



REPUBLIC OF KENYA

PARLIAMENT

SENATE BILLS

(Bill No. 6 of 2022)

**THE NATURAL RESOURCES (BENEFIT
SHARING) BILL, 2022**



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THE NATURAL RESOURCES (BENEFIT SHARING) BILL, 2022

A Bill for

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

ENACTED by the Parliament of Kenya, as follows —

PART I – PRELIMINARY

Short title.

1. This Act may be cited as the Natural Resources (Benefit Sharing) Act, 2022.

Interpretation.

2. In this Act, —

“affected county” means a county in which a natural resource is exploited;

“affected entity” means an organization or person involved in the exploitation of a natural resource to which this Act applies;

“Authority” means the Benefit Sharing Authority established under section 5;

“benefit” means any gains, proceeds or profits from the exploitation of natural resources;

“benefit sharing” means the sharing of any benefits arising from the exploitation of natural resources in a fair and equitable manner;

“benefit sharing agreement” means an agreement on the manner in which revenue accruing from the exploitation of natural resources shall be shared out between an affected entity and a county;

“Board” means Board of the Benefit Sharing Authority

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constituted under section 7; and

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;

“county executive committee member” means the county executive committee member responsible for matters relating to finance in the respective county;

“Director-General” means Director-General of the Benefit Sharing Authority appointed under section 16(1).

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

“industrial fishing” means the exploitation of fishing resources—

No. 35 of 2016.

(a) using an industrial or a semi industrial fishing vessel as provided under the Fisheries Management and Development Act; or

(b) by a foreign entity.

“local community” means

(a) people living in a ward within which a natural resource is situated; and

(b) people displaced to make way for the exploitation of a natural resource;

“natural resources” means the natural resources provided under section 3 of this Act;

No. 17 of 2015.

“officer” has the meaning assigned to it under section 3 of the Companies Act; and

“royalties” includes fees or payments by whatever name, paid by an affected entity for the exploitation or exploration of a natural resource in Kenya.

Application of the Act.

3. This Act shall apply to the following natural resources—

(a) sunlight;

- (b) surface and underground water;
- (c) forests, biodiversity and genetic resources;
- (d) wildlife resources;
- (e) industrial fishing;
- (f) wind;
- (g) geothermal resources;
- (h) minerals; and
- (i) petroleum.

Guiding principles
of benefit sharing.

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

- (a) transparency and inclusivity;
- (b) revenue maximization and adequacy;
- (c) efficiency and equity;
- (d) accountability and participation of the people;
- (e) rule of law and respect for human rights of the people;
- (f) sustainable natural resources management; and
- (g) environmental protection and restoration.

PART II – ESTABLISHMENT AND MANAGEMENT OF THE BENEFIT SHARING AUTHORITY

Establishment of
the Benefit Sharing
Authority.

5. (1) There is established the Benefit Sharing Authority.

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

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing such other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

Functions of the
Authority.

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

- (a) coordinate the preparation of benefit sharing agreements between an affected county and an affected entity;
- (b) review and, where appropriate, determine the royalties payable by an affected entity engaged in natural resource exploitation;
- (c) identify counties that are required to enter into a benefit sharing agreement under this Act in consultation with the respective county governments;
- (d) oversee the administration of funds set aside for community projects to be implemented under a benefit sharing agreement;
- (e) facilitate and monitor the implementation of a benefit sharing agreement entered into between a county government and an affected entity;
- (f) conduct research regarding the exploitation and development of natural resource and benefit sharing in Kenya;
- (g) determine appeals arising out of conflicts regarding the preparation and implementation of benefit sharing agreements;
- (h) advise the national government on policy and the enactment of legislation relating to benefit sharing in resource exploitation;
- (i) oversee the establishment of benefit sharing

committees and forums established under this Act;

- (j) ensure the proper and timely payment of funds to counties and local communities as provided under this Act;
- (k) build the capacity of local communities in negotiations for benefit sharing and implementation of related projects;
- (l) prepare national guidelines on benefit sharing in consultation with the relevant stakeholders;
- (m) identify, in consultation with sector-specific organizations, incentives and benefits to promote the conservation of natural resources;
- (n) promote value addition in natural resources;
- (o) promote local content initiatives on the exploration and exploitation of natural resources under this Act; and
- (p) promote the restoration of the environment after the exploitation of a natural resource in an affected county.

(2) The Authority may, in furtherance of its functions, collaborate with such other bodies or organizations within or outside Kenya as it may consider necessary for the better performance of its functions under this Act.

(3) The Authority shall have regard to the following in the performance of its functions—

- (a) all existing law regulating the natural resources sector in Kenya;
- (b) all existing arrangements for benefit sharing between local communities and an affected entity under any law in Kenya; and
- (c) obligations imposed on Kenya under any international treaty or agreement relating to the exploitation of natural resources.

Board of the
Authority.

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

- (a) a chairperson appointed by the President with the

approval of Parliament;

- (b) the Principal Secretary responsible for finance or a designated representative;
- (c) the Principal Secretary responsible for mining or a designated representative;
- (d) the Principal Secretary responsible for petroleum or a designated representative;
- (e) the Principal Secretary responsible for energy or a designated representative;
- (f) two persons of opposite gender nominated by the Council of County Governors to represent such communities as the Council shall determine;
- (g) one person nominated by a registered association representing a majority of members of county assemblies to represent local communities;
- (h) one person nominated by an umbrella body representing the interests of the private sector in Kenya; and
- (i) the Director-General appointed by the Board in accordance with Section 16.

(2) The Chairperson shall be competitively recruited by the Public Service Commission and appointed by the President by notice in the *Gazette*.

(3) The Cabinet Secretary shall, with the approval of Parliament, appoint the persons nominated under subsection (1)(f), (g) and (h) by notice in the *Gazette*.

(4) In nominating and appointing persons as members of the Board, the nominating authorities and the Cabinet Secretary shall—

(a) have regard to—

- (i) the principles of non-discrimination on the basis of gender, disability, youth and marginalized persons under the Constitution; and
- (ii) the requirements of Chapter Six of the Constitution; and

(b) ensure that the nominations reflect the regional

diversity of the people of Kenya.

Tenure of office.

8. (1) The members of the Board other than the Director-General shall—

- (a) hold office for a term of three years and shall be eligible for reappointment for one further term; and
- (b) serve on a part-time basis.

(2) Paragraph (1)(a) shall not apply to Principal Secretaries who serve as members of the board.

Qualifications for appointment.

9. A person is qualified for appointment as the chairperson or a member of the Board under Section 7 (1) (f), (g) and (h) if that person—

- (a) holds a degree from a university recognised in Kenya; and
- (b) has knowledge and at least seven years' experience in—
 - (i) law;
 - (ii) environmental management;
 - (iii) economics;
 - (iv) public finance;
 - (v) mining;
 - (vi) community development; or
 - (vii) any other related field.

Vacation of office.

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

- (a) is unable to perform the functions of the office by reason of mental or physical incapacity;
- (b) is otherwise unable or unfit to continue serving as the Chairperson or member of the Board;
- (c) is adjudged bankrupt;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

- (e) is absent, without reasonable cause, from three consecutive meetings of the Board;
- (f) resigns in writing addressed, in the case of the Chairperson, to the President and in the case of a member appointed under section 7 (1) (f), (g) or (h), to the Cabinet Secretary;
- (g) fails to declare their interest in any matter being considered by the Board; or
- (h) dies.

Powers of the Board.

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

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Authority in such manner and for such purposes as best promote the purposes for which the Authority is established;
- (c) receive any gifts, grants, donations or endowments made to the Authority or any other monies in respect of the Authority and make disbursements therefrom in accordance with the provisions of this Act;
- (d) require from any person such information as it considers necessary for the performance of its functions under this Act; and
- (e) open and operate a bank account for the funds of the Authority into which all monies received by the Authority shall be paid in the first instance and out of which all payments made by the Authority shall be made.

(2) The Board shall consult the respective Cabinet Secretary responsible for an affected natural resource in carrying out its functions under this Act.

Committees of the Board.

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

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

Power to delegate.

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

Remuneration and allowances.

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

Conduct of business and affairs of the Board.

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

Director-General.

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

(2) A person qualifies for appointment as a Director-General under Subsection (1) if such person —

- (a) holds a degree from a university recognized in Kenya; and
- (b) has knowledge and at least ten years' experience in —
 - (i) law;
 - (ii) environmental management;
 - (iii) economics;
 - (iv) public finance;
 - (v) mining;
 - (vi) community development; or
 - (vii) any other related field.

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

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Tenure of office of
the Director-
General.

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

Functions of the
Director-General.

18. (1) The Director-General shall be the Chief Executive Officer of the Authority and secretary to the Board.

(2) The Director-General shall, for the effective performance of the functions under this Act and subject to the direction of the Board —

- (a) be responsible for the day-to-day management of the Authority;
- (b) manage the funds, property and affairs of the Authority;
- (c) be responsible for the management of the staff of the Authority;
- (d) cause to be prepared for the approval of the Board—
 - (i) the strategic plan and annual plan of the Authority; and
 - (ii) the annual budget and audited accounts of the Authority; and
- (e) perform such other duties as may be assigned by the Board.

Vacation of office
of the Director-
General.

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

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify removal from office under the terms and conditions of service.

Common seal of
the Authority.

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

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

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

Staff of the
Authority.

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

(2) The staff employed under subsection (1) shall serve on such terms and conditions as the Board may, subject to Section 51, determine.

Protection from
personal liability.

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

Liability of the
Authority to
damages.

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

PART III— COLLECTION OF ROYALTIES AND FEES

Imposition of
royalties and fees.

24. (1) The Authority shall, in consultation with the Council of County Governors and relevant national government entities and upon conducting public participation, determine and review the amount of royalties and fees payable by affected entities in respect of a particular sector where a written law does not prescribe the royalties or fees.

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

- (a) the total capital investment of the affected entity;
- (b) the prevailing international market value of the commodity from which royalty is payable;
- (c) the commercial viability of the natural resource being exploited;
- (d) the impact of the exploitation on the local community, the affected county and the environment; and
- (e) obligations of the affected entity under any existing benefit sharing agreement with the affected county.

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

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

Kenya Revenue
Authority to collect
royalties.

25. (1) The Kenya Revenue Authority shall collect royalties as determined by the Authority under Section 24 from affected entities and any other payment of royalties from natural resource exploitation undertaken under any other written law.

(2) The Kenya Revenue Authority shall declare and pay monies collected under Subclause (1) to the Consolidated Fund by the fifth day of every month.

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

(4) The Kenya Revenue Authority shall declare and account to the Authority the total sum collected from affected entities with respect to each natural resource as provided for under this Act.

(5) The Authority shall submit to the respective county government declarations received from the Kenya Revenue Authority under Subsection (4) at least once every quarter.

(6) The county executive committee member in the respective county shall submit to the respective local community declarations received from the Authority under Subsection (5) within twenty one days of receipt.

Revenue sharing
ratio.

26. (1) The revenue collected under this Act shall, subject to Subsection (2), be shared between the National Government and respective county governments in the ratio of sixty percent to the National Government and forty percent to the county governments.

(2) At least sixty per cent of the revenue assigned to county governments under subsection (1) shall be utilised to implement local community projects and forty per cent of that revenue shall be utilised for the benefit of the entire county.

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

(4) In determining the ratio of sharing the retained revenue amongst counties sharing a resource under Subsection (3), the Authority shall take into account —

- (a) the contribution of each affected county in relation to the resource;
- (b) the inconvenience caused to the county in the exploitation of the natural resource; and
- (c) any existing benefit sharing agreement with an affected entity.

(5) The Authority shall, in consultation with the lead agencies with respect to each natural resource, review the revenue sharing ratio after every five years and present its recommendations to Parliament for approval.

PART IV— BENEFIT SHARING AGREEMENT

Benefit sharing

27. (1) Every affected entity shall enter into a benefit

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agreement.

sharing agreement with the relevant county government before the exploitation of a natural resource in the affected county.

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

Establishment of a
County Benefit
Sharing
Committee.

28. (1) Each county that has a natural resource to which this Act applies shall establish a County Benefit Sharing Committee.

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

- (a) the county executive committee member responsible for finance;
- (b) the county executive committee member responsible for matters relating to natural resources;
- (c) two technical officers of the relevant county departments, appointed by the county executive committee member in consultation with the county executive committee member responsible for the respective natural resources; and
- (d) five persons, two of whom shall be of the opposite gender, elected by the local communities where the natural resource is found and representing the areas with the main natural resources within the county.

(3) The members of the County Benefit Sharing Committee elected under Subsection (2)(d) shall be appointed by the county governor and serve for one single term of five years.

(4) The members of the County Benefit Sharing Committee shall be paid such allowances as shall be determined by the County Public Service Board in consultation with the Salaries and Remuneration Commission.

(5) The members of the County Benefit Sharing Committee shall elect a chairperson from amongst the members elected under Subsection (2)(d).

(6) The county chief officer responsible for matters relating to natural resources shall serve as the secretary to the County Benefit Sharing Committee.

(7) The Cabinet Secretary shall, in consultation with the Council of County Governors, make Regulations for the conduct of the affairs of the County Benefit Sharing Committees.

(8) Where a resource bestrides two or more counties, the affected counties' Benefit Sharing Committees shall constitute a joint committee with equivalent membership to oversee the negotiation of a joint benefit sharing agreement with an affected entity.

Functions of a
County Benefit
Sharing
Committee.

29. The functions of each County Benefit Sharing Committee shall be to—

- (a) in consultation with the respective local community and upon conducting public participation, negotiate the terms of a benefit sharing agreement with an affected entity on behalf of the county government;
- (b) monitor the implementation of projects required to be undertaken in the county pursuant to a benefit sharing agreement;
- (c) determine the amount of money to be allocated to each local community from monies that accrue under a benefit sharing agreement under this Act;
- (d) convene public forums to facilitate public participation with regard to proposed benefit sharing agreements during negotiations prior to execution by the county government;
- (e) convene public forums for the purpose of facilitating public participation with regard to community projects proposed to be undertaken using monies that accrue to a county government pursuant to this Act; and

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

Approval of a benefit sharing agreement.

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

(2) Each benefit sharing agreement shall be deposited with the Authority within thirty days of its execution and a copy shall simultaneously be submitted to the Senate.

Local Community Benefit Sharing Forum.

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

(2) A public officer shall not be eligible for election as a member of a local community benefit sharing forum.

(3) The members of a local community benefit sharing forum shall be appointed by the respective county executive committee member responsible for matters relating to natural resources and serve for a single term of five years.

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

(5) A local community benefit sharing forum shall not hold more than eight meetings in one year.

(6) The local community benefit sharing forum shall ensure that the respective local community benefits from the exploitation of natural resources and shall, for this purpose —

- (a) collect and collate the views of the local community and represent the interests of the local community in the negotiations with the respective County Benefit Sharing Committee and in the implementation of a Benefit Sharing Agreement;
- (b) in consultation with the local community,

identify local community projects to be supported by money allocated to the local community by the County Benefit Sharing Committee under this Act; and

- (c) oversee the implementation of projects undertaken in the relevant local community using funds devolved under this Act.

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

PART V— FINANCIAL PROVISIONS

Funds of the
Authority.

32. The funds of the Authority shall consist of—

- (a) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) such money as may be provided by the National Assembly for defraying expenses incurred in the implementation of this Act;
- (c) all monies from any other source provided for or donated or lent to the Authority; and
- (d) such other monies that may lawfully accrue in the discharge of functions of the Authority under this Act.

Financial year.

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

Accounts.

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

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

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

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- (b) a statement of the assets and liabilities of the Authority as at the last day of that year.

No. 34 of 2015.

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

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

Annual Report.

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

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

- (i) a statement of the income and expenditure of the Authority during that year; and
 - (ii) a statement of the assets and liabilities of the Authority as at the last day of that financial year; and

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

- (i) the financial statements of the Authority including—

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

- (B) a statement of the assets and liabilities of the Authority as at the last day of that financial year;

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

- (iii) the total sums contributed towards benefit sharing and its distribution;

- (iv) the progress made in the implementation of the Authority's functions; and

- (v) any other information that the Authority may

consider necessary.

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

PART VI — MISCELLANEOUS PROVISIONS

Uses of retained funds.

36. Monies distributed to counties under this Act shall be utilized for projects that—

- (a) are prioritized by the County Benefit Sharing Committee;
- (b) are prioritized by the local community benefit sharing forums;
- (c) meet the socio-economic needs of the residents of the County or local community; and
- (d) are of public interest and are community-based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.

Offences.

37. (1) A person who—

- (a) fails to furnish information required to be furnished to the Authority under this Act;
- (b) makes a statement which the entity knows to be false or which the entity has no reason to believe to be true; or
- (c) knowingly makes a false statement under this Act;

commits an offence.

(2) A person who is found guilty of an offence under Subsection (1) is liable, on conviction, —

- (a) in the case of a natural person, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three

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years or to both such fine and imprisonment;
and

- (b) in the case of a body corporate, to a fine not exceeding five million shillings.

(3) Where a body corporate is found guilty of an offence under this Act, every officer of that corporation is deemed to have committed an offence and is liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

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

Transitional
provisions.

38. (1) An affected entity that, immediately before the commencement of this Act, was lawfully authorised to exploit a natural resource under this Act shall be deemed to be authorised to conduct such exploitation under this Act.

(2) Despite Subsection (1), an affected entity shall comply with the provisions of this Act within two years of the commencement of the Act.

Power to make
Regulations.

39. (1) The Cabinet Secretary may, in consultation with the Authority and the Council of County Governors, make Regulations for the better carrying out of the provisions of this Act.

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

- (a) prescribing the fees in respect of anything required to be done under this Act;
- (b) prescribing the mode for the payment of royalties under this Act;
- (c) prescribing the revenue sharing formula between counties that share a natural resource; and
- (d) prescribing anything which is required to be prescribed or is necessary to give effect to this

Act.

Amendment to
section 183 of Act
No. 12 of 2016.

40. Section 183 of the Mining Act is amended by deleting Subsection (5) and substituting therefor the following new subsection (5)—

(5) The royalty received by the State under this section shall be paid into the Consolidated Fund and apportioned in accordance with Section 26 of the Natural Resources (Benefit Sharing) Act.

Amendment to
section 76 of Act
No. 47 of 2013.

41. Section 76 of the Wildlife Conservation and Management Act is amended by—

(a) deleting Subsection (1) and substituting therefor the following new subsection —

(1) The revenue received by the National Government under this Act shall be paid into the National Treasury and apportioned in accordance with section 26 of the Natural Resources (Benefit Sharing) Act.

(b) deleting Subsection (2);

(c) deleting Subsection (3); and

(d) deleting Subsection (4).

Amendment to
section 85 of Act
No. 1 of 2019.

42. Section 85 of the Energy Act is amended by—

(a) deleting Subsection (3) and substituting therefor the following new Subsection (3)—

(3) The royalty received by the National Government under this section shall be paid into the National Treasury and apportioned in accordance with Section 26 of the Natural Resources (Benefit Sharing) Act.

(b) deleting Subsection (4).

Amendment to
section 58 of Act
No. 2 of 2019.

43. The Petroleum Act is amended by deleting Section 58 and substituting therefor the following new Section 58—

Sharing of
petroleum
resource.

58. The National Government's share of the profits derived from upstream petroleum under Section 57 shall be apportioned in accordance with Section 26 of the Natural Resources (Benefit Sharing) Act.

SCHEDULE (s.15)
PROVISIONS AS TO THE CONDUCT OF BUSINESS AND
AFFAIRS OF THE BOARD OF THE BENEFIT SHARING
AUTHORITY

Meetings of the Board.

1. (1) The Board shall meet at least once in every three months to conduct the business of the Board of the Authority.

(2) The first meeting of the Board shall be convened by the Chairperson and the Board shall meet subsequently at such a time and place as it shall determine.

(3) Notwithstanding the provisions of Subparagraph (1), the Chairperson shall, upon a written request by at least five members of the Board or at any time where he or she considers it expedient for the transaction of the business of the Authority, convene a special meeting of the Board.

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

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

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

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

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

(7) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

(8) The proceedings of the Board shall not be invalidated by reason of a vacancy within its membership.

Quorum.

2. (1) Subject to Subparagraph (2), the quorum of a meeting of the Board shall be not less than half of the

appointed members.

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

Voting.

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

Conflict of interest.

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

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

- (a) be present during the deliberation on the matter by the Board; or
- (b) take part in the decision of the Board on the matter.

(3) A member of the Board who makes a disclosure under Subparagraph (1) shall not—

- (a) be present in the meeting of the Board held to determine whether or not the member should take part in the deliberations or decision of the Board in relation to the matter; or
- (b) influence any other member of the Board in arriving at a particular decision in relation to the matter.

(4) A member or staff of the Authority shall not transact any business or trade with the Authority.

Rules of Procedure and minutes.

5. (1) Subject to provisions of this Schedule, the Board

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may determine its own procedure and the procedure for any committee of the Board.

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

The Natural Resources (Benefit Sharing) Bill, 2022

I certify that this printed impression is a true copy of the Bill as passed by the Senate on 1st August, 2023.



Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 161 of the Senate Standing Orders.



Speaker of the Senate

PRINTED BY THE CLERK OF THE SENATE

