAPERS LAID | |
| DATE: 17 OCT 2024 | |
| DAY: <input type="text"/> | |
| TABLED BY: | <i>Hon. David Gikaria</i> |
| CLERK-AT THE-TABLE: | <i>TRACY CHERET</i> |

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. Masito Fatuma Hamisi, MP
Kwale County
ODM Party

Hon. Mwanyanje Gertrude Mbeyu, MP
Kilifi County
ODM Party

Hon. Nguro Onesmus Ngogoyo, MP
Kajiado North Constituency
UDA Party

Hon. Hiribae Said Buya, MP
Galole Constituency
ODM Party

Hon. Titus Lotee, MP
Kachaliba Constituency
KUP Party

Hon. Salim Feisal Bader, MP
Msambweni Constituency
UDA Party

Hon. Mohamed Tubi Bidu, MP
Isiolo South Constituency
Jubilee Party

Hon. Emathe Joseph Namuar, MP
Turkana Central Constituency
UDA Party

Hon. Yakub Adow Kuno, MP
Bura Constituency
UPIA 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

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

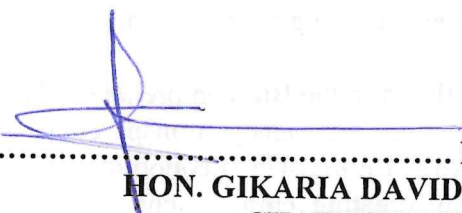
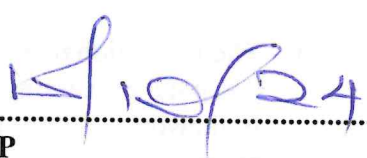
127. Having considered the Bill, the Committee made the following observations:


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

| | |
|--|--------------------|
|  THE NATIONAL ASSEMBLY PAPERS LAID | |
| DATE: 17 OCT 2024 | |
| DAY. <input type="text"/> | |
| TABLED BY: | HON. DAVID GIKARIA |
| CLERK-AT-THE-TABLE: | TRACEY AHESET |