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REPUBLIC OF KENYA



THE SENATE

TWELVETH PARLIAMENT

Approved  
*[Signature]*  
1/12/2020.

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

ON

PETITION BY MR. NOOR ABDIRASHID REGARDING WAJIR WASTE  
DISPOSAL SITE AND THE ALLEGED DISGRACEFUL ABUSE OF THE  
RIGHT TO ENJOY ENVIRONMENTAL RIGHTS UNDER ARTICLE 42 OF  
THE CONSTITUTION OF KENYA

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

NOVEMBER, 2020

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### **List of Abbreviations/ Synonyms**

1. CDE - County Director of Environment
2. CS - Cabinet Secretary
3. EA - Environmental Audit
4. EACC - Ethics and Anti-Corruption Commission
5. EMCA - Environment Management and Coordination Act

## 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.

### 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 the sitting of the Senate held on 2<sup>nd</sup> July, 2019 the Honourable Deputy Speaker of the Senate, reported to the Senate that a Petition has been submitted through the Clerk, by Mr. Noor Abdirashid and a resident of Ali Mao Village, in Wajir County regarding Wajir waste disposal site and the alleged disgraceful abuse of the right to enjoy environmental rights under Article 42 of the Constitution of Kenya.

The salient issues raised in the said Petition are as follows-

1. That the Wajir dumping site was established in 1992. However, at that time, the waste was manageable due to the low population and that the dumping site was far from human settlement;
2. That waste disposal and management has been highlighted as a major problem in Wajir County. In particular, the residents of Ali Mao Village, have had to bear the brunt of the negative impact of the Wajir disposal site which continues to jeopardize their health and livelihoods;
3. That the government has been using the dumping site illegally to dump raw medical waste, human and medical waste as well as hazardous materials;

4. That some of the risks the disposal site is exposing the residents of Wajir county to also include; skin and blood infections resulting from direct contact with water and from infected wounds; Eye and respiratory infections resulting from exposure to infected dust, especially during landfill operations; Different diseases that result from the bites of animals feeding on the waste; Intestinal infections that are transmitted by flies feeding on the waste; and cancers resulting from exposure to hazardous compounds and chemicals.
5. There is now little grazing land as most of the land is covered by the dumping site, where the livestock is susceptible to serious health risks since they are exposed to harmful toxins;
6. That as a result of the mismanagement of the waste disposal site, water in and around the local community is contaminated, thereby exacerbating the problem even further as pathogens from human waste have caused numerous cases of cholera and hepatitis, as well as diarrhoea leading to the deaths of some residents of Ali Mao Village;
7. That there is an overwhelming possibility that many people are likely to die as a result of the continued operation of the dumping site and that the residents are now concerned about the increase in the number of patients in hospitals within Wajir County;
8. That efforts have been made to have the matter addressed by the County Government of Wajir, the National Environmental Management Authority and other relevant authorities but there has been no change of situation;

The petitioner prays that the Senate investigates the matter and intervenes with a view to -

- (a)** Ensuring that the lives and livelihoods of the residents of Ali Mao Village in Wajir County are safeguarded against the harmful effects of mismanagement of waste disposal site;
  - i. Ensure that an Environmental Inspector is appointed by the National Environment Management Authority (NEMA) pursuant to Section 117 of the Environment Management and Coordination Act (EMCA), 1999, to ensure that the County Government of Wajir restores the settlement areas affected by the disposal site and that it is relocated and the area cleaned-up;
  - ii. Ensure compensation of persons in Ali Mao Village whose health has been negatively affected as a direct result of the devastating impact of the dump site;
- (b)** Ensuring that funds through the National and County budgeting process are availed to the Wajir County Government for rehabilitation of the dump site;
- (c)** Ensuring that the Wajir County Government enhances the policy, legal and regulatory framework for disposal of waste in the county;

- (d) Ensuring that medical institutions in Wajir County adhere to proper waste disposal practices;
- (e) Make appropriate recommendations to the NEMA and other bodies charged with safeguarding the environment;
- (f) Review national legislation to address the challenges of waste management in the country; and
- (g) Any other recommendation that the Senate deems fit and just in the circumstances.

Pursuant to the above provisions of the Constitution, the Petition to Parliament (Procedure) Act and the Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within the prescribed period.

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 on the issues raised.

The Committee proceeded to invite the Cabinet Secretary, Ministry of Environment and Forestry, National Environment Management Authority (NEMA) and the County Government of Wajir for them to send their written responses on the aforementioned Petition.

## 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 Mr. Noor Adirashid, the Cabinet Secretary, Ministry of Environment and Forestry, Mr. Keriako Tobiko, CBS, SC, for their 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 Wajir waste disposal site and the alleged disgraceful abuse of the right to enjoy environmental rights under Article 42 of the Constitution of Kenya.

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 2<sup>nd</sup> July, 2020 the Honourable Deputy Speaker of the Senate, reported to the Senate that a Petition has been submitted through the Clerk, by the Petitioner Mr. Noor Adirashid, regarding Wajir waste disposal site and the alleged disgraceful abuse of the right to enjoy environmental rights under Article 42 of the Constitution of Kenya.
2. The salient issues raised in the Petition are as follows-
  - (a) That the Wajir dumping site was established in 1992. However, at that time, the waste was manageable due to the low population and that the dumping site was far from human settlement;
  - (b) That waste disposal and management has been highlighted as a major problem in Wajir County. In particular, the residents of Ali Mao Village, have had to bear the brunt of the negative impact of the Wajir disposal site which continues to jeopardize their health and livelihoods;
  - (c) That the government has been using the dumping site illegally to dump raw medical waste, human and medical waste as well as hazardous materials;
  - (d) That some of the risks the disposal site is exposing the residents of Wajir county to also include; skin and blood infections resulting from direct contact with water and from infected wounds; Eye and respiratory infections resulting from exposure to infected dust, especially during landfill operations; Different diseases that result from the bites of animals feeding on the waste; Intestinal infections that are transmitted by flies feeding on the waste; and cancers resulting from exposure to hazardous compounds and chemicals.
  - (e) There is now little grazing land as most of the land is covered by the dumping site, where the livestock is susceptible to serious health risks since they are exposed to harmful toxins;



- (f) That as a result of the mismanagement of the waste disposal site, water in and around the local community is contaminated, thereby exacerbating the problem even further as pathogens from human waste have caused numerous cases of cholera and hepatitis, as well as diarrhoea leading to the deaths of some residents of Ali Mao Village;
- (g) That there is an overwhelming possibility that many people are likely to die as a result of the continued operation of the dumping site and that the residents are now concerned about the increase in the number of patients in hospitals within Wajir County;
- (h) That efforts have been made to have the matter addressed by the County Government of Wajir, the National Environmental Management Authority and other relevant authorities but there has been no change of situation;

3. The Petitioner, therefore, prays that –

- (a) Ensuring that the lives and livelihoods of the residents of Ali Mao Village in Wajir County are safeguarded against the harmful effects of mismanagement of waste disposal site;
  - i. Ensure that an Environmental Inspector is appointed by the National Environment Management Authority (NEMA) pursuant to Section 117 of the Environment Management and Coordination Act (EMCA), 1999, to ensure that the County Government of Wajir restores the settlement areas affected by the disposal site and that it is relocated and the area cleaned-up;
  - ii. Ensure compensation of persons in Ali Mao Village whose health has been negatively affected as a direct result of the devastating impact of the dump site;
- (b) Ensuring that funds through the National and County budgeting process are availed to the Wajir County Government for rehabilitation of the dump site;
- (c) Ensuring that the Wajir County Government enhances the policy, legal and regulatory framework for disposal of waste in the county;

- (d) Ensuring that medical institutions in Wajir County adhere to proper waste disposal practices;
  - (e) Make appropriate recommendations to the NEMA and other bodies charged with safeguarding the environment;
  - (f) Review national legislation to address the challenges of waste management in the country; and
  - (g) Any other recommendation that the Senate deems fit and just in the circumstances.
4. Pursuant to standing order 232(1) of the Standing Orders of the Senate, the Petition was committed to the Land, Environment and Natural Resources Committee.

### **LEGAL BASIS FOR PETITIONS**

5. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.
6. 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.”*
7. 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.*
8. Standing order 233 requires the Clerk to, within fifteen days of 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

#### Petition Concerns

1. **That** the Wajir dumping site was established in 1992. However, at that time, the waste was manageable due to the low population and that the dumping site was far from human settlement;
2. **That** regrettably, waste disposal and management has been highlighted as a major problem in Wajir County. More particularly, the residents of Ali Mao Village, have had to bear the brunt of the deleterious impacts of the Wajir disposal site which continues to jeopardize their health and livelihoods;
3. The government has been using the dumping site illegally to dump raw medical waste. As a matter of good practice and policy medical waste should not be dumped near human settlement;
4. **That** it is tragic that the disposal site has become notorious for dumping of human and medical waste including hazardous materials such as infectious waste, anatomical and pathological waste, obsolete or expired chemical products and pharmaceuticals, radioactive materials and medical equipment and instruments such as syringes, needles or devices that are no longer used, thereby posing a serious health risk to the local community;
5. **That** it is ironic that the healthcare delivery system, which is established to provide treatment and safeguard the health of the people against illnesses, has now become a source of and means through which the spreading of diseases is perpetuated;
6. **That** some of the risks the disposal site is exposing the residents of Wajir county also include;

#### **Infections**

- (a) Skin and blood infections resulting from direct contact with water and from infected wounds.

(b) Eye and respiratory infections resulting from exposure to infected dust, especially during landfill operations.

(c) Different diseases that results from the bites of animals feeding the waste

(d) Intestinal infections that are transmitted by flies feeding on the waste.

### **Chronic diseases**

Cancers resulting from exposure to hazardous compounds and chemicals.

7. **That** Wajir County residents majorly depend on pastoralism as a source of livelihood. Noteworthy, before the establishment of the dumping site the land had been used for livestock grazing. There is now little grazing land as most of the land is covered by the dumping site. The livestock is susceptible to serious health risks since they are exposed to harmful toxins emanating from the disposal site. This situation has led to an adverse effect on the livelihoods of pastoral communities in and around the dumping site;
8. **That** as a result of the mismanagement of the waste disposal site, water in and around the local community is contaminated, thereby exacerbating the problem even further as pathogens from human wastes have caused numerous cases of cholera and hepatitis, as well as diarrhea and leading to the deaths of some residents of Ali Mao village, who died from cholera and hepatitis, as well as diarrhea;
9. **That** waste from the dumping site ending up in water negatively changes the chemical composition of the water consumed by the residents of Wajir, It is evident that this is water pollution. This has affected all ecosystems existing depending on the water. It has also caused harm to animals that drink from such polluted water.
10. **Those** soil contaminations from hazardous chemicals have been harming human and animal live when the plants take up the contamination through their roots. Residents in Wajir are now consuming plants that have been in contact with such polluted soils;
11. **That** there is an overwhelming possibility that many people are likely to die as a result of the continued operation of the dumping sites. The community residents are now

- concerned about the unfortunate proliferation of patients in hospitals within Wajir County;
12. **That** the National Environment Management Authority gave a notice to the Wajir County Government to take measures to address concerns raised by residents on the disposal site but no action has been taken to change the situation;
  13. **That** the relevant authorities charged with the mandate to ensure proper management of waste in Wajir County have conducted themselves in a manner that is inconsistent with rights granted to Kenya Citizens at Article 42 (a) of Constitution of Kenya that “every person has a right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations and section 3(1) of the Environmental Management and Coordination Act that every person in Kenya is entitled to a clean and healthy environment and that the continued operation of the dumpsite violates article 42 of the Constitution;
  14. **That** the County Government of Wajir does not have a sufficient environmental policy and legal framework for waste management;
  15. **That** efforts have been made to have the matter addressed by the County Government of Wajir, the National Environmental Management Authority and other relevant authorities but there has been no change of situation even despite the fact that residents have raised a litany of complaints;
  16. **That** the numerous relevant authorities including County Government of Wajir have not signaled any willingness to address the problem.

#### **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 Petition. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.
2. In this regard the Committee received the Petition from the Petitioner through the House and further sought for written responses from the County Government of Wajir.

3. Thereafter the Committee invited the Cabinet Secretary, who virtually appeared before the Committee on Thursday, 13<sup>th</sup> August, 2020. The Committee was able to discuss broadly on all matters that affect most of the counties regarding handling of waste.

### **Responses by the Cabinet Secretary, Ministry of Environment and Forestry**

Pursuant to a letter Ref: **SEN/DCS/LENR/2/2020/(42)** dated 4<sup>th</sup> August, 2020, the Committee invited the Cabinet Secretary, Ministry of Environment and Forestry to respond to the Petition in its entirety. Based on the concerns raised below the Ministry provided the responses indicated:

#### **Background**

The waste disposal site is located at Ali Mao Estate in Wajir town. The site is about 40 years old and was designated as Waste Disposal site by Wajir County Council in late 1970s hence not true that the site was designated in 1992.

The Waste Disposal site existed before the settlement of Ali Mao Estate in Wajir town. The nearest building to the site is about 300 to 500 metres. The area is sparsely populated and therefore direct impacts seem minimal.

#### **Reponses provided by the Cabinet Secretary, Ministry of Environment and Forestry on the issues raised issues;**

1. It is true that the community of Ali Mao in Wajir complained to the NEMA Wajir County Director of Environment (CDE) on the poor waste management in the said Wajir Waste Disposal site.
2. The CDE gave an Improvement Order to Wajir County Government on proper management of waste on the site which they promised to comply with. ( **Annexes 1 & 2**)
3. The County Government has taken actions to comply with the Order by making the following improvements of the site:
  - a) Submitted an Environmental Audit (EA) Report of the waste disposal site to NEMA as a requirement in the EIA/EA Regulation 2003 ( **Annex 3**)
  - b) Applied and obtained Waste Transportation License for four (4) waste collection trucks as a requirement for compliance with the Waste Regulation

- c) The County Government is in the process of constructing the Biomedical Waste Incinerator at Wajir District Hospital at the TB Manyatta in Wajir Town
- d) The County Government submitted an EIA Report and obtained EIA License for a concrete perimeter wall fence around the wajir waste disposal site (**Annex 4**). The contract to construct the wall has been given out. The community is objecting to the construction of the wall claiming the site has not been properly managed in the past. Currently the site has a chain link and it is manned.
- e) In September 2019, the County Government signed an MOU with the community committing itself to relocate the site within 12 months. The site is the only designated waste disposal site in the county.
- f) Further, NEMA has confirmed that biomedical waste in the County is transported by NEMA Licensed waste transporters and incinerated at Wajir Referral Hospital incinerator.
- g) The community has appealed against NEMA and County Government actions at National Environment Tribunal (NET) claiming the disposal site is wrongly located and is causing pollution. The hearings has been completed and the ruling is being awaited (**Annex 5**)

The Cabinet Secretary assured the Committee that, the Ministry through NEMA is continuing to monitor the use of the current site to ensure compliance with Waste Management Regulations 2006 and the 10 minimum points on management of open dumps as it awaits the ruling of the Tribunal.

#### **Responses by the County Government of Wajir**

Pursuant to a letter Ref: SEN/DCS/LENR/2/2020/(20c) dated 26<sup>th</sup> May, 2020, the Committee requested for written information regarding the Petition and the Committee was informed that the said matter is before the National Environment Tribunal and that they were therefore constrained to discuss the matter before a court of law. They further attached a copy of the court order that has been annexed to this Report.



## CHAPTER 5

### COMMITTEE OBSERVATIONS

**In accordance with the Prayers of the Petitioner the Committee observes as follows:**

- (1) Ensuring that the lives and livelihoods of the residents of Ali Mao Village in Wajir County are safeguarded against the harmful effects of mismanagement of waste disposal site;**
  - (a) Ensure that an Environmental Inspector is appointed by the National Environment Management Authority (NEMA) pursuant to Section 117 of the Environment Management and Coordination Act (EMCA), 1999, to ensure that the County Government of Wajir restores the settlement areas affected by the disposal site and that it is relocated and the area cleaned-up;
  - (b) Ensure compensation of persons in Ali Mao Village whose health has been negatively affected as a direct result of the devastating impact of the dump site;

#### **Committee Observation**

The Committee observed that-

1. The County Director of Environment gave an Improvement Order to Wajir County Government on proper management of waste on the site which they promised to comply with.
  2. In September 2019, the County Government signed an MOU with the community committing itself to relocate the site within 12 months. The site is the only designated waste disposal site in the county.
- (2) Ensuring that funds through the National and County budgeting process are availed to the Wajir County Government for rehabilitation of the dump site;**

#### **Committee Observation**

The Committee observes that

1. Refuse removal, refuse dumps and solid waste disposal are devolved functions that fall under the County Government.
2. Budgeting for County functions is carried out by the County Assembly and therefore the Petitioners have an opportunity to present their views when the county presents the budget estimates and the County Fisical strategy paper.

- (3) Ensuring that the Wajir County Government enhances the policy, legal and regulatory framework for disposal of waste in the county;**

**Committee Observation**

The Committee observes that-

1. NEMA has confirmed that biomedical waste in the County is transported by NEMA Licensed waste transporters and incinerated at Wajir Referral Hospital incinerator.
2. A High Level Workshop should be organized by NEMA bringing together 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.

- (4) Ensuring that medical institutions in Wajir County adhere to proper waste disposal practices;**

**Committee Observation**

The Committee observes that-

1. NEMA has confirmed that biomedical waste in the County is transported by NEMA Licensed waste transporters and incinerated at Wajir Referral Hospital incinerator.
2. The County Government has sought and obtained a Waste Transportation Licence for four (4) waste collection trucks as a requirement for compliance with the Waste Management Regulations.

- (5) Make appropriate recommendations to NEMA and other bodies charged with safeguarding the environment;**

**Committee Observation**

The Committee observes that NEMA is well versed with the concerns raised by the Petitioner and that the Committee prevails upon NEMA to keep in check the happenings in counties on matters waste management.

- (6) Review national legislation to address the challenges of waste management in the country;**

**Committee Observation**

The Committee observes that refuse removal, refuse dumps and solid waste disposal are devolved functions that fall under the County Governments and the Committee undertakes to coordinate a High Level Workshop with NEMA bringing together 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.

## CHAPTER 6

### COMMITTEE RECOMMENDATIONS

In accordance with the Prayers of the Petitioner the Committee recommends as follows:

- (1) **Ensuring that the lives and livelihoods of the residents of Ali Mao Village in Wajir County are safeguarded against the harmful effects of mismanagement of waste disposal site;**
  - (a) Ensure that an Environmental Inspector is appointed by the National Environment Management Authority (NEMA) pursuant to Section 117 of the Environment Management and Coordination Act (EMCA), 1999, to ensure that the County Government of Wajir restores the settlement areas affected by the disposal site and that it is relocated and the area cleaned-up;
  - (b) Ensure compensation of persons in Ali Mao Village whose health has been negatively affected as a direct result of the devastating impact of the dump site;

#### **Committee Recommendation**

1. The Committee recommends that the County Government of Wajir restores the settlement areas affected by the disposal site.
2. Health services being devolved function, the County Government of Wajir should identify persons leaving in Ali Mao Village and ensure they get treatment for health issues arising from the impact of the dumpsite.

- (2) **Ensuring that funds through the National and County budgeting process are availed to the Wajir County Government for rehabilitation of the dump site;**

#### **Committee Recommendation**

The Committee recommends that the County Government of Wajir sets aside funds for the rehabilitation of the dumpsite the County Budget Estimates 2021/2022.

- (3) **Ensuring that the Wajir County Government enhances the policy, legal and regulatory framework for disposal of waste in the county;**

#### **Committee Recommendation**

The County Government of Wajir should ensure that it has a waste disposal policy which is subjected to public participation and approved by the County Assembly.

- (4) Ensuring that medical institutions in Wajir County adhere to proper waste disposal practices;**

**Committee Recommendation**

The Committee recommends that the County Government of Wajir continuously monitors waste disposal practices in Wajir County.

- (5) Make appropriate recommendations to NEMA and other bodies charged with safeguarding the environment;**

**Committee Recommendation**

The Committee recommends that NEMA continuously keeps in check the happenings in counties on matters waste management.

- (6) Review national legislation to address the challenges of waste management in the country.**

**Committee Recommendation**

The Committee recommends that NEMA works with the Committee in coordinating a High Level Workshop, bringing together all stakeholders in the waste management sector and all the 47 counties to come up with solutions that uniformly handle waste management in the counties.

## **APPENDICES**

### **ANNEX I: MINUTES OF THE MEETINGS**

**MINUTES OF THE 30<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 13<sup>TH</sup> 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

**PETITIONERS**

1. Mr. Stephen Moiko
2. Eng. F. Sakimpa

- 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/SCLNR/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 –**
  - (a) 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)
  - (b) 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;
  - (c) 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/SCLNR/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/SCLNR/168/2020: MEETING WITH THE CABINET SECRETARY, MINISTRY OF ENVIRONMENT & FORESTRY ON THE FOLLOWING PETITIONS AND STATEMENTS –**

- (a) **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.

**(b) 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 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 in their Country Integrated Development Plans (CIDP's).

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 spearhead the engagements.

**(c) Petition by residents of Kajiado County on the siltation of Lake Magadi,**

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

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

The matter touches the following agencies –

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

The Petitioners who were following through the meeting were also given a chance to contribute to the meeting and were able to clearly put out their concerns to the CS and further thanked both the Ministry of Environment and Forestry and the Committee for coming to their aid. They further welcomed the move by the Committee to conduct a site visit and that they are will to host the team.

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.

**MINUTE SEN/SCLN/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 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 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/SCLNLR/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 53<sup>RD</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON SATURDAY, 14<sup>TH</sup> NOVEMBER, 2020 AT SAROVA WHITESANDS HOTEL, MOMBASA AT 9.00 AM.**

**MEMBERS**

1. Sen. Philip Mpaayei, MP
2. Sen. Mwaruma Johnes, MP
3. Sen. Sylvia Kasanga, MP
4. Sen. Gideon Moi, CBS, MP
5. Sen. Ndwiga Peter Njeru, EGH, MP
6. 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 Mboore
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/SCLNR/291/2020: PRELIMINARIES**

The meeting was called to order at 9.30 am by the Vice Chairperson followed by a word of prayer.

**MINUTE SEN/SCLNR/292/2020: 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 –

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Adoption of the following Petition Reports;**

1. Report of the Committee on the Petition regarding the alleged grabbing of the part of the land allocated for settlement of the Petitioners at Kiang'ombe Squatters Settlement Scheme in Thika sub-County, Kiambu County (Residents of Kiang'ombe Squatters Settlement Scheme in Thika)
2. Report of the Committee on the Petition regarding the compensation and resettlement of evictees from Marmanet Forest in Laikipia County (Evictees of Marmanet Forest in Laikipia County)
3. Report of the Committee on the Petition regarding the Wajir waste disposal site and the disgraceful abuse of the right to enjoy environmental rights under Article 42 of the Constitution (Noor Abdirashid)
4. Report of the Committee on the Petition regarding the alleged unlawful acquisition and disposition of the Poka Group Ranch Land
5. Report of the Committee on the Petition regarding the compensation to land owners affected by construction of the Kibwezi - Kitui-Kabati - Migwani (B7) road
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

**MINUTE SEN/SCLNDR/293/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

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

**MINUTE SEN/SCLNDR/294/2020: ADOPTION OF THE FOLLOWING PETITION REPORTS;**

- (a) **Report of the Committee on the Petition regarding the alleged grabbing of the part of the land allocated for settlement of the Petitioners at Kiang'ombe Squatters Settlement Scheme in Thika sub-County, Kiambu County (Residents of Kiang'ombe Squatters Settlement Scheme in Thika);**

The Committee adopted its report with the following recommendations;

1. That the Ministry of Lands and Physical Planning fast tracks the verification exercise on the ownership of the land and issues titles to the beneficiaries at zero cost allocated to members of the Kiang'ombe Squatters Settlement Scheme;
2. That the DCI and EACC investigates the allegations with regard to any parcels of land issued irregularly and responsible officers and grabbers if found brought to book in accordance with the law.

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 compensation and resettlement of evictees from Marmanet Forest in Laikipia County (Evictees of Marmanet Forest in Laikipia County);**

The Committee adopted its report with the following recommendations;

1. The National Land Commission needs to coordinate a multi-agency team comprising of the Ministry of Lands and Physical Planning, Ministry of Interior and Coordination of National Government, Ministry of Environment and Forestry and the County Government of Laikipia to expedite the investigation into the claim by Petitioners from Marmanet Forest. Since the matter falls under the category of a historical injustice, the Committee recommends that a status report on the matter is submitted to the Committee within three (3) months of tabling this Report by the Senate.
2. That the Ministry of Lands and Physical Planning in consultation with the County Government of Laikipia identifies agriculturally viable land that could be used to resettle Petitioners from Marmanet Forest.
3. That the Petitioners should receive any relief accorded to Internally Displaced persons in Kenya through the Ministry of Devolution and Arid and Semi-Arid Lands, Special Programmes Department.
4. That the Ministry of Education should facilitate the issuance of certified duplicated education certificates to the Petitioners who lost their academic documents.

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 Wajir waste disposal site and the disgraceful abuse of the right to enjoy environmental rights under Article 42 of the Constitution (Noor Abdirashid)**

The Committee adopted its report with the following recommendations;

**In accordance with the Prayers of the Petitioner the Committee recommends as follows:**

**(1) Ensuring that the lives and livelihoods of the residents of Ali Mao Village in Wajir County are safeguarded against the harmful effects of mismanagement of waste disposal site;**

- (a)** Ensure that an Environmental Inspector is appointed by the National Environment Management Authority (NEMA) pursuant to Section 117 of the Environment Management and Coordination Act (EMCA), 1999, to ensure that the County Government of Wajir restores the settlement areas affected by the disposal site and that it is relocated and the area cleaned-up;
- (b)** Ensure compensation of persons in Ali Mao Village whose health has been negatively affected as a direct result of the devastating impact of the dump site;

**Committee Recommendation**

- 1. The Committee recommends that the County Government of Wajir restores the settlement areas affected by the disposal site.
- 2. Health services being devolved function, the County Government of Wajir should identify persons leaving in Ali Mao Village and ensure they get treatment for health issues arising from the impact of the dumpsite.

**(2) Ensuring that funds through the National and County budgeting process are availed to the Wajir County Government for rehabilitation of the dump site;**

**Committee Recommendation**

The Committee recommends that the County Government of Wajir sets aside funds for the rehabilitation of the dumpsite the County Budget Estimates 2021/2022.

**(3) Ensuring that the Wajir County Government enhances the policy, legal and regulatory framework for disposal of waste in the county;**

**Committee Recommendation**

The County Government of Wajir should ensure that it has a waste disposal policy which is subjected to public participation and approved by the County Assembly.

**(4) Ensuring that medical institutions in Wajir County adhere to proper waste disposal practices;**

**Committee Recommendation**

The Committee recommends that the County Government of Wajir continuously monitors

waste disposal practices in Wajir County.

- (5) Make appropriate recommendations to NEMA and other bodies charged with safeguarding the environment;**

**Committee Recommendation**

The Committee recommends that NEMA continuously keeps in check the happenings in counties on matters waste management.

- (6) Review national legislation to address the challenges of waste management in the country.**

**Committee Recommendation**

The Committee recommends that NEMA works with the Committee in coordinating a High Level Workshop, bringing together all stakeholders in the waste management sector and all the 47 counties to come up with solutions that uniformly handle waste management in the counties.

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 alleged unlawful acquisition and disposition of the Poka Group Ranch Land**

The Committee adopted its report with the following recommendations;

1. The County Government of Kajiado submits to the Senate all relevant records pertaining to Emali Holding Grounds- L.R Kajiado/Kaputiei South/23 reasons for the change in land use and how it was allocated to private entities without the consultation of the immediate community within one (1) month of the tabling of this Report;
2. That the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) investigates with speed how Emali Holding Grounds, set aside for livestock production purposes was alienated, subdivided, transferred and leased out without the consultation of local communities with a view to prosecuting those who may have fraudulently transferred the land; and
3. That the National Land Commission expedites and submits to the Senate regulations under section 12 (12) of the Land Act, 2012 prescribing for allocation of public land to individuals and communities as well as the manner of conversion of land across categories.



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 compensation to land owners affected by construction of the Kibwezi - Kitui-Kabati - Migwani (B7) road**

The Committee adopted its report with the following recommendations;

- i. The National Land Commission to avail a list of all persons who have been issued with award letters in respect of the project, including valuation for the acquired pieces of land and any variations made on the original award letters;  
**The Committee recommends that the National Land Commission submits to the Committee an updated list of all project affected persons and the status of their compensation within two months of the tabling of this Report, and in any case not later than 1<sup>st</sup> February, 2020.**
- ii. The National Land Commission to compensate the affected land owners promptly, justly and in full.  
**The Committee recommends that the Kenya National Highways Authority and the National Land Commission forthwith compensates all the Project Affected Persons in full and both submit to the Committee a status update on the compensation within three months of the tabling of this Report, and in any case not later than 28<sup>th</sup> February, 2021.**

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

**MINUTE SEN/SCLN/295/2020: ANY OTHER BUSINESS;**

There was no other business discussed.

**MINUTE SEN/SCLN/296/2020: DATE OF NEXT MEETING;**

The meeting was adjourned at 1.00 pm and the next meeting was to follow thereafter at 3.00 pm.

Signed:  Date: **19 /11/2020**

**SEN. PHILIP MPAAYEI, MP**

**VICE CHAIRPERSON**

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

**ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS**

*(Attached separately)*