SUMMARY OF THE NATURAL RESOURCES (BENEFIT SHARING) BILL, 2014

I. Introduction

The Bill proposes the establishment of benefit sharing arrangements in exploitation of natural resources between resource exploiters, the National government, County governments and local communities. The Bill if enacted will apply to the exploitation of petroleum, natural gas, minerals, forest resources, water resources and fishery resources.

II. Institution and bodies established under the bill

- **The Benefit Sharing Authority:** The Bill establishes the authority in Part II, to coordinate and monitor the preparation and implementation of benefit sharing agreements between local communities and affected organizations engaged in natural resource exploitation as well as determine where appropriate, the royalties payable among other functions.

- **County Benefit Sharing Committee:** The committee is established in Section 28, to negotiate with an affected organization on behalf of the County government prior to entering into a county benefit sharing agreement and to recommend to the County government on projects to be funded using monies which accrue to the County government, among other functions. The committee is made up of the County Executive Committee (CEC) member responsible for finance, the chairperson of the County Assembly and 5 persons elected by the local community.

- **Local community Benefit sharing Forum:** The bill established a local community benefit sharing forum which is to be facilitated by the relevant County government (Section 31). The core function is to negotiate with the county benefit sharing committee for the purpose of entering into a local community benefit sharing agreement on behalf of the community. The affected local community shall enter into a local community benefit sharing agreement with the respective county benefit sharing committee (Section 32, 1).

III. Key provisions of the Bill

a) **Collection of royalties and fees**

Part IV of the bill gives power to the Authority to determine and review the amount of royalties and fees payable by affected organizations in each year in respect of a particular sector where a written law does not prescribe the royalties or fees. Considerations will include; the overall capital investment; the prevailing international market value of the commodity from which
royalty is payable; the commercial viability of the natural resource being exploited; and obligations of the affected organization under any existing County Benefit Sharing Agreement with the local community.

Where a written law prescribes the royalty, fees, payments or benefit sharing in a particular natural resource sector, the relevant written law shall apply with respect to that sector (Section 24, 2). Section 25 provides that the Kenya Revenue Authority shall collect royalties imposed by the Authority from affected organizations and any other payment of royalties from natural resource exploitation undertaken under any other written law. The monies collected shall be paid into the Sovereign wealth fund—sums of money set aside from monies that accrue to the National government including royalties collected under any written law for use by the future generations.

b) Revenue sharing ratio

Section 26 provides that the revenue collected shall be shared as follows—

- Twenty percent to be paid into a sovereign wealth fund (60% paid into the futures fund and 40% into the natural resources fund) and;
- Eighty percent to be shared between the National and County governments in the ratio of 60% and 40% respectively (At least 40% revenue assigned to the County governments shall be assigned to local community projects and 60% utilized in the entire county).

Where natural resources straddle two or more counties, the Authority shall determine the ratio of sharing the retained revenue amongst the affected counties, depending on the contribution of each affected county in relation to the resource; the inconvenience caused to the county in the exploitation of the natural resource; and any existing benefit sharing agreement with an affected organization. The Authority shall review the revenue sharing ratio after every 5 years and present its recommendations to Parliament for approval.

c) County benefit sharing

Section 27 provides that every affected organization shall enter into a county benefit sharing agreement with the respective County government. The county benefit sharing agreement shall include non-monetary benefits that may accrue to the county and the contribution of the
affected organization in realizing the same. Every county benefit sharing agreement shall be approved by the County Assembly of the respective county prior to the execution of the agreement by the County government (Section 30).

d) **The Natural Resources Royalties Fund**

The bill establishes a Natural Resources Royalties Fund which shall vest in the Benefits Sharing Authority (Section 34). There shall be paid into the Fund -(a) all royalties collected as a result of exploitation of natural resources in the country, (b) all fees and other charges levied on affected organizations for the exploitation of natural resources; and (c) all contributions and other payments required by this Act to be paid into the Fund. Where any written law provides for the payment of royalties or fees from exploitation of a natural resource in a particular sector, such royalties and fees shall be paid into the Fund. The Authority shall make Regulations prescribing the administration of the Fund.