

February 26th 2019

The Clerk of the Senate,
Parliamentary Service Commission,
P.O. Box 41842-00100
Nairobi, Kenya

**RE: KWCA MEMORANDUM ON THE NATURAL RESOURCES (BENEFIT SHARING),
BILL, 2018**

Reference to the call for submission of memoranda on the above Bill by Kenya Wildlife Conservancies Association (KWCA) on behalf of its 160 community and private wildlife conservancies covering an area of 6.5 million hectares (11% of Kenya's Landmass) and collectively representing over a million households,

HEREBY SUBMITS AS FOLLOWS:

1.0. GENERAL SUBMISSION

While the objective of Bill is to establish a system of benefit sharing in exploitation and use of natural resources, listed in section 3, the Bill, by including wildlife, has the unintended consequence of adversely affecting the existing benefit sharing arrangement largely managed by the local communities, further driving wildlife conservation in community and private land beyond the tipping point.

In the foregoing, it is KWCA's **submission** that the Natural Resource Benefit Sharing Bill be withdrawn in its entirety or amended by deleting section 3 (d) to exclude wildlife resources.

General Grounds:

1. The **Bill is drafted within the concepts of mining**, a depleting and non-renewable resource, whose exploitation and benefit sharing models are differently governed and managed relative to renewable resources including wildlife.
2. In the last 3 decades, Kenya has lost more than half of its wildlife; the creation of conservancies to complement Parks and Reserves has seen a reversal of this worrying trend. **This Bill has the potential to deny wildlife conservancies much needed revenue to manage this resource**, offset opportunity costs and costs associated with hosting wildlife, thereby pushing more wildlife to the brink and discourage voluntary stewardship.
3. **By allocating a paltry 12.8% of benefits from natural resources for projects within the communities and disproportionately** allocating 68% to National government and the 2 funds, 19.2% to projects within the county, local communities who incur the larger costs of living with wildlife and who are currently not being compensated for such losses will replace wildlife with other land uses.
4. 5 of 7 members of the County Benefit sharing Committee are local community representatives, this is a case of devolving responsibility while centralizing benefits, benefit sharing should favorably compare with responsibility

5. Reference to the benefit sharing ratio above (3), the Bill *contravenes the Article 69 (1) (a) of the Constitution of Kenya that demands equitable benefit sharing of benefits accrued from natural resources separation.*
6. *Further the Bill fails to align with sectoral laws including the Wildlife Act 2013 under its guiding principles*, section 4 (e), requires that benefits from wildlife conservation are derived to offset costs and ensure value and management of wildlife do not decline.
7. The implementation of the Bill, upon becoming an Act of Parliament, *will create more financial burden to the people of Kenya.* The Bill identifies three funds (Sovereign Wealth Fund, Futures Fund and Natural Resources Royalties Fund), at a time where government policy is funds consolidation; management of such funds has historically proved to be unviable and costly.
8. Further, the Bill creates County Benefit sharing committees and local community fora which are paid allowances by County Governments; such committees shall further *increase county governments wage bills at a time when the country is focusing on expanding development budgets and add to other already existing county level committees within sectoral laws.*
9. The *Bill is silent on the roles of state agencies (Kenya Wildlife Service, Kenya Forest Service, Water Resources Management Authority)* with the mandate and charged with the overall management of natural resources, and further excludes them from benefit sharing process.
10. The Bill *does not align with the Sovereign Wealth Fund Bill 2019*, which under section 7, provides that the Fund will receive royalties from mining and petroleum, while other natural resources in the Natural Resource Benefit Sharing Bill are excluded.
11. The Bill assigns functions to the Commission on revenue allocation, *far beyond the principle functions assigned by Article 216 (1) of the Constitution including administrative and executive roles* such as (e) monitoring benefit sharing agreements, (f) research on exploitation of natural resources, and (i) establishment of County committees and community Forums.
12. While the Bill is designed to cover benefit-sharing management, several sections including (6, 7 and definition of royalties,) *go beyond benefit sharing to include provisions on management of royalties from exploitation of natural resources*, already provided in the respective sectoral laws hence acting beyond the objects of this bill.

2.0 Specific Grounds and Recommendations

Notwithstanding the above general grounds, the following specific grounds are also relied upon by KWCA:

No	Bill Section	Issue	KWCA Recommendation
1	Sec 3	The Bill apply to Wildlife resources	Delete Section 3 (d), Benefit Sharing under the Wildlife Act 2013 recognises the dynamism of wildlife management on community and private lands.
2	Sec 5	The Principle functions of the Commission on Revenue Allocation is to recommend the basis for equitable benefit sharing raised by National and County Governments; This bill extends this mandate to include administration and executing functions.	Delete 5 (a) (d), (e), (f) (i), (g) (k), (n), (o) and (p) which are administrative and executive functions beyond CRA mandate and capacity.

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3	Sec 6 (2)	Factors to consider in determining royalties paid by affected entity fail to factor the cost of management of the natural resource.	Add 6 (2) (f) Costs of management of the natural resources
4	Sec 8	The benefit-sharing ratio provided highly favours national government (National Government Fund 20%, National Government 48%, County Government Projects 19.2% and local community projects 12.8% and discriminates against local communities.	Revise benefit-sharing ratio to account for resource management costs incurred by communities and principle of equity.
5	Sec 10	The composition of the County Benefit Sharing Committee is largely comprised of community representatives.	Revise the composition of the County Benefit Sharing Committee to enable effectively act on behalf of county government. A committee largely comprising of local communities cannot negotiate on behalf of the County Government.
6	Sec 11	Roles of the County Benefit sharing Committee include roles on behalf of the county government; e.g. (a) Negotiate the terms of the benefit sharing agreements (c) determining amount of money payable to communities yet a benefit sharing ratio is already provided	Redraft the functions of committee as follows: Delete sec 11 (a) (c) – benefit-sharing ration already determined by Commission on Revenue Allocation. Sec 11 (c) A committee largely comprising of local communities cannot negotiate on behalf of the County Government Roles of the County Committee are to implement the benefit sharing agreements and projects funded under such funds not to determine benefit sharing ratios
7	Sec 12	The process of benefit sharing agreement execution is highly bureaucratic and fails to ensure benefits are accrued efficiently and will undermine natural resource management.	Re-design the benefit sharing agreements process <ul style="list-style-type: none"> • A benefit sharing framework under the Cabinet secretary responsible for Mining will require negotiations with relevant ministries responsible for water, wildlife, fishing, and forestry and respective state agencies • Requirements for negotiations of contracts with County benefit sharing committees, public participation, approval by County assembly is lengthy and needs clarity • The bill fails to identify the entity at the local community level to enter into local community benefit sharing agreements, neither does it identify the content of the benefit sharing agreements • The bill further assumes all exploitation agreements are under the jurisdiction of the County government and ignores the fact that many natural resources especially water, forests and wildlife occur on community and

			privately owned land for which the entity is not the county government
8	Sec 13	Local Community Benefit Sharing Forums lack independence, their election, meetings and allowances are facilitated by the county government, the forum allegiance shall then be to the County governments and not the local communities they represent	Replace local community forums with relevant existing local community institutions Local communities have ability to self organize and today majority possess local institutions that can perform such roles
9	Sec 19	The Bill amends section 183 of the Mining Act 2016 yet minerals are not among natural resources to which the Bill applies in section 3	Either include mineral resources under section 3 or separately amend the Mining Act.

3.0 ABOUT KWCA

Kenya Wildlife Conservancies Association is the national umbrella body of 160 community and private landowners who through wildlife conservancies, conserve and manage 65% of Kenya's wildlife on their lands spread across 28 Counties and amount to 11% of Kenya's landmass. KWCA provides platform for communities and landowners to directly participate in wildlife governance in Kenya.

In taking this responsibility, KWCA partners with the government to enable landowners obtain incentives, benefits, enabling policy and support from the Government to cover for the huge cost of hosting wildlife on their land and for the opportunity lost for adopting conservation over other economic activities.

Your kind considerations of the above recommendations will promote wildlife conservation by the communities and landowners and facilitate the growth of conservation in Kenya.

Signed:



Dickson Ole Kaelo
Chief Executive Officer
Kenya Wildlife Conservancies Association



CC:

1. Hon. Paul Githiomi,
Chair, Senate Standing Committee,
Land, Environment and Natural Resources
2. Cabinet Secretary,
Ministry of Tourism and Wildlife
3. Director General,
Kenya Wildlife Service