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1/12/2020

THE SENATE

TWELFTH PARLIAMENT

THE REPORT OF THE SENATE STANDING COMMITTEE ON LAND,
ENVIRONMENT AND NATURAL RESOURCES

ON

PETITION BY RESIDENTS OF KAJIADO COUNTY ON THE SILTATION
OF LAKE MAGADI

PAPERS LAID	
DATE	Dec 1 2020
TABLED BY	Sen Khairi
COMMITTEE	Lands
CLERK AT THE TABLE	M. Adyibodde

NOVEMBER, 2020

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List of Abbreviations/ Synonyms

1. NEMA - National Environment Management Authority
2. WARMA/WRA - Water Resources Authority
3. TCML - Tata Chemicals Magadi Limited
4. SGR - The Kenya Standard Gauge Railway

PREFACE

Mr. Speaker sir,

The Standing Committee on Lands, Environment and Natural Resources is established pursuant to standing order 218(3) of the Standing Orders of the Senate. As set out in the Second Schedule, the Committee is mandated to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

A. Committee Membership

The Committee comprises of the following Members.

1. Sen. Paul Mwangi Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. George Khaniri, MGH, MP
4. Sen. Gideon Moi, CBS, MP
5. Sen. Njeru Ndwiga, EGH, MP
6. Sen. (Dr.) Lelegwe Ltumbesi, MP
7. Sen. Issa Juma Boy, MP
8. Sen. (Arch.) Sylvia Kasanga, MP
9. Sen. Johnes Mwaruma, MP

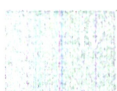
Chairperson

Vice-Chairperson

At a sitting of the Senate held on 6th August, 2019 the Senator for Kajiado County, Sen. Philip Mpaayei, MP, reported to the Senate that a Petition has been submitted through the Clerk, by resident of his County regarding siltation of Lake Magadi.

The Petitioners prayed that that the senate investigates the matter of Lake Magadi Siltation and makes appropriate recommendations thereon with a view to:-

- a) ensuring that siltation to the lake is prevented; and
- b) ensuring that appropriate interventions, regulations and guidelines are put in place to ensure and promote sustainable land use practices and prevent soil and water degradation upstream of Lake Magadi.



Pursuant to the above provisions of the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012, and the Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioners.

To enable a judicious disposal of the Petition, the Committee resolved to conduct an inquiry on the issues raised in the Petition. In this regard the Committee invited the Petitioner to a meeting of the Committee for the Petitioner to elaborate further on the issues raised in the Petition and to supply supporting evidence.

The Committee thereafter proceeded to invite the Cabinet Secretary, Ministry of Environment and Forestry, National Environment Management Authority and the Management of Tata Chemicals Limited.

ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioner Dr. Stephen S. Moiko, Mr. John N. Kamanga, Mr. Daniel Nehui, Mr. Francis Sakimpa and the Senator for Kajiado County, Sen. Philip Mpaayei for bringing the Petition to the Senate. Further, the Committee extends its gratitude to the Cabinet Secretary, Ministry of Environment and Forestry, Mr. Keriako Tobiko, CBS, SC, for providing submissions and contribution to the resolution of this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Lands, Environment and Natural Resources on the Petition regarding siltation of Lake Magadi.

Signed: Date: 14/11/2020

SEN. PHILIP MPAAYEI, M.P.
VICE CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND,
ENVIRONMENT AND NATURAL RESOURCES



CHAPTER I

INTRODUCTION

1. At the sitting of the Senate held on 7th August, 2020 the Senator for Kajiado County, Sen. Philip Mpaayei, MP reported to the Senate that a Petition has been submitted through the Clerk, by Dr. Stephen S. Moiko, Mr. John N. Kamanga, Mr. Daniel Nchui and Mr. Francis Sakimpa regarding siltation in Lake Magadi.
2. The Petition reads as follows-
 1. That, Tata Chemicals Magadi Limited operating from Lake Magadi is Africa's largest manufacturer of Soda Ash and one of Kenya's leading exporters. The Company has been producing soda ash and related products, processed from Trona that naturally occurs in Lake Magadi, for over 100 years,
 2. That, the lake has been facing serious environmental threats emanating from sedimentation and siltation for the last decade, which have gradually led to the loss of about 20% of the lake to soil and silt deposition. In addition, the accumulation and spread of the residues is affecting the quality of soda ash produced from the rest of the lake.
 3. That, the siltation problem in Lake Magadi has its origins in the upper and middle water catchment areas of the lake, where intense soil erosion is occurring. The upper catchment areas include Keekonyokie and Suswa Wards of Narok East Constituency and the middle catchment areas covers Mosiro in Narok East, and Ewuaso Nkidongi and Mosiro Wards of Kajiado West Constituency.
 4. That, the mining operations in Lake Magadi are a source of livelihoods for over 50,000 people through trade, and direct or indirect employment. The company also supports water provision, education facilities, bursaries, health services and

enterprise opportunities for surrounding communities.

5. That, the Company has invested heavily in individual efforts to save Lake Magadi from destruction through siltation. It initially built three dykes to block the soil deposits, but successive rain periods led to the covering of the dykes.
6. That, the Company also initiated a project to divert the main river identified to be the main conduit of the siltation as an emergency measure to protect the lake. This was done in partnership with relevant Government departments and agencies and local communities. Environmental due diligence was carried out and necessary approvals obtained from NEMA and WARMA. Consideration was taken to ensure that sufficient water remained available for the dependent communities downstream. The project took more than 3 years to complete and cost the company more than Ksh.100 million.
7. That, the Company is overseeing monitoring of the above project to manage any environmental issues, while partnering with local communities to address pertinent development issues.
8. That, while the river diversion is a short term measure, there is need for a widespread and long term solution targeting the catchment areas of the lake to introduce measures that stop soil erosion and movement of soil to the lake, and to promote afforestation and sustainable land use practices.
9. That, the Company urgently needs Government support and interventions to deal with the siltation challenge. The Company is dealing with an environmental load that is not of its making and which if not urgently and appropriately addressed may lead to the loss of a national economic resource that has supported local livelihoods for decades and which continues to earn the Country much needed foreign exchange.
10. That, the petitioners have made the best efforts to have these matters addressed by the relevant authorities like the Ministry of Environment and WARMA, but nothing

has been done.

11. That, none of these issues raised in the petition is pending in any court of law, constitutional or any other legal body.

12. Wherefore, the petitioners prayed that the Senate investigates the matter of Lake Magadi Siltation and makes appropriate recommendations thereon, with a view to—

- a) ensuring that siltation to the lake is prevented; and
- b) ensuring that appropriate interventions, regulations and guidelines are put in place to ensure and promote sustainable land use practices and prevent soil and water degradation upstream of Lake Magadi.

3. Pursuant to standing order 232(1) of the Standing Orders of the Senate, the Petition was committed to the Standing Committee on Land, Environment and Natural Resources.

B. LEGAL BASIS FOR PETITIONS

1. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012, and the Senate Standing Orders.
2. Article 37 of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while Article 119(1) of the Constitution provides that “*every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.*”
3. Section 5(2) of the Petition to Parliament (Procedure) Act, provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House.* In this regard, standing order 232 of the Senate Standing Orders provides as follows-
 232. *Committal of Petitions*
 - (1) *Every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.*
 - (2) *Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.*
4. Standing order 233 requires the Clerk to, within fifteen days of the tabling of the report on a petition under Standing Order 232 (*Committal of Petitions*), submit a copy of the report to the petitioner or petitioners.



CHAPTER 2

CONSIDERATION OF THE PETITION

Approach taken by the Committee

1. In considering the Petition, the Committee observed that it would be important to verify the facts alleged by the Petitioners. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.
2. In this regard, the Committee invited the Petitioners to a meeting of the Committee for the Petitioners to elaborate further on the issues raised in the Petition and to supply supporting evidence on the issues raised.
3. The Petitioners appeared before the Committee on 20th November, 2019 and later on during the meeting called by the Committee to interrogate the matter with the Cabinet Secretary, Ministry of Environment and Forestry on 13th August, 2020. The Petitioners, who were mainly from Tata Chemicals Limited, Magadi, were allowed by the Committee to engage the Cabinet Secretary directly and were able to deliberate on some of the issues in contention.

Responses by the Ministry of Environment and Forestry

Pursuant to a letter Ref: SEN/DCS/LENR/2/2020/(20a) dated 20th May, 2020, the Committee invited the Cabinet Secretary, Ministry of Environment and Forestry and consequently received the following submissions;

Background

Lake Magadi is the southernmost lake in the Kenyan Rift Valley, lying in a catchment of faulted volcanic rocks, north east of Lake Natron in Tanzania. The Lake is a saline, alkaline lake, approximately 100 square kilometers in size. It is an example of a "saline pan". The lake water, which is a dense sodium carbonate brine, precipitates vast quantities of a

mineral called trona (sodium sesquicarbonate). In some places within the Lake, the salt is up to 40M thick.

The lake is recharged mainly by saline hot springs (with temperatures up to about 83°C) that discharge into alkaline "lagoons" around the lake margins, as a result of very little surface runoff in this arid region. Most hot springs lie along the north-western and southern shorelines of the lake.

The Lake, one of the world's largest sources of soda ash is facing serious environmental challenges due to massive siltation. Both the depth and area of the lake is decreasing due to sedimentation. The northern part of the Lake is the most affected as it is silted with a nine-foot layer of soil on the surface. It is estimated that more than 8,000 tons of silt enters the Lake after every storm causing a huge accumulation of silt soil from the upstream of Narok County and its environs being deposited at the Lake basin.

The major cause of the siltation is environmental degradation in the upper and middle catchment where huge parcels of land are opened for cultivation, charcoal burning and overgrazing causing soil erosion. Other contributing factors to the siltation are infrastructural developments that have taken place over the last decade including the Mai Mahiu – Narok road and the Standard Gauge Railway (SGR).

The areas contributing most to the siltation problem of Lake Magadi comprise of upper and lower catchment covering Keekonyokie and Suswa Wards of Narok East Sub-county. Others include the middle catchment covering Mosiro in Narok East, Ewvaso-oo Nkidong'i and Mosiro Wards of Kajiado West Sub-county.

Some of these causes include the following:-

1. pressure on the catchment areas by overgrazing leading to exposed soil that is swept downstream when it rains leading to siltation of the lake;
2. loose soil from heavy machines working on roads and the SGR upstream which is swept downstream by heavy rains;
3. exposed landscapes with no trees/grass cover which speeds up the erosion process; and
4. unsustainable agricultural practices such as over-stocking of animals and overreliance on pasture to feed livestock.



The ecosystem up-stream the lake is therefore over-stretched and any measures to save it must include plans on helping the mainly pastoral community living around it.

Interventions

1. The Ministry, through the National Environment Management Authority, having realized the need to address the issues arising from the degradation of the Lake Magadi catchment, initiated, through the Authority's Research and Planning Department, a participatory process to develop the Mt. Suswa Geopark Conservancy Management Plan 2016 – 2026. The process had the participation and input of the County Governments of Kajiado and Narok. It culminated into a Management Plan document detailing the Current Situation of the catchment, the prevailing environmental governance relevant for the catchment conservation, Stakeholder Identification and Mapping, Management Interventions, Vision and Strategic Objectives, Institutional Arrangement, Resource Mobilization Strategy, Implementation Strategy and Monitoring and Evaluation Plan.
2. NEMA also granted an Environmental Impact Assessment License for the diversion of one of the seasonal rivers that was posing a major siltation problem to the Lake. Although this was a temporary measure, it provided a reprieve to the Lake, as various stakeholder consultations continue so as to come up with lasting catchment wide interventions to address the problem and save the Lake.
3. In 2018, NEMA organized a National event in Magadi to mark the World Day to Combat Desertification on 17th June 2018. The event was aimed at mobilizing community support for the conservation of the Lake Magadi catchment through Tree Planting and provision of alternative livelihood support e.g. improved Goat breeds.
4. Other Government and Non-Government actors have also had interventions in the catchment at various times. They include the Ewaso Ng'iro South Development Authority, the Ministry of Environment and Forestry, the County Governments of Kajiado and Narok, Kenya Forest Service, Kenya Water Towers Agency, TATA Chemicals Company Limited among others. To actualize the proposed activities of Management Plan, a joint proposal has been developed and presented to the Ministry of Environment and Forestry for support through the Ministry administered Climate Change Fund.

Proposed way forward by the Ministry of Environment and Forestry

Provision of the necessary budgetary resources for the implementation of the Mt. Suswa Geopark Conservancy Management Plan 2016 – 2026 jointly through the County

Environment Committees of Kajiado and Narok Counties. This will actualize the much needed multi-agency approach in the enforcement of the existing legislation, implementation of the various proposed intervention activities to curb soil erosion and improve catchment integrity as well as support alternative community livelihoods to ease pressure on the catchment and overreliance of the catchment's natural resources.



CHAPTER 5

COMMITTEE OBSERVATIONS

In accordance with the Prayers of the Petitioners, the Committee observes as follows:

- a) Ensuring that siltation to the lake is prevented;

The Committee observes that Lake Magadi, which is one of the world's largest sources of soda ash and a significant source of foreign currency for Kenya, is facing serious environmental challenges due to massive siltation with both the depth and area of the lake is decreasing due to sedimentation.

The Committee further observes that the Ministry of Environment and Forestry advised that the Lake was being destroyed by siltation due to environmental factors. Indeed, the Ministry was in support of the Petition and implored the Committee to facilitate the allocation of funds to the Ministry to enable it undertake the prevention of siltation to the Lake.

The Committee observes that the siltation to the Lake is grave and ought to be stopped forthwith.

- b) Ensuring that appropriate interventions, regulations and guidelines are put in place to ensure and promote sustainable land use practices and prevent soil and water degradation upstream of Lake Magadi.

The Committee observes that the major cause of siltation in Lake Magadi is environmental degradation in the upper and middle catchment where huge parcels of land are opened for cultivation, charcoal burning and overgrazing that causes soil erosion and infrastructural developments that have taken place over the last decade i.e. the Mai Mahiu – Narok road and the SGR.

The Committee further observes that there are sufficient laws governing environmental degradation through siltation and the implementing agencies are the ones who have not been implementing or adhering to the law.

CHAPTER 6

COMMITTEE RECOMMENDATIONS

The Committee having investigated the matter in accordance with its mandate under standing order 218(3), as read together with the Second Schedule to the Senate Standing Orders, recommends as follows in accordance with each Prayer of the Petitioners:

- a) Ensuring that siltation to the lake is prevented:

The Committee recommends that the Cabinet Secretary for the National Treasury and Planning forthwith allocates the Ministry of Environment and Forestry funds for the prevention of siltation to Lake Magadi and submit to the Committee a status update on the allocation of the funds within six months of the tabling of this Report, and in any case not later than 31st May, 2021.

The Committee further recommends that the Cabinet Secretary, Ministry of Environment and Forestry, immediately funds are allocated, undertakes the prevention of siltation to Lake Magadi and submit to the Committee a status update on the prevention exercise within nine months of the tabling of this Report, and in any case not later than 31st August, 2021.

- b) Ensuring that appropriate interventions, regulations and guidelines are put in place to ensure and promote sustainable land use practices and prevent soil and water degradation upstream of Lake Magadi.

The Committee recommends that the Cabinet Secretary, Ministry of Environment and Forestry, in collaboration with NEMA, collate information on charcoal burning in the water catchment areas of Lake Magadi with a view to ensuring that the same is done sustainably and in compliance with environment law and submit to the Committee a status update on its progress within three months of the tabling of this Report, and in any case not later than 9th February, 2021.

The Committee further recommends that the Cabinet Secretary, Ministry of Environment and Forestry carries out a comprehensive tree planting exercise in the water catchment areas of Lake Magadi and submit to the Committee a status update on its progress within three months of the tabling of this Report, and in



any case not later than 9th February, 2021.

The Committee also recommends that the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Co-operatives formulates and implements sustainable and environmentally efficient crop cultivation and livestock grazing practices in the water catchment areas of Lake Magadi and submit to the Committee a status update on its progress within nine months of the tabling of this Report, and in any case not later than 31st August, 2021.

The Committee recommends that the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works surveys infrastructure projects undertaken by the National Executive and submit to the Committee a report on the measures it has taken to dispose of debris, excavated and other remains from the projects within six months of the tabling of this Report, and in any case not later than 30th June, 2021.

The Committee further recommends that the County Executive Committee member responsible for public works in Narok County surveys infrastructure projects undertaken by the County Government and submit to the Narok County Assembly a report on the measures it has taken to dispose of debris, excavated and other remains from the projects within six months of the tabling of this Report, and in any case not later than 30th June, 2021.

The Committee further recommends that the County Executive Committee member responsible for public works in Kajiado County surveys infrastructure projects undertaken by the County Government and submit to the Kajiado County Assembly a report on the measures it has taken to dispose of debris, excavated and other remains from the projects within six months of the tabling of this Report, and in any case not later than 30th June, 2021.

APPENDICES

A. ANNEX I: MINUTES OF THE MEETINGS

MINUTES OF THE 32ND MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 20TH NOVEMBER, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 11.30 AM.

MEMBERS

	PRESENT
1. Sen. Mwangi Paul Githiomi, M.P.	- Chairperson
2. Sen. Prengei Victor, M.P.	- Vice Chairperson
3. Sen. Halake Abshiro, M.P.	- Member
4. Sen. Mwaruma Johnes, M.P.	- Member
5. Sen. Boy Issa Juma, M.P.	- Member
6. Sen. Godana Hargura, M.P.	- Member

ABSENT WITH APOLOGY

1. Sen. Ndwiga Peter Njeru, EGH. M.P.	- Member
2. Sen. George Khaniri, MGH, M.P.	- Member
3. Sen. Slyvia Kasanga, M.P.	- Member

IN ATTENDANCE

PETITIONERS- POKA GROUP RANCH

PETITIONERS- RESIDENTS OF KAJIADO COUNTY

PETITIONERS- MR. JOHN NJOGU NJOROGE

SENATE SECRETARIAT

1. Ms. Gloria Wawira	- Clerk Assistant
2. Ms. Caroline Cheruiyot	- Legal Counsel
3. Mr. Robert Rop	- Audio Recording

MINUTE SEN/SCLN/189/2019: PRELIMINARIES

The meeting was called to order at 11.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLN/190/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Godana Hargura, M.P. and seconded by Sen. Halake Abshiro, M.P.as follows.

AGENDA

1. Preliminaries - *Prayer*
2. Adoption of the agenda:
3. **Receiving submissions from Petitioners as per the attached schedule:**
 - a) Alleged unlawful acquisition and disposition of the Poka Group Ranch Land
 - b) Siltation of Lake Magadi.
 - c) Resettlement of East Mau Forest Evictees.
4. Any other Business:
5. Date of the next meeting:
6. Adjournment.

MINUTE SEN/SCLNR/191/2019: RECEIPT OF SUBMISSIONS FROM PETITIONERS

Alleged unlawful acquisition and disposition of the Poka Group Ranch Land

The Petitioners informed the Committee that they were members and descendants of the Poka Group Ranch established in 1968 under the Group Ranching Act as a 2148 Ha ranch. In 1995 the ranch was subdivide into two parcels and part of it was submitted to the Tana and Athi River Development Authority (TARDA) for purposes of livestock framing and the members of the ranch each contributed 5 cows for demonstrations.

At some point the ranch was divided into two parcel and part of it allocated to private owners who then acquired titled and disposed of it thereby permanently dispossessing the members of the group.

The Committee sought the intervention of the Committee in order to rectify the fraudulent acquisition of title and transfer of parcels of the Poka ranch and the restoration of the Ranch to its original size.

Committee Observations

The Committee observes that the matter was under that Trust Lands Act and that the relevant procedure thereunder had been flouted. That the Petition canvassed the issues of ownership of the lad, land use and compensation



Committee Resolutions

The Committee resolved to conduct a visit to the ranch. It also resolved to invite the other relevant stakeholders including TARDA, NLC and the Ministry of Lands

Siltation of Lake Magadi.

The presented their Petition on the siltation of Lake Magadi. They illustrated the loss of soda ash yielding parts of the lake as a result of the siltation. Since the siltation started the lake had lost 30% of its mass as a result of soil rushing into the Lake. The petitioner stated that the siltation had increased since the construction of the Mai Mahiu road and the standard gauge railway. The petitioners had sought the intervention of the Ministry of Environment, however, the initiative that had been started had not been implemented to finality.

It was explained that the consequences of the siltation were on multiple levels affecting the natural features, the business interest and the community. Most notably, the lake was no longer producing soda ash at a high rate that may result in the existing of Tata Magadi one of Kenya's largest tax payers and as a result a loss of revenues to the country at large.

Committee resolutions

The Committee resolved to visit Lake Magadi. It also resolved to invite the cabinet Secretaries for Environment, Transport, KENHA and Kenya Railways to discuss the matter.

Resettlement of East Mau Forest Evictees.

The petitioners informed the Committee that they had come together in 2011 during the Truth Justice and Reconciliation Commission (TJRC) process. They informed the committee that in 1988 the Government of Kenya had evicted people living in forests who had settled there on 1918 for the purposes of tending and protecting forests. At the time of the eviction, they were given only 3 days after which the government forcefully evicted them causing them to lose their homes, lands and livelihoods.

The petitioners had sought intervention from the National assembly and the TJRC without any reprieve. They petitioned the Committee to correct the injustices. They committed to providing the list of the 1350 affected persons.

Committee Resolution

The Committee resolved to visit the Community and to invite the Ministry of land and the NLC to further investigate the matter.

MINUTE SEN/SCLNDR/192/2019: ANY OTHER BUSINESS;

There was no other business.

MINUTE SEN/SCLNDR/193/2019: DATE OF NEXT MEETING;

The meeting was adjourned at 11.00 am and the next meeting was to on 20th November, 2019 at 11.30am.

SIGNATURE.......... DATE.....

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

MINUTES OF THE 30TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 13TH AUGUST, 2020 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. Gideon Moi, CBS, MP
4. Sen. Sylvia Kasanga, MP
5. Sen. Mwaruma Johnes, MP

PRESENT

- **Chairperson**
- Member
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Philip Mpaayei, MP
2. Sen. Boy Issa Juma, MP
3. Sen. (Dr.) Lelegwe Ltumbesi, MP
4. Sen. Ndwiga Peter Njeru, EGH, MP

- **Vice Chairperson**
- Member
- Member
- Member

IN ATTENDANCE

1. Sen. Victor Prengei, MP

SENATORS

- Nominated Senator, Nakuru County

MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES

1. Mr. Keriako Tobiko, CBS, SC,
2. Mr. Patrick Kariuki
3. Mr. Alex Lemarkoko
4. Mr. Mamo Boru Mamo

- CS, Ministry of Environment and Forestry
- Deputy, Chief Conservator of Forests, KFS
- Deputy, Chief Conservator of Forests, KFS
- Ag. DG, NEMA

4. Mr. Stephen Moiko
5. Eng. F. Sakimpa

PETITIONERS

- Tata Chemicals, Magadi
- Tata Chemicals, Magadi

SECRETARIAT

1. Mr. Victor Bett
2. Ms. Judy Ndegwa
3. Ms. Clare Kidombo
4. Mr. John Ngang'a

- Clerk Assistant
- Legal Counsel
- Researcher/Policy Analyst
- Audio Recording

MINUTE SEN/SCLN/165/2020: PRELIMINARIES

The meeting was called to order at 11.25 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNDR/166/2020: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. George Khaniri, MGH, MP and seconded by Sen. Gideon Moi, CBS, MP as follows –

1. Preliminaries
2. Adoption of the agenda:
3. Confirmation of Minutes of Previous Sittings:
4. **Meeting with the Cabinet Secretary, Ministry of Environment & Forestry on the following Petitions and Statements –**
 - Statement by Sen. Susan Kihika on the eviction of residents of Mariashoni Ward in Molo Constituency, Nakuru County, by the Kenya Forest Service (KFS) and the Kenya Wildlife Service (KWS)
 - Petition by Mr. Noor Abdirashid on the Wajir waste disposal site and the alleged abuse of the right to enjoy environmental rights under Article 42 of the Constitution;
 - Petition by residents of Kajiado County on the siltation of Lake Magadi.
5. Any other Business:
6. Date of the next meeting:
7. Adjournment.

MINUTE SEN/SCLNDR/167/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Confirmation of Minutes was deferred to the next sitting when the Committee discusses housekeeping matters.

MINUTE SEN/SCLNDR/168/2020: MEETING WITH THE CABINET SECRETARY, MINISTRY OF ENVIRONMENT & FORESTRY ON THE FOLLOWING PETITIONS AND STATEMENTS –

- **Statement by Sen. Susan Kihika on the eviction of residents of Mariashoni Ward in Molo Constituency, Nakuru County, by the Kenya Forest Service (KFS) and the Kenya Wildlife Service (KWS)**

The Cabinet Secretary (CS) informed the Committee that as he had reported during the previous engagement with the Committee that there was a team on the ground working on



the cut lines. He informed the Committee that although the exercise was to be concluded within two weeks, violence erupted in the said areas as was widely reported in the media making it difficult for the team to complete the exercise.

As a result of the violence experienced, the matter became a matter of National Security leading to the President appointing a team led by the Principal Secretary (PS), Ministry of Lands and Physical Planning, the PS, Environment and Forestry and the Regional Commissioner, Rift Valley Province to resolve the impasse with recommendations to the President on way forward within 30 days and they have since received periodic reports that the violence has been contained and no further evictions have been carried out until the matter is fully concluded.

Members were concerned with the welfare of the persons who had earlier been evicted and whether they should return back. The CS responded by informing the Committee that they shouldn't return first until the report of the team appointed by the president is done to inform the way forward.

- **Petition by Mr. Noor Abdirashid on the Wajir waste disposal site and the alleged abuse of the right to enjoy environmental rights under Article 42 of the Constitution;**

The CS invited the newly confirmed Director General (DG) National Environment Management Authority (NEMA) to give submissions on the Petition.

The DG NEMA began by thanking the CS for his new appointment and informed members that this is his first assignment as DG NEMA.

The DG gave a presentation, a copy of which was to be shared with the Committee.

Among the matters discussed were;

The history of the dumpsite in Wajir, whereby the Committee was informed that it was began before settlement in the area in the 1970's.

The area is sparsely populated and the nearest building is 400m away.

The Community has complained to NEMA in the past about the dump site and has intervened in numerous occasions.

The County Government is constructing an insurator and a perimeter wall and ultimate responsibility rests with the County Government as the entire aspect is devolved.

The CS urged the Committee to intervene on the entire issue of dumpsites in counties, since the ultimate responsibility lies with the County Governments and NEMA only assists

that this applies for gazetted forests and is a devolved function. The CS further Forest Resources within Counties and the CS responded by informing the Committee regarding the formation of Community Forest Associations to Aid in Management of the Senate

MINUTE SEN/SCLENR/169/2020: ANY OTHER BUSINESS:

The CS was requested to give a comment regarding the resolution of the Senate regarding the formation of Community Forest Associations to Aid in Management of the Senate Forest Resources within Counties and the CS responded by informing the Committee that this applies for gazetted forests and is a devolved function. The CS further

The Committee agreed with the proposal by the CS to conduct a multi-agency approach on the matter and resolved that the Committee conducts an aerial site visit together with the aforementioned agencies and convenes a meeting to come up with a way forward.

- Ministry of Interior and Coordination of National Government.
- Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works;
- Ministry of Devolution and the ASALs;
- NEMA (land degradation);
- Ministry of Agriculture, Livestock and Fisheries (Soil Erosion);
- Council of Governors;

The matter touches the following agencies –

agency approach. The CS further attributed these to reduced funding and that it would require a multi –

during high rainfall seasons. loosens the soil in the higher parts of Kajjado County all settling in areas within the lake water conservation measures. There is also commercial maize farming being done that The CS informed the Committee that what is affecting Lake Magadi is lack of soil and

• Petition by residents of Kajjado County on the siltation of Lake Magadi.

spearhead the engagements. The Committee resolved that indeed a retreat should be organized involving all stakeholders in the waste management sector and all the 47 counties to come up with solutions to uniformly handle waste management in the counties. NEMA offered to in their County Integrated Development Plans (CIDPs).

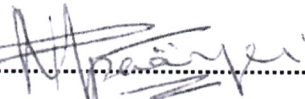
with execution of the devolved function. County Governments have not seriously taken up the issue of waste management. Some of the Counties have even not included any budget

informed the Committee that some Governors may not be interested with conservation of the forests and as a result may not cater for it during their budgeting processes. This would therefore necessitate that a consultative broad engagement be done with the counties which may further lead to reviewing of the Forest Management Act.

- The CS also informed the Committee following a concern by the Committee that NEMA's self-assessment reports on Infrastructural projects is no longer being done, by alluding to the fact that NEMA has serious resource constraints following the removal Environmental Impact Assessment(EIA) fees which was their main source funds as an institution. They are currently negotiating for a return of the levy.

MINUTE SEN/SCLNR/170/2020: DATE OF NEXT MEETING;

The meeting was adjourned at 1.00 PM and the date of the next meeting was to follow thereafter to consider the remaining Petitions and Statements thereafter via zoom platform.

Signed: For:  Date: 19/11/2020

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES**



MINUTES OF THE 54TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON SATURDAY, 14TH NOVEMBER, 2020 AT SAROVA WHITESANDS HOTEL, MOMBASA AT 2.00 PM.

MEMBERS

7. Sen. Philip Mpaayei, MP
8. Sen. Mwaruma Johnes, MP
9. Sen. Sylvia Kasanga, MP
10. Sen. Gideon Moi, CBS, MP
11. Sen. Ndwiga Peter Njeru, EGH, MP
12. Sen. Boy Issa Juma, MP

PRESENT

- **Vice Chairperson**
- Member
- Member
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. (Dr.) Lelegwe Ltumbesi, MP

- **Chairperson**
- Member
- Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Crispus Njogu
3. Ms. Clare Kidombo
4. Ms. Mitchell Otoro
5. Mr. Abdalla Mbore
6. Mr. John Nganga
7. Mr. Naftali Ondiba

SECRETARIAT

- Clerk Assistant II
- Clerk Assistant II
- Researcher
- Legal Counsel
- Sergeant-At-Arms
- Audio Recording
- Finance Officer

MINUTE SEN/SCLNENR/297/2020: PRELIMINARIES

The meeting was called to order at 2.30 pm by the Vice Chairperson followed by a word of prayer.

MINUTE SEN/SCLNENR/298/2020: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP as follows –

7. Preliminaries
8. Adoption of the agenda;
9. Confirmation of Minutes;
10. Adoption of the following Petition Reports;

1. Report of the Committee on the Petition regarding the Loading and Unloading of iron ore in Ganjoni, Mombasa County (Petitioners C/o Sen. Mwinyihaji Mohamed Faki, MP)
 2. Report of the Committee on the Petition regarding the Environmental degradation and irregular dumping at landfill in Kajulu, Kisumu East (Hon. Shakeel Shabbir Ahmed)
 3. Report of the Committee on the Petition regarding the National Housing Policy (Residents of Lumumba and Kibuye Estates in Kisumu County)
 4. Report of the Committee on the Petition regarding the Siltation of Lake Magadi
 5. Report of the Committee on the Petition regarding the Unlawful encroachment and forceful occupation of Barwaqo plots within Bulla Mpya Ward, Mandera East Constituency - Mandera County (Residents of Barwaqo Area)
11. Any other Business:
 12. Date of the next meeting:
 13. Adjournment.

MINUTE SEN/SCLNDR/299/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Committee deferred the confirmation of Minutes to the next housekeeping meeting.

MINUTE SEN/SCLNDR/300/2020: ADOPTION OF THE FOLLOWING PETITION REPORTS;

- (a) **Report of the Committee on the Petition regarding the Loading and Unloading of iron ore in Ganjoni, Mombasa County (Petitioners C/o Sen. Mwinyihaji Mohamed Faki, MP);**

The Committee adopted its report with the following recommendations:

1. The Committee recommends that the open field for South Africa Ports Terminals Limited at COMACO, near the Port of Mombasa remains closed.
2. Should the Company re-open, they should do after an Environmental Impact Assessment before opening, and that impact assessment should be submitted to NEMA and the Committee.

The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP



(b) Report of the Committee on the Petition regarding the Environmental degradation and irregular dumping at landfill in Kajulu, Kisumu East (Hon. Shakeel Shabbir Ahmed);

The Committee adopted its report with the following recommendations;

4. The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders finds as follows:
 - (a) On the allegation that no meaningful public participation was undertaken before issuance of the said licence as required under the law, the Committee was supplied with evidence that public participation took place and which evidence the Petitioner did not controvert. In addition, there is a Judgement of a superior court in *Rose Juma Nyanjom & 3 others v County Government of Kisumu & 2 others [2020] eKLR* where the Environment and Lands Court dismissed the allegation that no public participation took place. In the circumstances, the Committee is satisfied that public participation was undertaken prior to the commencement of rehabilitation of Kisumu Concrete Quarry using inert waste from Kachok Dumpsite.
 - (b) On the allegation that the dumping of waste in the quarry pits in Kajulu has breached the underground aquifers in the area, thus compromising the safety and quality of underground water, the Committee was supplied with evidence by the National Environment Management Authority (NEMA) that an Environmental Impact Assessment was undertaken in which it was found that the proposed landfill did not pose a threat to the water table in Kajulu area. Further, NEMA submitted that a hydrological assessment study had been undertaken and a water quality analysis of neighboring boreholes had been undertaken, all which did not show contamination of the underground water as a result of the land fill. NEMA further reported to the Committee that monitoring of the ground water was done periodically. The Committee thus finds that based on the evidence presented to it, and without any proof of the contrary, as at the time of writing this Report, the allegation of contamination of the underground water was not established. Nonetheless future monitoring of the landfill was still necessary.
 - (c) On the allegation that That the establishment of a landfill for waste in a private site has drastically dropped the value of property in the area, the Committee finds that there was no evidence of valuation of the property in the area to illustrate that that the value of the property had fallen since the filling of the open quarries. NEMA also reported to the Committee that the abandoned open

quarries in the Kajulu area posed a major security, health and environmental risks to the neighboring community and that continuous rehabilitation of quarry sites is the recommended environmental and social management practice. NEMA also reported to the Committee that use of inert materials to rehabilitate quarry pits has been documented as a best practice across the globe. The Committee therefore finds that the allegation of devaluation of the property was not established.

(d) On the allegation that the landfill site was directly in the flight path leading to Kisumu Airport and therefore posed a threat to aircrafts flying over the area, a report was presented by the Kenya Civil Aviation Authority (KCAA), after visiting the landfill in Kajulu and the dumpsite in Kajok. The KCAA reported that the Kajulu landfill did not attract scavenger birds and there was no visible solid waste on the ground. The Committee therefore finds that, as at the time of writing this Report, there was no proof that the Kajulu landfill was a threat to aircrafts flying over the area. Regular monitoring of the site was however necessary to ensure that the Kajulu landfill to ensure that any future threats are promptly identified and addressed.

(e) On the allegation that the County Government of Kisumu irregularly awarded the tender for transportation of the semi-inert waste from Kachok dumpsite to the Kajulu landfill and at an excessive price above market rates, the Committee was not presented with any evidence to support this allegation and could therefore not make any determination as to whether the procurement in respect of this matter complied with the relevant procurement laws. The Committee therefore recommends that this report be submitted the Ethics and Anti-Corruption Commission for investigation.

Recommendations

5. In view of the foregoing, the Committee recommends as follows-

Public participation

6. Waste management in any city is a legitimate concern of its residents as poor waste disposal practices pose a serious threat to the health and the overall wellbeing of the community. It is therefore important that county governments are intentional about creating public awareness on their waste management policies and are responsive to residents who may express concern of any aspect of waste disposal within the county.



7. Going forward therefore, the Committee recommends that the County Government of Kisumu creates awareness on its waste management policy and sensitizes the local leaders and the members of the public on the proposed Kisumu Integrated Solid Waste Management Plan so as to allay and fears or concerns over the manner in which waste is managed or proposed to be managed within Kisumu County.

Kajulu landfill site

8. In respect of this issue, while the Petitioner did not present any evidence to demonstrate that the Kajulu site poses a threat to the environment or to flights over the area, the Committee recommends regular monitoring of the site by the National Environment Management Authority and the Kenya Civil Aviation Authority and requests that any violations or threats to the environment that may be identified by the said Authorities be brought to the urgent attention of the Committee.
9. The Committee particularly notes the National Environment Management Authority's undertaking to continually supervise the Kajulu site in respect of its underground water and therefore recommends that the Petitioner and other local leaders be notified of any concern or breach that may be observed in the future.
10. Due to the COVID-19 situation, the Committee was not able to visit the Kajulu landfill and the Kachok Dumping Site during the inquiry, but the Committee undertakes to do so when the Committee next travels to Kisumu County.

The Kachok Dumping Site

11. The Committee also noted KCAA's recommendation that the closure of the Kachok Dumping Site and the relocation of the dumpsite from Kachok Dumping Site to the proposed Kases plant be accelerated to mitigate aviation risks as it falls within 13 km radius from Kisumu International Airport Aerodrome reference point. The Committee therefore recommends that the KCAA also monitors the Kachok Dumping Site regularly until it is fully decommissioned.

Allegations of impropriety in award of the Kajulu landfill tender

12. The Committee recommends that this Report be submitted the Ethics and Anti-Corruption Commission for investigation of the allegations and prosecution of any persons found culpable.

Waste Management in the Counties

13. The county governments, which are vested with the mandate of waste management, including the Kisumu County Government, should adhere to the National Solid Waste Management Strategy, 2015 and the Best Practice Guidelines on Rehabilitation of disused/abandoned Quarries using Semi-Inert Wastes have been published to guide County Governments towards sound waste management and disposal that were developed by the National Environment Management Authority.

The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP

(c) Report of the Committee on the Petition regarding the National Housing Policy (Residents of Lumumba and Kibuye Estates in Kisumu County)

The Committee adopted its report with the following recommendations:

- (i) Exercise its constitutional obligation under Articles 94 and 96 of the Constitution to enact the National Housing Law that will give effect to all relevant articles in the Constitution with regards to right to housing in terms of availability, affordability, accessibility and adequacy

The Committee recommends that the Cabinet Secretary, Ministry of Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works finalizes the development of the Housing Bill and submits to the Committee the Bill or a status update on the development of the Bill within three months of the tabling of this Report, and in any case not later than 28th February, 2021.

- (ii) Causes public and private partnerships between the national and county Governments on affordable housing to be put on hold pending the enactment of a National Housing Policy.

The Committee recommends that the County Executive Committee member responsible for housing in Kisumu County Government forthwith ensures that it collects rent from people residing in its properties and takes enforcement measures available to them to ensure that the County Government receives monies due to it to enable the County Government offer services to all the people of Kisumu County.

The Committee further recommends that the Senate Business Committee comes up with criteria for consideration of Petitions before they referred to Committees to ensure that the use of the time and resources of the Senate and its Committees are used prudently to protect public interests as opposed to protection of private interests of honest and dishonest people alike.

The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP

(d) Report of the Committee on the Petition regarding the Siltation of Lake Magadi

The Committee adopted its report with the following recommendations;

c) Ensuring that siltation to the lake is prevented;

The Committee recommends that the Cabinet Secretary for the National Treasury and Planning forthwith allocates the Ministry of Environment and Forestry funds for the prevention of siltation to Lake Magadi and submit to the Committee a status update on the allocation of the funds within six months of the tabling of this Report, and in any case not later than 31st May, 2021.

The Committee further recommends that the Cabinet Secretary, Ministry of Environment and Forestry, immediately funds are allocated, undertakes the prevention of siltation to Lake Magadi and submit to the Committee a status update on the prevention exercise within nine months of the tabling of this Report, and in any case not later than 31st August, 2021.

d) Ensuring that appropriate interventions, regulations and guidelines are put in place to ensure and promote sustainable land use practices and prevent soil and water degradation upstream of Lake Magadi.

The Committee recommends that the Cabinet Secretary, Ministry of Environment and Forestry, in collaboration with NEMA, collate information on charcoal burning in the water catchment areas of Lake Magadi with a view to ensuring that the same is done sustainably and in compliance with environment law and submit to the Committee a status update on its progress within three months of the tabling of this Report, and in any case not later than 9th February, 2021.

The Committee further recommends that the Cabinet Secretary, Ministry of Environment and Forestry carries out a comprehensive tree planting exercise in the water catchment areas of Lake Magadi and submit to the Committee a status update on its progress within three months of the tabling of this Report, and in any case not later than 9th February, 2021.

The Committee also recommends that the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Co-operatives formulates and implements sustainable and environmentally efficient crop cultivation and livestock grazing practices in the water catchment areas of Lake Magadi and submit to the Committee a status update on its progress within nine months of the tabling of this Report, and in any case not later than 31st August, 2021.

The Committee recommends that the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works surveys infrastructure projects undertaken by the National Executive and submit to the Committee a report on the measures it has taken to dispose of debris, excavated and other remains from the projects within six months of the tabling of this Report, and in any case not later than 30th June, 2021.

The Committee further recommends that the County Executive Committee member responsible for public works in Narok County surveys infrastructure projects undertaken by the County Government and submit to the Narok County Assembly a report on the measures it has taken to dispose of debris, excavated and other remains from the projects within six months of the tabling of this Report, and in any case not later than 30th June, 2021.

The Committee further recommends that the County Executive Committee member responsible for public works in Kajiado County surveys infrastructure projects undertaken by the County Government and submit to the Kajiado County Assembly a report on the measures it has taken to dispose of debris, excavated and other remains from the projects within six months of the tabling of this Report, and in any case not later than 30th June, 2021.

The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP

(e) Report of the Committee on the Petition regarding the Unlawful encroachment and forceful occupation of Barwaqo plots within Bulla Mpya Ward, Mandera East Constituency - Mandera County (Residents of Barwaqo Area)

The Committee resolved to await the submissions from the Ministry of Interior and Coordination of National Government before it makes its final recommendation on the matter.

MINUTE SEN/SCLENR/301/2020: ANY OTHER BUSINESS;

The Committee discussed the following invitations and resolved that a letter be done to the Speaker seeking for exemption from the ruling against physical sittings of committees.


- i). Request for a Breakfast Dialogue with the Kenya Land Alliance(KLA) on land matters under the Land Sector and registration of Communally held Lands on Wednesday, 18th November, 2020 7.00am – 10.00am;



- ii). Working Retreat on the Consideration of the Intended Nationally Determined Contribution (INDC) to the United Nations Framework Convention on Climate Change, UNFCCC hosted by the Ministry of Environment and Forestry in Naivasha, on 20th and 21st November, 2020; and
- iii). Stakeholder consultations on the Water Sector Regulations and National Water Policy hosted by the Ministry of Water, Sanitation and Irrigation on 27th and 28th November, 2020.

MINUTE SEN/SCLNLR/302/2020: DATE OF NEXT MEETING;

The meeting was adjourned at 1.00 pm and the next meeting was scheduled for 18th November, 2020.

Signed:  Date: 19 /11/2020

SEN. PHILIP MPAAYEI, MP
VICE CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

B. ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS

(Attached separately)