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PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

THIRD SESSION

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

REPORT ON THE PETITION TO THE SENATE ON PROBLEMS CAUSED
BY IRON ORE MINING AT KISHUSHE IN TAITA TAVETA COUNTY

Clerk's Chambers,
Parliament Buildings,
P. O. Box 41842-00100,
NAIROBI.

OCTOBER, 2019

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PAPERS LAID	
DATE	7/11/2019
TABLED BY	Vice Chair
COMMITTEE	Land, E & NA
CLERK AT THE TABLE	CM



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List of Abbreviations/ Synonyms

1. CS - Cabinet Secretary
2. CSR - Community Social Responsibility
3. MOLPP - Ministry of Land & Physical Planning
4. NLC - National Land Commission

PREFACE

Mr. Speaker sir,

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

Committee Membership

- | | |
|---------------------------------------|--------------------|
| 1. Sen. Mwangi Paul Githiomi, M.P. | - Chairperson |
| 2. Sen. Prengei Victor, M.P. | - Vice Chairperson |
| 3. Sen. Ndwiga Peter Njeru, EGH, M.P. | - Member |
| 4. Sen. George Khaniri, MGH, M.P. | - Member |
| 5. Sen. Godana Hargura, M.P. | - Member |
| 6. Sen. Mwaruma Johnes, M.P. | - Member |
| 7. Sen. Sylvia Kasanga, M.P. | - Member |
| 8. Sen. Halake Abshiro, M.P. | - Member |
| 9. Sen. Boy Issa Juma, M.P. | - Member |

I am pleased to present and table the Committee's report on the petition submitted through the Clerk by four (4) Petitioners and countersigned by Sen. Johnes Mwaruma. The petition is on the problems caused by iron ore mining at Kishushe in Taita Taveta County.

The petitioners submitted their prayers in line with Articles 37 and 119 of the Constitution and guided by the provisions of the *Petition to Parliament (Procedure) Act* and the *Senate Standing Orders*.

The Petitioners prayed that the Senate urgently investigates this matter and makes appropriate recommendations thereon. Among the proposals made by the Petitioners is that the Senate -

1. Deals with the Petition immediately in view of the urgency and seriousness of the matters raised therein.
2. Investigates the poor working conditions at the mining site and recommend appropriate actions.
3. Investigates the circumstances that led to the nonpayment of royalty to the community of Kishushe and recommend that it be paid in arrears and with the accruing interest.
4. Investigates the circumstances that led to the fraudulent acquisition of Kishushe Cooperative Ranch titled deed No.CR 65748 and recommend that it be revoked forthwith.
5. Recommends that Sambruddha Resources Kenya Limited stops its mining operations at Kishushe until it negotiates an agreement with the community members of Kishushe as guided by section 36 of the Community Land Act of 2016.
6. Takes any other appropriate action it deems fit to resolve the matters raised in the Petition.

The Petition

Pursuant to the Senate Standing Orders No. 226 (1)(b) the Speaker of the Senate reported to the House a Petition presented through the office of the Clerk of Senate by four (4) residents of Kishushe, in Taita Taveta County and countersigned by the area Senator, Sen. Johnes Mwaruma. The Petition is on the problems caused by iron ore mining at Kishushe in Taita Taveta County. Pursuant to standing order 232, the petition stood committed to the Standing Committee on Land, Environment and Natural Resources.

The Committee undertook to investigate and determine the prayers of the petitioners pursuant to Senate Standing Order No. 232(2). It also received submissions from the Petitioners and various key stakeholders including the Ministry of Petroleum and Mining, the Ministry of Lands and Physical Planning and the County Government of Taita Taveta.

ACKNOWLEDGEMENT

The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues for their thoughtful and considerate contributions to the matter. Further, the Committee is indebted to the Offices of the Speaker and the Clerk of the Senate for facilitating the work of the Committee in undertaking its constitutional mandate. We also wish to recognize the commitment and dedication of the Committee Secretariat that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

It is now my pleasant duty to table the report of the Senate Standing Committee on Land, Environment and Natural Resources in relation to the Petition by the residents of Kishushe on the problems caused by iron ore mining at Kishushe in Taita Taveta County.

Signed:  Date: 23-10-2019

SEN. MWANGI PAUL GITHIOMI, M.P. - CHAIRPERSON
SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

CHAPTER I

INTRODUCTION

1.1 The right to petition

The right of Kenyan citizens to petition public authorities and Parliament is a right conferred by the Constitution under Articles 37 and Article 119 of the Constitution and by the *Petition to Parliament (Procedure) Act* as well as the *Standing Orders of Senate*. The right to petition is an essential citizen participatory tool, as it provides an avenue for the Members of Parliament and citizens to interact with the issues that concern citizens, and also demonstrates that Parliament is prepared to directly intervene on the issues of concern in order to promote and protect the rights of the citizens.

1.2 Background to the Petition

Pursuant to standing order 226 of the Senate Standing Orders, the petition was presented and submitted, through the Clerk, by 4 residents of Kishushe, in Taita Taveta County and countersigned by the area Senator, Sen. Johnes Mwaruma. The Petition is on the problems caused by iron ore mining at Kishushe in Taita Taveta County. It was then committed to the Standing Committee on Land, Environment and Natural resources for consideration and determination.

CHAPTER 2

APPROACH OF THE COMMITTEE

The Members of the Committee sifted through the issues raised by the Petitioners and analyzed the issues to be determined from the prayers of the Petitioners and embarked on a process to identify the necessary action to take on the prayers submitted by the Petitioners. The Committee invited Ministry of Lands and Physical Planning and thereafter during the site visit invited the Local Administration and the County Government of Taita Taveta.

The Committee also invited the Petitioners and gave opportunity to any other resident from the affected area during the site visit who was interested in making submissions on the Petition to provide further information to help determine the prayers in the Petition.

The Committee conducted the site visit on 10th May, 2019.

The main objective of the Committee was to obtain as much information and facts on the subject matter so as to reply to the prayers of the Petitioners conclusively and make recommendations on all issues pertaining to the Petition.

2.1 Committee Proceedings

i. Deliberative sessions

In the exercise of its mandate, the Committee held deliberative sessions with the following:

- (a) The Petitioners;
- (b) Ministry of Petroleum and Mining;
- (c) Ministry of Lands and Physical Planning; and
- (d) Local Administration.

ii. Documents review

The Committee reviewed documents presented to it by the petitioners and they are annexed in this report (Annex II). Among the documents presented were:

- i). Petitioner's presentation; and
- ii). Documentation in support of the Petition.

iii. Site Visit to Kishushe, Taita Taveta County

The committee also met Petitioners at Kishushe to respond to petition/statement on the Iron ore mining in Kishushe where the petitioners raised the following issues to the committee;

- 1) Ranches are set up taking most community land in Taita-Taveta County and they end up using the ranches for mining activities without informing the people living in Kishushe.
- 2) The people of Kishushe do not benefit from the Iron Ore Company as many of them are unemployed. Many people working in the company come from outside Kishushe and Taita-Taveta County as a whole.
- 3) Iron Ore mining activities have brought diverse effects to the environment. The road from Mwatate-Holili junction to Kishushe is not tarmacked hence there is a lot of dust affecting the people of Kishushe from the trucks that use the road to transport the iron ore and also there's pollution from the company activities within the mining area.
- 4) The people of Kishushe do not know the owner of the Iron Ore Company because they have never had public participation to involve them and hear their views on the company and the project.
- 5) The few people employed in the company are given meagre wages and whenever they demonstrate for better pay, they are dismissed by police officers using teargas.
- 6) The employees are not given industrial protection equipment like gloves, boots to help them in handling the iron and this puts their health at a very high risk.
- 7) The residents of Kishushe also do have title deeds for their various pieces of land.

The committee together with Principal Secretary, State Department for Mining in the Ministry of Petroleum and Mining listened to the Petitioners keenly and the Committee, through the chairperson, promised to follow up on the matter and produce a report promptly.



Figure 1: Committee members, Petitioners and local leaders together with other stakeholders from various government agencies at the Social Hall in Kishushe on 10.05.2019. (Kishushe, Taita Taveta County)

CHAPTER 3

SUBMISSIONS TO THE COMMITTEE

This section contains the summaries of the submissions made to the Committee during the sessions and other documents submitted.

3.1 Submissions by the Petitioners

The Petitioners submitted as follows-

The petitioners raised the following salient issues on the petition:

1. THAT the residents of Kishushe have been having a lot of problems with Sambruddha Resources Kenya Limited, a company mining iron ore in the area.
2. THAT Sambruddha Resources Kenya Limited have a secret partnership agreement with the management of Kishushe Cooperative Society Ranch, which claims to own the mining area, to mine iron ore for the benefit of themselves with total disregard of their members and the rest of Kishushe residents.
3. THAT Sambruddha Resources Kenya Limited and its partner, the management of Kishushe Cooperative Society Ranch:
 - i). Are denying people who complain about human rights violations in the mine an opportunity to work in the mine contrary to section 30 of the Community Land Act, 2016;
 - ii). Have failed to provide the right working tools and facilities that ensure health and safety of workers contrary to Article 41(2)(b) of the Constitution and section 178 of the Mining Act, 2016;
 - iii). Have failed to provide insurance cover for the workers and thus violating section 217 of the Mining Act and Section 7 of the Work Injury Benefits Act (WIBA), 2007;
 - iv). Have been transporting workers to work and back by a lorry which has no insurance cover and thus exposing them to risk in case of an accident;
 - v). Are paying workers poorly and thus have violated Article 41(2)(a) and (5) which states that every person has a right to fair remuneration which can be

achieved by signing a collective bargain agreement between the employer and the employees;

- vi). Have not ensured that the community benefits from the investment through remittance of royalties as anticipated by section 183 of the Mining Act, 2016 and from the projects funded via CSR by the Company.
4. THAT by claiming to own Kishushe iron ore mining area, the management of the Kishushe Cooperative Society Ranch have contradicted Article 61 (f) of the constitution of Kenya which declares that all minerals and mineral oils are public land, and that, according to section 6 of the Mining Act of 2016, are held in trust for all the citizens of Kenya.
 5. THAT on 1st August, 2015 the management of Kishushe Cooperative Ranch fraudulently got a title deed No. CR65748 despite the fact that:
 - i). During the survey of the ranch boundaries by the county government in December 2014, the citizens whose parcels of land border the ranch were suspiciously not informed about it and so did not participate in it.
 - ii). The survey extended the Kishushe Cooperative Society Ranch boundary into residents' land and thus making over 1500 people landless or squatters of the Kishushe Cooperative Ranch on land they have lived in and cultivated since 1962.
 - iii). There was a court order served on the Attorney general's office on behalf of the Ministry of Lands and Physical Planning not to issue the title deed.
 6. THAT a task force appointed by the then cabinet secretary for mining, Hon. Najib Balala to look into the mining problems in the area recommended that the title deed No. CR 65748 be revoked because it was acquired fraudulently.
 7. THAT the mining being done by Sambruddha Resources Kenya Limited at Kishushe is illegal for it fails to comply with section 36 of the Community Land Act, 2016.
 8. THAT section 36 of Community Land Act, 2016 states that, for any investment to be done on community land, there has to be an agreement between the investor and the community that has been done after a free and open consultative process.

9. THAT on 14th January, 2019, Taita Taveta County Senator, Wundanyi and Voi Constituency Members of the National Assembly, the Members of County Assembly for Wumingu/ Kishushe and Mwanda/ Mghange Wards and the Finance and Planning County Executive Member of the County Government of Taita Taveta brokered a consultative meeting between Sambruddha Resources Kenya Limited and the residents of Kishushe to resolve some of the issues raised in the Petition.
10. THAT most of the issues raised in herein were discussed and an agreement was reached on how they should be resolved and by when, but the company has not implemented any of the resolutions.
11. THAT effort to resolve the matters raised in the Petition with the relevant authorities have proved futile.
12. THAT there is no case pending in court or any constitutional body on the matters raised in the Petition.

The Petitioners the prayed that the Senate:

1. Deals with the petition immediately in view of the urgency and seriousness of the matters raised herein
2. Investigates the poor working conditions at the mining site and recommend appropriate actions.
3. Investigates the circumstances that led to the nonpayment of royalty to the community of Kishushe and recommend that it be paid in arrears and with the accruing interest.
4. Investigates the circumstances that led to the fraudulent acquisition of Kishushe Cooperative Ranch titled deed No.CR 65748 and recommend that it be revoked forthwith.
5. Recommends that Sambruddha Resources Kenya Limited stops its mining operations at Kishushe until it negotiates an agreement with the community members of Kishushe as guided by section 36 of the community Land Act of 2016.
6. Takes any other appropriate action it deems fit to resolve the matters raised in the Petition.

3.2 Submissions by Ministry of Petroleum and Mining

The Ministry of Petroleum and Mining submitted as follows:

1. Legal Provisions

The Mining industry had for a long time been regulated by Mining Act Cap 306, administered by the Commissioner of Mines and Geology. Effective from 27th May 2016, the Mining Act 2016 was enacted with its administrator as the Cabinet Secretary in-charge of mining.

2. Historical Maktou Mining Company Limited

Iron ore mining in Kishushe area started in mid-1995; when Maktou Mining Company Limited on 29th March, 1995 applied for mining rights for the supply of iron ore to local cement manufacturing companies. In support of the application the company had submitted a consent dated 27th April, 1995 from the Chairman of the then County Council of Taita Taveta. The company directors were; Mr. Hasham Abdalla Sale Mohamed and Mr. Mahamood Kassam Hussein.

Immediately a dispute arose among the company directors after the company obtained a temporary authority from the Commissioner of Mines to prospect and mine for the supply of iron ore to the cement manufacturing companies, pending the consideration of the application. The dispute led to the cancellation of the temporary authority, after it was realized that at the time of lodging the application, 27th April 1995 the company had not been registered, as per the copy of company Registration Certificate No. C 65583 of 26th June, 1995. Subsequently, Maktou Mining Company Limited instituted a court case, Civil Suit No 164 of 1996 in the High Court at Mombasa, against Hasham Abdalla Mohamed, the Commissioner of Mines and the Attorney General. The parties later on 8th November 1996 entered a consent to settle the matter out of court whereby it was agreed that the Commissioner of Mines be at liberty to issue a license for ten (10) years in respect of the suit land in the names of Hasham Abdalla Sale Mohamed and Mahamood Kassam Hussein or any company nominated by them.

3. Wanjala Mining Company Limited and Grant of Special Licence No 171

Wanjala Mining Company Limited was incorporated on 19th November, 1996, under certificate of incorporation No. C73739, with its directors as Hasham Abdalla Sale

Mohamed and Mahamood Kassim, where each held one (1) share. The Commissioner of Mines, in compliance with the out of court settlement, issued to the Company special Licence No. 171 for a period of 10 years with effect from 1st April, 1997 over an area of 64km² at Kishushe of the then Taita Taveta District, to prospect explore and mine in the area non precious minerals as defined in the Mining Act.

4. Lack of Local Markets of the Kishushe Iron Ore and Termination of Special License No 171

Initially Wanjala Mining Company Limited targeted to supply the local cement manufacturers with iron ore. However, the physical characteristics of the ore led to its rejection by the cement companies due to its extreme hardness, although the chemical composition was satisfactory. The companies had required the ore to be crushed first. This resulted in non-activity in the area for some time. Vide Gazette Notice No 2424 of 19th April 2002, the Commissioner of Mines and Geology terminated Special License No 171 with effect from 1st April 2000 for non-compliance with license conditions (nonperformance).

5. Appeal Against Termination of License and Re-grant of Special License No 211

The company appealed against the termination of the Special Licence No. 171 upon which the Commissioner of Mines re-granted Special Licence No. 211 for a term of 5 years (the reminder of the initial 10 years term under 171) with effect from 1st December 2005 to explore and prospect for non - precious minerals as defined in the Act.

6. Proposal for sale of the company

Through an agreement dated 23rd March 2005, Wanjala Mining Company Limited was to be sold to Mahashumu Limited for Kshs. 185 million. Mr. Mahamood Kassim and Mohamed Rafio Abdulrehman Miyanji acted on behalf of Wanjala Mining Company (who were indicated to have had equal interest of 50% each in the company after the former partner shareholder Mr. Ilasham Abdalla Mohamed had been

allegedly bought off by Mr. Mohamed Rafio Abdulrehman Miyanji). Mr. David Langat and Mr. Hardeep Singh Puee acted for Mahashumu limited. The payment for purchase was structure in form of installments, were the sale was to be completed by 10th January, 2006. The Commissioner of Mines gave consent for the agreement on 4th April, 2005. This sale agreement appears not to have been concluded.

7. First Land Dispute Complaint

On 2nd June, 2005 Wanjala raised a complaint to the Commissioner of Mines and Geology that the land under their mining operations was in the process of being registered in the name of Kishushe Ranch after adjudication exercise. The Commissioner of Mines on 30th June, 2005 wrote to the Commissioner of Lands requesting for the suspension of registration of the ranch until the issue of accessibility of land for mining was fully addressed. In the meantime, the Company and County Council of Taita Taveta instituted a suit against Kishushe Ranching Cooperative Society Limited on the land issue.

8. Termination of Special Licence No 211 and Re-grant as Special Licence No 251

Due to nonperformance the Special Licence No 211 was again terminated with effect from 1st December 2006 through gazette notice No 3570 of 20th April, 2007. The company further appealed and after submitting a ten (10) years land lease dated 28th March, 2007 over the 64 km² from the County Council of Taita Taveta, the licence was re-issued as Special Licence No. 251 for a period of 2 years effective from 1st October, 2007, to explore and prospect for non-precious minerals as defined in the Act.

9. Memorandum of Understanding (MoU) Between Wanjala Mining Co and R. K. Sanghani

Though Memorandum of Understanding dated 20th March 2008, Mr. R. K. Sanghani was to finance operations and carry out mining of iron ore in the licence area on royalty payment terms to Wanjala Mining Co Limited based on product tonnage.

However, through letter of 11th April 2008 the Commissioner of Mines and Geology informed the company that they needed to obtain a mining lease for them to undertake mining as per the agreement. In the meantime, the authority to undertake bulk sampling of iron ore from Kishushe and move equipment to site was issued to the Company on 20th May 2005. By March 2010, Mr. R.K. Sanghani had shipped a total of 32,875 tonnes of iron ore and paid a royalty of Kshs. 538,750 to the GoK. The royalty rate was 2.5% of F.O.B value.

10. Airborne Geophysical Survey Undertaken over the License area by R.K. Sanghani in 2010

Mr. R.K. Sanghani undertook an airborne geological survey over the license area in 2010. A ground follow-up drilling operations reported some 5 million tonnes of iron ore resource in the area.

11. Applications for grant of Mining Locations

On 11th June 2010, Wanjala Mining Company applied for registration of six (6) mining locations within the special License No 251 area. The six mining locations were registered/granted on 6th September, 2010 as Nos 2156/1-10 to 2161/1-10.

12. Heightened Kishushe land dispute

The Kishushe Ranching Co-operative Society Limited on 19th August, 2010 complained to, and accused the Commissioner of Mines and Geology of issuing the Wanjala Mining Company Limited with a Prospecting License without their consent and requested for the cancellation of the said license. The Ranch had indicated that they had identified a suitable investor whom they were ready to work with in exploiting the iron ore in Kishushe. The Commissioner of Mines and Geology made efforts to arbitrate the land dispute with no success after the Clerk to the County Council claimed that there was a pending court case on the land.

13. Interests of Samrudha Resources Kenya Limited over the Kishushe Iron ore Area

Samrudha Resources Kenya Limited on 6th January, 2014 applied for an Exclusive Prospecting License over an area of 80km² bordering the Wanjala Special License No 251, after obtaining consent from Kishushe Ranching Co-operative Society on 22nd December, 2013. The company was granted with an Exclusive Prospecting Licence No. 277 over 80 Km² for one (1) year with effect from 6th June, 2014 to prospect for industrial minerals and iron ore. The Directors of Samrudha were indicated as Vinay Rohidas Patil (900 shares), Chinubhai Sheth Shailesh (25 shares), Shivraji Jaikumar Jadhar (25 shares), Ashish Bahadur (25 shares) and Jinis Liladhar Shah (25 shares) — total 1000 shares.

14. Area Variation of Wanjala Special Licence No 251

As the land boundary dispute escalated with Kishushe Ranching Co-operative Society Limited insisting that the Wanjala Mine site was within their Ranch, the Cabinet Secretary on 18th September, 2014 wrote to the Chairman, National Land Commission to confirm land parcel boundaries between Kishushe Ranching Co-operative Society Limited ranch, Kishushe Adjudication Section and Oza Group Ranch. According to a letter dated 10th November, 2014 from the Chairman, National Land Commission, approximately 40 km² of Special Licence No. 251 of Wanjala Mining Company Limited was within the Kishushe Adjudication Section, and was the only area that the licence could be renewed / issued for. The 40 Km² area encompassed the mine site. Subsequently, the Special Licence No. 251 on 14th November was renewed for a term of three (3) years with effect from 1st September 2013, on a varied / reduced area of 40 km². The company's six (6) Mining Locations were also renewed for one year with effect from 2nd November, 2014 to 1st November, 2015.

15. Issuance of Kishushe Ranching Co-operative Society Limited with Title No. C.R. 65748

On 24th August 2015, Kishushe Ranching Co-operative Society Limited was issued with a land title No. C.R. 65748, by the Registrar of Titles. The ranch management presented a copy of the title to the Ministry of Mining as evidence that they were the land owners over area within which the Wanjala mine was located, and that as land

owners Wanjala Mining Company Limited had not obtained consent from them as required by the law.

16. Commissioner's Request to Wanjala Mining Co Ltd to Regularise land Consent with Kishushe Ranching Co-operative Society Limited

The then Acting Commissioner of Mines and Geology, on 15th February, 2016, requested Wanjala Mining Company Limited to regularize land consent with Kishushe Ranching Co-operative Society Limited within 21 days, failure to which the status of their mining rights would be reviewed. The company chose not to comply with the request claiming that the issuance of the title to Kishushe Ranch was in breach of a court order issued in respect to ELC No. 260 of 2014.

17. Further area variation of Wanjala Mining Co Ltd's Special licence No. 251

The Ministerial Licensing Advisory Committee, acting on the complaint and proof of land ownership by Kishushe, on 4th May, 2016, considered and approved the area variation of the Special Licence No. 251 to exclude areas under the Kishushe Ranch Titled parcel. The area variation was then effected in the Mining Cadastre Portal, reducing the area under Special Licence No. 251 to 18.7336 km².

18. Wanjala Mining Co. Ltd Institutes Further Court Proceedings Nos. 28 and 40 of 2016,

Wanjala Mining Company Limited challenged the action of the Ministry to vary the licence area through judicial review proceedings No. 28 of 2016 in the High Court at Mombasa and instituted court proceedings against the Kishushe Ranching Co-operative Society Limited and the Ministry of Mining, through Miscellaneous Application No. 40 of 2016.

19. Kishushe Ranching Co-operative Society Institute Court Proceedings vide ELC No. 141 of 2017

Through ELC No. 141 of 2017 at the Environment and Land Court in Mombasa, Kishushe Ranching Co-operative Society instituted court proceedings against Wanjala Mining Company Limited and Sanghani Limited.

20. An Out of Court Settlement of the Protracted Court Cases

On 26th February, 2018, Kishushe Ranching Co-operative Society Limited (the Plaintiff) entered into an out of court consent with Wanjala Mining Company and Sanghani Limited (the defendants) for an out of court settlement of ELC No. 141 of 2017, whereby:

- i). R. K. Sanghani (the second defendant) was at liberty to remove the iron ore stock pile of approximately 200,000 tonnes lying on 64km² area situated at Kishushe and within the lease area granted by the defunct County Council of Taita Taveta.
- ii). The defendants had up to 180 days from the date of settlement to remove the stockpile, where they had unrestricted access to enter into and out of the area together with putting up own employees for security of the stockpile.
- iii). Upon the removal of the stockpile the defendants were to have no claim, right or interest over the suit property and ELC Case Number 260 of 2014 and resultant appeals arising out the said suit and Case Number ELC 141 of 2017 would be settled between the parties without any cost implication on any of the parties to the said suit (each party was to bear its own costs).
- iv). Any entry by defendants to the suit property after the 180 days required consent of the plaintiff (Kishushe Ranching Co-operative Society Limited).
- v). The Defendants were not required to restore the suit property to its state prior to their excavation.
- vi). The Plaintiff thereafter was to have no claim against the Defendants in respect of the stockpile and/or any iron ore and/or any other minerals previously mined or removed from the suit property and/or previously sold and or exported.

21. Implementation of Court Consent / Settlement

(i) Removal of Ore Stockpile from site by R.K. Sanghani

- a) Under the out of court settlement, R.K. Sanghani was to remove his iron ore stockpile within 180 days from the consent date (of 26th February, 2018).
- b) Within a few days after R. K. Sanghani's commenced their stockpile removal, the Taita Taveta County Government asked them to seek their consent. This halted the stockpile removal.
- c) Taita Taveta County Government gave approval on 1st August, 2018, where Sanghani was supposed to pay a cess of Kshs. 150 per tonne of the iron ore stock pile removed from site.
- d) The delay occasioned lapse of the 180 days window given for removal of iron ore stock pile. As a result, R.K. Sanghani sought extension from court and was allowed more 90 days from the ruling date of 7th March 2019.
- e) According to Sanghani, the iron ore is being stocked in two yards in Mombasa, as they wait to seek and secure orders for export.

(ii) Environmental issues

- a) The Local Community complained of dust pollution from trucks ferrying iron
- b) R.K. Sanghani was instructed to be watering the roads to suppress dust pollution from trucks ferrying the iron ore. Three water boozers have since been deployed for this purpose.

(iii) Re-grant of Mineral Rights to Wanjala Mining Company Limited

- a) On 27th April, 2018, Wanjala wrote to the Cabinet Secretary for Petroleum and Mining informing him of the out of court settlement and agreement to transfer all the

company's rights and obligations under the special licence No. 251 to Samrudha Resources Kenya Limited, who had already gotten consent from Kishushe Ranching Cooperative Society Limited.

b) However, the Special Licence No. 251 had expired on 31st August, 2016 whereas the Licences for the six Mining Locations had expired on 2nd November, 2015 and as a result they needed to be validated and/or renewed by National Government before transfer.

c) Based on the transitional provisions under Section 225 (3) of the Mining Act 2016, any right under a special licence or mining location, issued under the repealed Mining Act Cap 306 and subsisting immediately before the Commencement of the Mining Act 2016, was to continue in force until expiration by passage of time

d) On 23rd October, 2018 Wanjala mining Company Limited applied for the re-grant renewal of the mineral rights under the Mining Act 2016;

- Prospecting Licence No. PU2018/0149, over an area of 18.7336Km² in place of the Special Licence No. 251.
- Mining Permits Nos. MP/2018/0137 to MP/2018/0142 over a total area of 1.8586 Km² in place of the former six (6) Mining Locations.

e) The Prospecting Licence No. PL/2018/0149 was granted for 3 years with effect from 8th March, 2019 whereas the Mining Permits Nos. MP/2018/0137 to MP/2018/0142 were issued for 5 years with effect from 5th April, 2019.

22. Operations by Samrudha Resources Kenya Limited

- i). Samrudha had applied for and was granted a mineral dealers licence No. DTL12018/0231 on 11th April, 2018.
- ii). After the court settlement, Samrudha Resources Kenya Limited, the preferred company by the Kishushe Ranching Cooperative Society Limited made four exports of iron ore from the area totaling 164.268 tonnes, valued at Kshs.

456,761,938 and paid royalty to the National Exchequer totaling Kshs 36,540,955.

23. Whether the income received from mining in Taita Taveta County is directed to the National Exchequer as required by the Mining Act.

We confirm that the income received from mining in Taita Taveta County is directed to the National Exchequer as required by the Mining Act. Payments are made directly by the companies paying entities to the State Department for Mining Revenue Account in the Central Bank of Kenya. Those making small remittances may choose to make payments by banks' cheques or cash to the State Department for Mining at the Accounts office where remittances/banking to the Department's revenue account at the Central Bank Account are made at least three times per week. Being a revenue account, transfers of the remittances are immediately and instantly done to the National Exchequer, at the Central Bank of Kenya.

24. Report on the sharing of royalties between the National Government, the County Government and the community, indicating whether the sharing complies with Section 183 (5) of the Mining Act.

Royalties are National Government revenue paid into the Consolidated Fund. To operationalise royalty sharing, there is need to create a special fund for receiving the portion of the royalties for counties and communities in accordance with the Constitution. The Ministry of Petroleum and Mining did a draft Minerals Royalty Sharing Fund Regulations under the Public Finance Management Act to put into effect section 183(5) of the Mining Act. The draft Minerals Royalty Sharing Fund Regulations were submitted to the National Treasury in April, 2017 for consideration following which they will be enacted, published for application. The Ministry despite several follow-ups has not received any response from the National Treasury. Therefore, to-date there has been no sharing of royalties to the County Governments and the Local Communities despite the provisions under the Mining Act.

3.3 Submissions by Ministry of Lands and Physical Planning

The Ministry of Lands and Physical Planning informed the Committee that the Title to the land in question is in the rightful owner and that the matter is still on court.

The registered proprietor of Plot Number 28984 – Taita CR 65748 is Kishushe Ranching Cooperative Society Limited on leasehold for a term of 99 years from 1st August, 2015. Annual rent payable to the Government of the Republic of Kenya is Kshs. 8,500. The Parcel measures approximately 23629.8Ha(s).

Pursuant to a letter of allotment dated 15th December, 1973 and revised on 13th June, 1983, a certificate of Title CR 65748 was issued on 24th August, 2015 to Kishushe Ranching Co-operative Society Ltd. This was before a court order was issued in Mombasa ELC No. 260 of 2014 (Wanjala Mining Company Ltd vs. the National Land Commission, the Ministry of Lands, the Chief Land Registrar and the Kishushe Ranching Co-operative Society Ltd) barring issuance of title on the property.

An application was filed in court citing the Ministry for contempt of the order of court that barred the issuance of title property. It also sought the nullification of the title. The Court in a ruling rendered on 1st February, 2017 held that there was no proof that the Ministry was duly served or/and was aware of the existence of the court order prior to issuance of the title. Consequently, the application was dismissed. The Court did not issue orders to revoke the title.

The case is still pending before court and thus the Ministry is awaiting the decision of the court as regards the revocation.

CHAPTER 4

COMMITTEE OBSERVATIONS

From the Evidence adduced and the observations made the Committee makes the following determination on the prayers of the petitioner.

The committee made the following observations in line with the prayers of the Petitioner as follows-

1. Deals with this petition immediately in view of the urgency and seriousness of the matters raised herein.

The Committee observed that the Senate had proceeded with speed to refer the Petition to the Committee and that the Committee, with the same speed and taking into account its heavy workload and the availability of stakeholders, proceeded to investigate the Petition and report back to the House.

2. Investigates the poor working conditions at the mining site and recommend appropriate actions.

The Committee noted that indeed any working environment ought to be in strict adherence to set standards and any breach of the standards and the law ought not to be tolerated. It observed that the Ministry of Petroleum and Mining ought to ensure that it critically assesses the Mining conditions at the Mine and reports back to the Committee the status.

The Committee was also advised by the Ministry of Petroleum and Mining that the environmental challenges that faces the employees and residents of Kishushe had largely been addressed. The Committee however observed that there was need for the Ministry to critically assess the environmental conditions and report back to the Committee the lapses and improvements made or needed.

3. Investigates the circumstances that led to the non-payment of royalty to the community of Kishushe and recommend that it be paid in arrears and with interest.

The Committee observes that the Ministry of Petroleum and Mining sent the National Treasury draft regulations for the implementation of section 183(5) of the Mining Act to facilitate sharing of royalties between the National Government, county governments and local communities way back in April, 2017. The National Treasury seems to be unduly delaying the publication of these regulations therefore denying counties and local communities their share of royalties as provided in the law.

4. Investigates the circumstances that led to the fraudulent acquisition of Kishushe Cooperative Ranch titled deed No.CR 65748 and recommend that it be revoked forthwith.

The Committee, observing that this matter is pending in court, opted to await the decision of the court and completion of the court process.

5. Recommends that Sambruddha Resources Kenya Limited stops its mining operations at Kishushe until it makes an agreement with the community members of Kishushe as guided by section 36 of the community Land Act of 2016.

The Committee observes that indeed there were existing lapses in terms of implementation of section 36 of the Community Land Act of 2016 by Sambruddha Resources Kenya Limited and they should therefore embark on involving the Community in all ways possible and further involve the state department of mining.

CHAPTER 5

COMMITTEE RECOMMENDATIONS

From the foregoing, the Committee now makes the following recommendations-

1. The Committee recommends that the Ministry of Petroleum and Mining embarks on critically assessing the working and general mining conditions in all mines in Kishushe, Taita Taveta County and report back to the Committee on the status within 60 days.
2. The Committee recommends that the Ministry of Petroleum and Mining critically assesses the environmental conditions in all mines in Kishushe, Taita Taveta County and report back to the Committee on their status of compliance with the law within 60 days.
3. The Committee recommends that the National Treasury finalizes the preparation of the regulations operationalizing sharing of revenue under section 183(5) of the Mining Act and publishes them within 90 days.
4. The Committee recommends that Sambruddha Resources Kenya Limited forthwith ensures that it enters into agreements with relevant communities in compliance with section 36 of the Community Land Act, 2016.
5. The Committee further recommends that the Ministry of Petroleum and Mining, as the regulator and licensor, investigates Sambruddha Resources Kenya Limited's compliance with the Community Land Act and takes appropriate action where a breach has been committed.

MINUTES OF THE 27TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 23RD OCTOBER, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Godana Hargura, M.P.
4. Sen. Ndwiga Peter Njeru, EGH. M.P.
5. Sen. George Khaniri, MGH, M.P.
6. Sen. Boy Issa Juma, M.P.
7. Sen. Halake Abshiro, M.P.

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Mwaruma Johnes, M.P. - Member
2. Sen. Slyvia Kasanga, M.P. - Member

IN ATTENDANCE

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Caroline Cheruiyot - Legal Counsel
3. Mr. Abdalla Mbore - Sergeant at arms
4. Mr. Eugene Luteshi - Audio Recording

MINUTE SEN/SCLN/157/2019: PRELIMINARIES

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

MINUTE SEN/SCLN/158/2019: ADOPTION OF AGENDA

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

1. Preliminaries;
 - Prayer
 - Chairpersons remarks
2. Adoption of the agenda;
3. Adoption of Committee Reports;
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLNDR/159/2019:

CONFIRMATION OF MINUTES

The Minutes of the 24th sitting held on 25th September, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Godana Hargura, M.P. respectively.

The Minutes of the 20th sitting held on 12th August, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Boy Issa Juma, M.P. respectively.

The Minutes of the 11th sitting held on 4th April, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Boy Issa Juma, M.P. respectively.

The Minutes of the 5th sitting held on 20th February, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Prengei Victor, M.P. and seconded by Sen. Halake Abshiro, M.P. respectively.

MINUTE SEN/SCLNDR/160/2019:

MATTERS ARISING

There were no matters arising.

MINUTE SEN/SCLNDR/161/2019: ADOPTION OF COMMITTEE REPORTS

The following reports were adopted by the Committee:

- (a) Report on the Petition regarding Adverse environmental and social effects arising from the construction of Phase 2A of the Standard Gauge Railway (Nairobi – Naivasha Section);

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (b) Report on the Petition regarding Budgetary support to Wildlife Conservancies for sustainable conservation and community development;

The report was adopted after having been proposed and seconded by Sen. Prengei Victor, M.P. and Sen. Boy Issa Juma, M.P. respectively.

- (c) Report on the Petition regarding Alleged unlawful deprivation of a parcel of land situated in Kaputiei North, Kajiado County;

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Ndwiga Peter Njeru, M.P. respectively.

- (d) Report on the Petition regarding Ownership of Mgeno Land Reserve;

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Prengei Victor, M.P. respectively.

- (e) Report on the Petition regarding Non-payment of compensation for land compulsorily acquired to construct Mwatate-Taveta-Holili Road;

The report was adopted after having been proposed and seconded by Sen. Boy Issa Juma, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (f) Report 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

The report was adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (g) Report on the Petition regarding the effects of iron ore mining at Kishushe in Taita Taveta County.

The report was adopted after having been proposed and seconded by Sen. Prengei Victor, M.P. and Sen. Ndwiga Peter Njeru, M.P. respectively.

- (h) Report regarding the Committee's participation in the 8th World Water Conference held in Brasília, Brazil from 18th – 23rd March, 2018;

The report was adopted after having been proposed and seconded by Sen. George Khaniri, M.P. and Sen. Boy Issa Juma, M.P. respectively.

- (i) Report regarding the Committee's participation in the 14th Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) on Modern Mining Law and Policy 16th – 18th October, 2018.

The report was adopted after having been proposed and seconded by Sen. George Khaniri, M.P. and Sen. Prengei Victor, M.P. respectively.

- (j) Report regarding the Committee's participation in the 18th meeting of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Conference of the Parties (CoP 18) that was held in Geneva, Switzerland from 17th – 28th August, 2019.

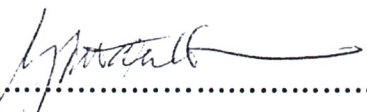
The report was adopted after having been proposed and seconded by Sen. Boy Issa Juma, M.P. and Sen. Prengei Victor, M.P. respectively.

MINUTE SEN/SCLN/162/2019: ANY OTHER BUSINESS;

There were no other matters discussed during the meeting.

MINUTE SEN/SCLENR/163/2019: DATE OF NEXT MEETING;

The meeting was adjourned at 10.29 am and the next meeting was to follow thereafter.

SIGNATURE.......... DATE 23-10-2019
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

MINUTES OF THE 24TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 25TH SEPTEMBER, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.30AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. George Khaniri, MGH, M.P.
3. Sen. Ndwiga Peter Njeru, EGH. M.P.
4. Sen. Godana Hargura, M.P.
5. Sen. Mwaruma Johnes, M.P.

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Prengei Victor, M.P.
2. Sen. Halake Abshiro, M.P.
3. Sen. Boy Issa Juma, M.P.
4. Sen. Sylvia Kasanga, M.P.

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

IN ATTENDANCE

A. SENATORS

1. Sen. Charles Kibiru, MP – Senator, Kirinyaga County

B. MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Ms. Farida Karoney - CS, MOLPP
2. Hon. Gideon M. Mungaro - CAS
3. Mr. Benson Mbiti - MOLPP
4. Mr. Charles Githenya - D/Director Land Administration
5. Ms. Juliana Mutua, PHD - MOLPP
6. Ms. Pauline Pesa - MOLPP

C. NATIONAL LAND COMMISSION

1. Mr. Francis Bor - DCS NLC
2. Mr. Dennis Mutungi - Co-ordinator NLC

D. SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Mr. Caroline Cheruiyot - Legal Counsel
3. Mr. Robert Rop - Audio Recording

MINUTE SEN/SCLNDR/135/2019: PRELIMINARIES

The meeting was called to order at 10.00 am by the Chairperson followed by a word of Prayer. The Chairman led the Committee through a round of introductions and thereafter informed the Committee that there is no response from the County Government of Nakuru following an invitation sent to them.

MINUTE SEN/SCLNDR/136/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. George Khaniri, EGH, MP and seconded by Sen. Godana Hargura, MP as follows;

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. **Meeting with the Cabinet Secretary Ministry of Lands and Physical Planning, County Government of Nakuru and the CEO National Land Commission on Statements and Petitions before the Committee;**
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLNDR/137/2019: CONFIRMATION OF MINUTES

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

MINUTE SEN/SCLNDR/138/2019:

MEETING WITH THE CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING AND CEO NATIONAL LAND COMMISSION ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE;

The Ministry of Lands and Physical Planning submitted as follows:

A. STATEMENT REQUEST BY SENATOR KIBIRU CHARLES REUBENSON, SENATOR FOR KIRINYAGA

On the matter of Mwea, the CS informed the Committee that they are embarking on giving the residents of Mwea conditional leases within 3 months. A technical team is also being set up to come up with resolutions in 90 days on long term measures to deal with the matter.

B. PETITION BY RESIDENTS OF MWATATE CONSTITUENCY, TAITA TAVETA COUNTY ON THE OWNERSHIP OF MGENO LAND RESERVE;

The CS informed the Committee that they have embarked on a Rapid Response Initiative (RRI) to ensure titles are issued for the remaining 6000 acres in Land Reference Number 3880/3. They are currently working on 30,100 titles at the moment.

The Committee was informed that part of the land is being set aside for public utilities and a land bank for future use.

The CS assured the Committee that they are following the Community Land Act and that the County Government is holding the land in trust until the Community is registered for them to get a block title.

C. PETITION ON NON-PAYMENT OF COMPENSATION FOR LAND COMPULSORILY ACQUIRED TO CONSTRUCT MWATATE-TAVETA-HOLILI ROAD;

The CS informed the Committee that NLC is fully responsible and that the information they have, is that they have since submitted the list of beneficiaries.

D. STATEMENT REQUESTED BY SEN. JOHNES MWARUMA ON 21ST FEBRUARY, 2019 ON THE STATUS OF VOI SISAL ESTATE;

The Committee was further informed by the Senator, Taita Taveta that the parcel of land in question has remained private through fraudulent means and that the Ministry of Lands and Physical Planning needs to establish and investigate the procedure that was followed in acquiring the parcel of land.

The CS responded by informing the Committee that the Senator Taita Taveta can seek supplementary questions for answers from the Ministry of Lands and Physical Planning citing clearly the allegations raised.

E. CONCERN OF THE NAYNDARUA VILLAGES

The CS informed the Committee that plans were underway and that the resettlement will be completed by July, 2020 as what was set as the target date to have completed the exercise.

F. STATEMENT REQUESTED BY SEN. ANUAR LOITIPTIP ON 19TH MARCH, 2019 REGARDING THE LAND CRISIS IN LAMU COUNTY;

The Committee was informed that an advisory has been sought from the Attorney General on the matter since they cannot be able to revoke the Title deeds without an opinion for the Attorney General.

The National Land Commission informed the Committee that the section was repealed in 2017 and therefore revocation has now to be done through a court of law and are therefore working with the Attorney General to provide amendments in the law to return these powers back to the Commission.

G. STATEMENT REQUESTED BY SEN. JOHNSON SAKAJA ON 21ST MARCH, 2019 REGARDING THE COMPENSATION OF NAIROBI RESIDENTS IN MIHANG'O WARD, EMBAKASI EAST CONSTITUENCY BY KENYA POWER AND LIGHTING COMPANY FOR THE ILLEGAL DEMOLITION OF THEIR HOUSES;

The CS informed the Committee that this is a matter of Public Land being restored and that the Kenya Power and Lighting Company would be best placed to give a response.

H. PETITION ON 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;

The Committee was informed that the matter has so far been settled and that the remaining part would be for NLC to give a comprehensive response on the matter.

The Committee is therefore waiting for a comprehensive response from the National Land Commission.

I. PETITION BY RESIDENTS OF GILGIL TOWNSHIP CONCERNING THE ALLEGED GRABBING OF PUBLIC UTILITY AND PRIVATE LAND AT LELESHWA, GILGIL TOWNSHIP, NAKURU COUNTY;

The Committee is waiting for a comprehensive response from the National Land Commission.

J. PETITION ON THE COMPENSATION AND RESETTLEMENT OF EVICTEES FROM MARMANET FOREST IN LAIKIPIA COUNTY;

The Committee was informed that the Ministry is trying to seek alternate land for the people of Marmanet. The Ministry currently does not have the money for that purpose.

The Committee was further informed that the Ministry has embarked on setting up a Committee to resettle the people of Marmanet together with NLC and that hopefully by

November, 2019 the Committee will have been in place.

K. PETITION ON IRON ORE MINING IN KISHUSHE AREA OF TAITA TAVETA COUNTY, THAT THEY ALLEGEDLY OBTAINED A TITLE (TITLE DEED NO. CR65748) FRAUDULENTLY THROUGH THE MANAGEMENT OF KISHUSHE COOPERATIVE RANCH

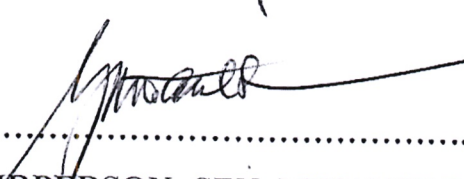
The CS informed the Committee that the matter of the Title deed for this parcel of Land is a matter that is currently active in court and wouldn't want to comment about it.

MINUTE/ SEN/SCLNCR/139/2019: ANY OTHER BUSINESS

There was no other business discussed.

MINUTES/SEN/SCLNCR/140/2019: ADJOURNMENT

The meeting was adjourned at 12.02 pm. The date of the next meeting was to be called on notice.

SIGNATURE.......... DATE..... 23-10-2019.....
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

MINUTES OF THE 17TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY 3RD JULY, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 11.00AM.

MEMBERS

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

A. SENATORS

1. Sen. Charles Kibiru, MP – Senator, Kirinyaga County
2. Sen. Anuar Loitip, MP – Senator, Lamu County

B. MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Hon. Gideon M. Mungaro - CAS
2. Mr. Daniel Kithuuka - D/DLAO
3. Dr. Eustace N. Kithumbi – SADLAS
4. Mr. Owino Jacob Cattwright - SLRO
5. Mr. Charles Githenya - D/Director Land Administration
6. Ms. Juliana Mutua - D/Director Physical Planning
7. Ms Gertrude K. Rapong'o - Asst. Director Physical Planning
8. Mr. A. A. Ombima - Liaison Officer
9. Mr. Geoffrey Kibowen - Snr. Land Surveyor
10. Mr. Paul Ndung'u - Snr. Land Surveyor

C. NATIONAL LAND COMMISSION

1. Ms. Kabale Tache - Ag. CEO/ Sec. NLC
2. Mr. Francis Bor - DCS NLC
3. Mr. Dennis Mutungi - Co-ordinator NLC
4. Mr. Benard Cherutich - D/D Finance and Accounting
5. Ms. Judy Kirior - PA Ag. CEO

D. SENATE SECRETARIAT

1. Mr. Yussuf Shimoy - Clerk Assistant
2. Mr. Jeremy Chabari - Legal Counsel
3. Ms. Joyce Chelang'at - Audio Recording

MINUTE SEN/SCLNENR/097/2019: PRELIMINARIES

The meeting was called to order at 11.06 am by the Chairperson followed by a word of Prayer.

MINUTE SEN/SCLNENR/098/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Prengei Victor, MP and seconded by Sen. Godana Hargura, MP as follows;

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Meeting with the Cabinet Secretary Ministry of Lands and Physical Planning and CEO National Land Commission on Statements and Petitions before the Committee;**
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNENR/099/2019: CONFIRMATION OF MINUTES

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

MINUTE SEN/SCLNENR/100/2019:

MEETING WITH THE CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING AND CEO NATIONAL LAND COMMISSION ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE;

The Committee was informed that the Cabinet Secretary for the Ministry was not available and that the Chief Administrative Secretary, Hon. Gideon Mungáro, was to represent her during the deliberations.

The Committee noted that most of the matters under consideration required policy directions hence the presence of the Cabinet Secretary in person and resolved to schedule another meeting to give the Cabinet Secretary an opportunity to attend.

The Committee directed the Ministry to submit comprehensive responses on all the matters (petitions and statements) it sought through its earlier communications within three (3) weeks.

Further, the Committee requested the following additional information within the same duration-

1. The Ministry's position and policy, if any, on demolitions and way leaves;
2. Update on the whether the Ministry has identified parcel of land to resettle the persons evicted from Marmanet Forest in 1988 in Laikipia;
3. The process, status and progress of titling of colonial villages in the Country particularly the 30 villages in Nyandarua County; and
4. Information on actions the Ministry has taken on all the titles recommended for revocation by the National Land Commission in regard to Lamu County.

Consequently, the meeting was adjourned without any further discussions.

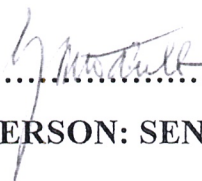
MINUTE/ SEN/SCLNR/101/2019: ANY OTHER BUSINESS

Sen. Johnson Sakaja was requested to write a letter to the Committee indicating all issues he has on matters land to enable the Committee to deal with them conclusively.

MINUTES/SEN/SCLNR/102/2019: ADJOURNMENT

The meeting was adjourned at 12.02 pm. The date of the next meeting was to be called on notice.

SIGNATURE.....



DATE.....

25-07-2019

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

MINUTES OF THE 3RD MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 13TH FEBRUARY, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Mwaruma Johnes, M.P.
3. Sen. Halake Abshiro, M.P.
4. Sen. Godana Hargura, M.P.

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Prengei Victor, M.P.
2. Sen. George Khaniri, MGH, M.P.
3. Sen. Ndwiga Peter Njeru, EGH. M.P.
4. Sen. Sylvia Kasanga, M.P.
5. Sen. Boy Issa Juma, M.P.

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

IN ATTENDANCE

SENATOR

1. Sen. Charles Kibiru - Senator, Kirinyaga County

NATIONAL ASSEMBLY MEMBERS

1. Hon. Kabinga Wachira - MP (Mwea Constituency)

MINISTRY OF LANDS

1. Hon. Gideon M. Mungaro - CAS
2. Mr. Michael Nyamai - Snr. Ass. Dir. Land Adj.
3. Mr. Peter K. Waithaka - Ag. Dep. Adj
4. Mr. Charles Muemi - D/Director Valuation
5. Mr. Edward Kosgei - Dir. Land Admin.
6. Mr. Charles Githenya - D/Director Land Administration
7. Mr. Owino Jacob Cattwright - SLRO
8. Mr. Paul Ndung'u - Ag. Ass. Director
9. Mr. Kamau J.H.M - CLAO
10. Mr. A. A. Ombima - Liaison Officer
11. Ms. Juliana Mutua - D/Director Physical Planning

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Mr. Ahmed Odhowa - Principal Researcher
3. Mr. Mitchell Otoro - Legal Counsel
4. Ms. Hawa Abdi - Sergeant at Arms
5. Mr. Nimrod Ochieng' - Audio Recording
6. Ms. Sharon Eleman - Intern

MINUTE SEN/SCLNDR/012/2019: PRELIMINARIES

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

MINUTE SEN/SCLNDR/013/2019: ADOPTION OF AGENDA

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

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Meeting with the CS Lands & Physical Planning and the NLC on Statements and Petitions before the Committee;**
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNDR/014/2019:

MEETING WITH THE CS LANDS & PHYSICAL PLANNING AND THE NLC ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE

Ministry of Lands and Physical Planning

The Chief Administrative Secretary made his presentation as follows:

A. Response to Statement as requested in the Senate by Sen. Kibiru Charles, MP

STATUS OF ISSUANCE OF TITLE DEEDS FOR MWEA RICE FARMERS IN KIRINYAGA COUNTY

• **The actual acreage of Mwea Irrigation Scheme land in Kirinyaga County.**

The Committee was informed that Mwea Irrigation Scheme was set apart vide *Gazette* Notice Nos 3097 and 3099 dated 5th July 1960. The *Gazette* Notice No. 3097 set apart acreage of 8,480 acres while the *Gazette* Notice No. 3099 set apart 7,120 acres for irrigation scheme.

Other *Gazette* Notices relating to the Irrigation Scheme are as tabulated below:

Gazette Notice	Date	Size (Acres approx.)	Purpose
3098	05.07.1960	22	Mwea/Tebere Scheme Canal
3100	05.07.1960	27	Draining of Nguka swamp
3102	05.07.1960	9.6	Dam to protect Nguka Irrigation Beds

3101	05.07.1960	25	Kiruara Drainage way
3103	05.07.1960	0.8	Drainage furrows protecting Nguka Dam
3090	26.07.1960	60	Main Thiba Water Canal Serving Mwea/Tebere Scheme
3096	26.07.1960	125	Mwea Tebere Scheme Village and Agricultural officer's house and staff lines
3093	26.07.1960	10	Protection of Head works
3095	26.07.1960	54	Mwea/Tebere scheme village and tree plantation

The total area of Mwea Irrigation scheme is therefore **15,933 Acres** approximately.

- **Status of surveying, beaconing and mapping of the Mwea Irrigation Scheme.**

The Committee was informed that the area in question is covered by Topographical Map Sheet SK 135/2-Embu (see Annex 2). Besides this, the Ministry has no records to indicate that the land has ever been surveyed.

- **Status of preparation of title deeds for the parcels of land owned by Mwea rice farmers.**

The Committee was informed that by virtue of Gazette Notices Nos. 3090, 3093, 3095, 3096, 3097, 3098, 3100, 3101, 3102, 3103 of 1960; the area known as Mwea/Tebere Irrigation Area in the Kirinyanga District of the Central Province was designated as a national irrigation scheme. Pursuant to Section 14 (2) of the Irrigation Act, Cap 347, the title or interest in such land is vested in the National Irrigation Board.

The Committee is not in agreement with most of the issues as presented by the Ministry, terming them as inaccurate and that a visit to the ground would possibly shed more light. A view that was also shared by the Senator, Kirinyaga County and the MP Mwea whose constituency Mwea Irrigation Scheme is in.

The Committee therefore made the following resolutions:

- i.) **Invite the Ministry of Agriculture, National Irrigation Board and Ministry of Lands and Planning.**
- ii.) **Visit the Mwea Irrigation Scheme**

B. Response to Petitions

1. PETITION BY THE RESIDENTS OF GILGIL TOWNSHIP CONCERNING ALLEGED GRABBING OF PUBLIC UTILITY AND PRIVATE LAND AT LELESHWA, GILGIL TOWNSHIP, IN NAKURU COUNTY.

The Committee was informed that the claim by the petitioners that the Anti-Stock Theft Unit (ASTU) officers invaded and occupied approximately 40 acres of land, part

of which included residential plots that had already been allocated to individuals is not true and that 118 acres were zoned off for the ASTU from the land set aside for public purpose. It is therefore proper for the ASTU to occupy the land.

Further the CAS informed the Committee that the Petitioners in their Petition want the original Approved Development Plan to be upheld, including safeguarding of the public utility land as well as the allotted residential plots in which the CAS responded by informing the Committee that Gilgil Development Plan No. 91 (the Plan) zoned the land into 8 broad approved development uses as follows:

USE	APPROXIMATE ACRES
Residential	379892.2
Industrial	123.5
Educational	6707.4
Recreational	28.6
Public purpose	4029.5
Commercial	152.9
Public utilities	17
Transportation	299
Total Acreage	391,250.1

The Committee therefore made the following resolutions:

- i.) **To conduct a site visit with the Ministry of Lands and Planning and the County Government of Nakuru to the meeting at a date to be communicated.**
- 2. PETITION ON THE RESETTLEMENT OF THE MINORITY NGEREK COMMUNITY FOLLOWING THEIR PROPOSED EVICTION FROM SOUTH NANDI FOREST, IN NANDI COUNTY.**

The Committee was informed by the CAS that the resettlement exercise was undertaken by the Office of the President and involved Ngerek and Koiben communities who settled in Ngerek and Koiben villages in South Nandi.

Since the settled area was rocky, hilly and served as a water catchment, the Government decided to resettle the two communities in Kapkangani and New Koiben areas, respectively. The Koiben community would be resettled on 266.8 Ha and the Ngerek Community on 455.4 Ha. This was in exchange of land previously held by the two communities in South Nandi Forest.

The resettlement programme was to be carried out in two phases:

- a.) Phase one involved resettlement of the Koiben Community at New Koiben/Chepkuma area and this was successfully completed.

b.) Phase two would involve resettlement of the Ngerek Community but was accompanied by the following challenges:

- i). political interference;
- ii). some original allottees sold their plots;
- iii). The Ngerek community attempted to forcefully occupy the parcels allocated to them but this led to clashes in 2002;
- iv). The Ngerek are still occupying their original land (Ngerek Hill) as they did not surrender their title deeds to the Kenya Forest Services as earlier agreed.

The Ministry therefore informed the Committee that; in these circumstances, there is need for engagement between the local leadership and relevant government agencies to resolve the issue.

The Committee therefore made the following resolutions:

The Ministry of Lands and Physical Planning should organise a team, visit the area and spearhead the engagement between the Local Leadership and the relevant Government agencies and report back to the Committee within 3 months.

3. PETITION BY RESIDENTS OF KIANG'OMBE SQUATTERS SETTLEMENT SCHEME IN THIKA SUB-LOCATION, KIAMBU COUNTY, CONCERNING ALLEGED GRABBING OF LAND ALLOCATED FOR THEIR SETTLEMENT.

The Committee was informed that the Ministry has a part development plan (PDP) for Kiang'ombe village departmental reference No.TKA/4/03/2A prepared on 30/10/2009, certified by the Director of Physical Planning on 4/12/2013 and approved on 4/12/2013 as approved Development Plan No. 365.

There are 585 plots allocated in total in the PDP out of which 13 are set aside for public utilities as shown in the table below:-

USE	NO. OF PLOTS	AREA IN HA
Residential and Commercial	574	17.277
Transport	1	6.226
Churches	2	0.189
Conservation area	1	1.775
Garbage collection plant	1	0.028
Dispensary	1	0.179
Nursery schools	3	0.399
Police post	1	0.105
Proposed primary school	1	1.176
	585	27.304

The approved part Development Plan was prepared and published as per the requirements of the Physical Planning Act Cap 286 and superseded PDF NO. KBU/93/22 of 19.10.1993 and TKA/4/03/2 of 21.11.2003.

However the CAS seeked leave for **two weeks** to furnish the committee with a ground report as to who is in occupation of the parcels set aside for public utilities.

The Committee therefore made the following resolutions:

- i.) **To invite the Petitioners**
- ii.) **The Ministry of Lands and Physical Planning to forward the actual map indicating the allocations;**
- iii.) **The Ministry of Lands and Physical Planning to visit the area together with the Committee to ascertain facts on the Parcels of Land.**

4. PETITION FROM EVICTEES OF MARMANET FOREST IN LAIKIPIA COUNTY CONCERNING THEIR COMPENSATION AND RESETTLEMENT.

The Committee was informed that the matter is currently before the National Land Commission for resolution. They committed to follow up with the National Land Commission and were seeking more time to also consult with other relevant government agencies.

The Committee however had the following concerns:

- How comes that the forest has not been degazetted but titles are there?
- Who exactly was allocated the parcels of land?
- What was the basis of issuing out the titles?

The Committee therefore made the following resolutions:

- i.) **To invite the Petitioners**
- ii.) **The Ministry of Lands and Physical Planning to follow up with NLC and report back to the Committee on the Status;**
- iii.) **The Committee would also engage the National Land Commission & the Kenya Forest Service.**
- iv.) **The Committee to visit the area to ascertain facts in the alleged forest.**

5. PETITION TO THE SENATE CONCERNING UNLAWFUL DEPRIVATION OF A PARCEL OF LAND IN KAPUTEI NORTH KAJIADO (KJD/KAJIADO/KAPUTIEI NORTH/28126).

Mr. DAVID MUNGAI NG'ANG'A, the petitioner claims the parcel belongs to his wife JECINTA NJERI NGANGA, while his neighbor claims to be the owner of the property. The petitioner wants the ownership of the land to be reinstated.

The Committee was informed that according to ~~the~~ records, the above parcel is registered to JECINTA NJERI NGANGA of ID 3243898 and title deed issued. (Annex 1)

There is no ownership dispute as the land in question belongs to JECINTA NJERI NGANGA. It is therefore clear that the petition touches on a boundary dispute. In terms of section 18 (2) of the Land Registration Act, a proprietor of registered land with a boundary dispute is obliged to first seek redress or resolution from the land registrar.

The petitioner should thus lodge a formal boundary dispute at the Kajiado lands office for the same to be resolved.

The Committee therefore made the following resolutions:

In view of the Petition being at the Senate, that Committee directs that the Registrar goes to the site and assist the Petitioner.

6. PETITION TO THE SENATE CONCERNING MGENO RESERVE LAND REGISTRATION NUMBER 3880/3

The Petitioner is a resident of Mwatate Constituency, in Taita Taveta County. The Petitioner's prayers are:

- To have members of Mgeno committee gazetted;
- The Government to survey and register Mgeno community land and issue title deeds and
- Revoke titles illegally issued.

The Committee was informed that all parcels subdivided from LR. No. 3880 including LR. No. 3880/3 was surrendered to the Government for Community Settlement. LR. No. 3880/3 was allocated except some 6000 acres (south of the Railway line). Titles were issued to the community or beneficiaries under the MODAMBOGHO ADJUDICATION SECTION.

The un-alienated part of LR. No. 3880/3 (approx. 6000 acres), was sparsely inhabited until recently when people started moving in. The National Youth Service (NYS) is currently occupying approximately 300 acres of the un-alienated land. LR. No. 3880/3 borders Community Land measuring approximately 7300 acres-popularly known as "Mgeno Grazers". It also borders Mugeno Ranch LR. No. 12178 measuring 20,920 Ha.

Further, the Committee was informed that the Ministry has embarked on a Rapid Response Initiative (RRI) to ensure titles are issued for the remaining 6000 acres in LR 3880/3. (Attached is a sketch showing the referenced parcels).

The Committee therefore made the following resolutions:

- i.) **To invite the Petitioners;**
- ii.) **The Ministry of Lands and Physical Planning to visit the area together with the Committee to ascertain facts on the disputed Parcels of Land.**

National Land Commission

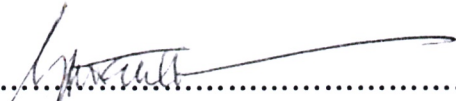
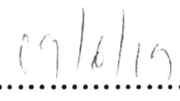
The Committee did not receive any apologies from the NLC and resolved to re-invite them again once new commissioners are sworn to office.

MINUTE SEN/SCLNCR/015/2019: ANY OTHER BUSINESS;

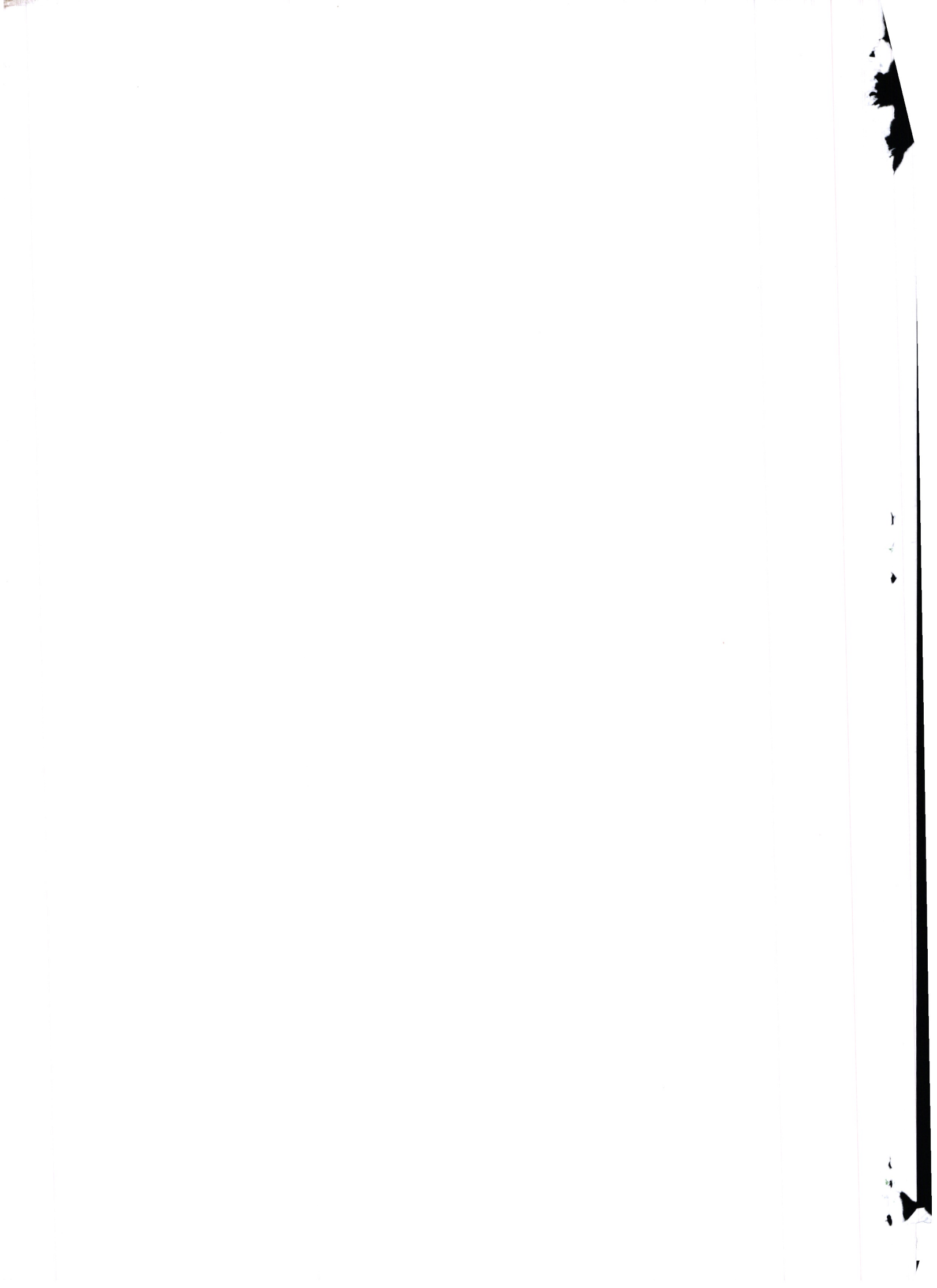
There was no other business discussed.

MINUTE SEN/SCLNCR/016/2019: DATE OF NEXT MEETING;

The meeting was adjourned at 11.35 am and the next meeting was to be held thereafter.

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

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



MEMO

THE SENATE

To : The Speaker
Thro' : The Clerk of the Senate
Thro' : Deputy Clerk
Thro' : Director, Committee Services
From : Clerk Assistant
Date : 4th November, 2019

Rt. Hon. Speaker
You may approve for tabling
05/11/19
Recommended for approval for tabling
Recommended & Forwarded
EJ 05/11/19
04/11/19
Approved
[Signature]

SUBJECT: FORWARDING OF REPORT ON PETITION

The Senate Standing Committee on Land, Environment and Natural Resources at its sitting held on 23rd October, 2019 adopted Committee Reports as follows:

1. Report on the Petition regarding Adverse environmental and social effects arising from the construction of Phase 2A of the Standard Gauge Railway (Nairobi – Naivasha Section);
2. Report on the Petition regarding Budgetary support to Wildlife Conservancies for sustainable conservation and community development;
3. Report on the Petition regarding alleged unlawful deprivation of a parcel of land situated in Kaputei North, Kajiado County;
4. Report on the Petition regarding Ownership of Mgeno Land Reserve;
5. Report on the Petition regarding Non-payment of compensation for land compulsorily acquired to construct Mwatate-Taveta-Holili Road;
6. Report on the Petition regarding the effects of iron ore mining at Kishushe in Taita Taveta County;
7. Report regarding the Committee's participation in the 8th World Water Conference held in Brasília, Brazil from 18th – 23rd March, 2018;
8. Report regarding the Committee's participation in the 14th Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) on Modern Mining Law and Policy 16th – 18th October, 2018; and
9. Report regarding the Committee's participation in the 18th meeting of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Conference of the Parties (CoP 18) that was held in Geneva, Switzerland from 17th – 28th August, 2019.

This is to request for your approval for tabling of the aforementioned and attached reports.

[Signature]
Victor Bett

04 NOV 2019