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**REPUBLIC OF KENYA**



**KENYA NATIONAL ASSEMBLY  
TENTH PARLIAMENT –FOURTH SESSION**

**REPORT  
OF THE  
DEPARTMENTAL COMMITTEE ON LANDS & NATURAL  
RESOURCES  
ON THE  
PETITION**

**BY THE RESIDENTS OF MARAKWET WEST CONSTITUENCY TO  
THE MINISTRY OF FORESTRY & WILDLIFE TO BE ALLOWED TO  
HARVEST OVERGROWN EXOTIC TREES TO BUILD SCHOOLS IN  
MARAKWET**

**CLERK'S CHAMBERS  
NATIONAL ASSEMBLY  
NAIROBI**

**AUGUST 2012**

## PREFACE

1. On the Thursday May12,2011, a petition was tabled before the House pursuant to Standing Order No. 207 by the Hon. Boaz Kaino, M.P., Member for Marakwet West on Behalf of the resident of Marakwet West Constituency who number 180 being citizens in Marakwet District of Kenya;
2. The Committee considered the petition pursuant to provision of Standing Order 201, 202, 203, 204, 205, 206, 207, 208, 209, 210 and 211. And further Third Schedule. And concluded that its meets the provision of the Standing Orders hence admissible.

## MANDATE OF THE COMMITTEE

3. The Departmental Committee No. J on Lands and Natural Resources is established pursuant to provisions of Standing Order No. 198 (2) and (3) with the following terms of reference: -
  - 3.1 to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
  - 3.2 to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
  - 3.3 to study and review all legislation referred to it;
  - 3.4 to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
  - 3.5 to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
  - 3.6 to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.
4. The Committee is mandated to consider the following **subjects**:-
  - 4.1 Lands and settlement,
  - 4.2 forestry, water resource management and development,
  - 4.3 irrigation;
  - 4.4 environment,
  - 4.5 wildlife,
  - 4.6 Mining and Natural resources.

## 5. OVERSIGHT

In executing its mandate, The Committee oversees the following Government Ministries; namely: -

- 5.1 Ministry of Water and Irrigation;
- 5.2 Ministry of Environment and Minerals Resources;
- 5.3 Ministry of Lands; and
- 5.4 Ministry of Forestry and Wildlife.

## 6. COMMITTEE COMPOSITION

The Departmental Committee on Lands and Natural Resources was constituted on June 17<sup>th</sup> 2009 and its membership is as follows:-

- 6.1 Hon. Mutava Musyimi, M.P. – **Chairperson**
- 6.2 Hon. Peris Chepchumba Simam, M.P. - **Vice Chairperson;**
- 6.3 Hon. Benjamin Jomo Washiali, M.P.
- 6.4 Hon. Silas Ruteere Muriuki, M.P.
- 6.5 Hon. Benedict Fondo Gunda, M.P.
- 6.6 Hon. Justus M. Kizito, M.P.
- 6.7 Hon. Njuguna Peter Gitau, M.P.
- 6.8 Hon. Mohammed Abdi Affey, M.P.
- 6.9 Hon. Omar Mbwana Zonga, M.P.
- 6.10 Hon. Kiema Julius Kilonzo, M.P.
- 6.11 Hon. Dr. Erastus Kihara Mureithi, MBS, HSC, MP

## 7. TASKS ACCOMPLISHED

The Committee proceeded with the consideration of the petition as follows, Held sittings for:-

- 7.1 Setting up the terms of reference;
- 7.2 Briefing from the Member who presented the matter – Hon. Boaz Kaino, M.P;
- 7.3 Meeting with the Minister for Forestry & Wildlife; and
- 7.4 Meeting with the Director, Kenya Forest Service;

## 8. FINDINGS.

- 8.1 The resident are in need of building materials for their schools in order to improve their learning environment and hence better education for their children;
- 8.2 The forest plantation is situated along the Yemit – Kapcherop Road and is mature enough for harvesting and more so is consisting of exotic trees;

- 8.3 The residents of Marakwet Constituency have committed to replant the forest with indigenous trees once granted authority to harvest exotic trees for the intended purposes;
- 8.4 The Director, Kenya Forest Service was in all means putting hindrances to the utilization of forest by adjacent communities through application of various statutes;
- 8.5 The residents of Marakwet Constituency have not formed Community Forest Association though they live close or adjacent to the forest;
- 8.6 There is need for benefit sharing in the forest sub sector in Kenya and specifically to rural communities who have been the custodians of the forest; and

#### **9. RECOMMENDATIONS – the Committee recommends that; -**

- 9.1 The residents of Marakwet Constituency establish a Community Forest Association under the Society's Act in order to guarantee a number of benefits pursuant to the section 45 and 46 Forest Act no. 7 of 2005; and
- 9.2 The Director, Kenya Forest Service should undertake to create awareness on the need for and benefits of Community Forest Association in Marakwet Constituency.

#### **10. ACKNOWLEDGMENT**

- 10.1 The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.
- 10.2 The Chairperson takes this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period.
- 10.3 The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.
- 10.4 Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Lands and Natural Resources, to present and recommend this report to the House pursuant to the provisions of Standing Orders of the National Assembly.

10.5 On behalf of the Committee, I request the house to adopt the report.



SIGNED:.....

HON. MUTAVA MUSYIMI, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES

DATE:..... AUGUST 14, 2012.....

## PREAMBLE:

11. The petition of the resident of Marakwet West Constituency to the Ministry of Forestry and Wildlife was presented to the House on Thursday, 12<sup>th</sup> May, 2011 by Hon. Boaz Kaino, MP having been signed by 180 residents on behalf of the Marakwet west Constituency residents.
12. The House, pursuant to standing Order No. 210, referred the petition to the Departmental Committee on Lands and Natural Resources for scrutiny and preparation of report;
13. The Committee received the petition on Tuesday, May 17, 2010 and set out a procedure for consideration and therefore is to report to the House on expiry of 21 calendar days (twenty one days) as set out in Standing order No. 210(3);
14. However, due to the nature of the petition and the work involved in solving the problem and therefore answering the prayer by the residents – **petitioners**, the Committee sought more time to consider it.

## SUMMARY OF FACTS.

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15. The petitioners are Parents, Board of Governors/management representatives, principals/head teacher, Sponsors/donors and Members of various schools within Marakwet West Constituency of Marakwet County;
16. The petitioners informed the Committee that they understand the importance of trees to human existences and to their livelihoods, that Whereas tress and especially indigenous trees are important however replacing them with exotic trees within an indigenous tree ecosystem or forest along Yemit – Kapcherop Road has had adverse effects on the immediate environment;
17. That the Indigenous forest along Yemit – Kapcherop road was indigenous initially it has since been replaced with exotic trees which has destroyed and affected the forest;
18. They did inform the responsible Ministry i.e. Ministry of Forestry and Wildlife of the above effects however they have not responded or acted;
19. Further informed the responsible Ministry of their intention to harvest exotic trees for use in Building schools and undertaking to replace with indigenous trees but to no Vail;
20. Their various pleas to the then Ministry of Environment and Natural Resources, are evidenced by their letters ref CONF.5/(177) of February 8,

1994 and Letter Ref. MFW/8/3 VOL. II/80 of December 6, 2010 in which they gave authority for felling of exotic trees and replacing with indigenous ones. The above authority and directive have not been implemented by the Director of Forestry i.e. Director, Kenya Forest Service;

21. They are seeking authority to harvest exotic trees for use and to assist in the construction of three secondary and primary schools respectively in Marakwet west constituency;
22. They have committed to plant indigenous trees to replace the exotic trees harvested to improve the ecosystem.
23. The petitioners wants this Honourable House to use their good offices to urge the Government and specifically the Ministry of Forestry & Wildlife to and that:-
  - a) Grant them the request and further authorize them to harvest the exotic trees in the indigenous forest along Yemit – Kapcherop Road.
  - b) The harvested trees will be used in the construction of dormitories in Six schools in Marakwet West Constituency;
  - c) They have undertaken to replaced the harvested trees with indigenous trees;

#### **INVESTIGATION - THE PETITION**

24. The Committee considered the petition pursuant to provision of Standing Order 201, 202, 203, 204, 205, 206, 207, 208, 209, 210 and 211. And further Third Schedule;
25. And concluded that it meets all the criteria as set out in the Rules of Procedure hence admissible.
26. An investigative Hearing on this petition took place on Tuesday, June 7, 2011 by the Committee in which the Ministry of forestry and Wildlife was represented by the -Minister – Hon. Noah M. Wekesa, EGH, MP and Assistant Minister- Hon. Josphat Nanok, MP, Permanent Secretary, - Mr. M. A.M Wa-Mwachai, CBS - Ministry of Forestry & Wildlife and Mr. David Mbugua - the Director, Kenya Forest Service were present;
27. They informed the Committee that:-
  - i.) Kenya Forest Service has reviewed the request and concluded that it is not prudent to grant the request outside the procurement regulations and provisions of the Forest Act 2005. The Act calls for

tendering of sale of plantation materials;

- ii.) There has been a ban on logging however, the ban was only meant for 3 months according to the Attorney General. The Ministry and the Board of Kenya forest Service are not disclosing the lifting on the ban, to all to allow proper and sustainable harvesting of trees.
- iii.) Community forest Association in Meru are active and do monitor the forest however operationalization of the Act and attendant regulations may empower the associations to enjoy the benefits envisaged in the act;
- iv.) Challenges in operationalization of the Forest Act led to less investment on physical infrastructure rather than ecological infrastructure and enactment of the Act require substantial resources to realize its benefits;
- v.) Problems in management of forest – limiting access, technology application to control fires;

28. On its own volition, the Committee based on various reports on Community Participation in Forest Management (PFM) in Kenya and the need to enhance and encourage benefit sharing from biodiversity, in addition to the provisions of the Kenya forest Act 2005, particularly section 46, observed as follows:-

- i.) **Participatory Forest Management** (PFM) is used often to mean local participation and involves a multi-stakeholders approach where private sector, individual, institutions (schools/colleges) and communities are involved in forest management and benefits sharing that accrue from such participation and management.
- ii.) It involves forging a partnership between the local community and the central government for sustainable management of forest.
- iii.) Participatory Forest Management (PFM) is being adopted widely in many developing countries as; -
  - An alternative method of managing forestry resources.
  - An approach through which to achieve the sustainability of threatened forests and conservation of biodiversity.This is done through a process of inclusion, equity, and democratization of governance of the forest resources.



- iv.) enhancement of Participatory Forest Management implementation in the country has showed that it has potential to:
- Improve forest management
  - Improve livelihoods
  - Improve forest governance
  - Facilitate benefits to trickle to the poorest of the poor in the society
  - Spur rural development
- v.) Further, According to the Forests Act (2005), section 45, 46, 47 and 48 of the Act, entrenches Community Participation in forest Management through formation of a **COMMUNITY FOREST ASSOCIATION** under the Society's Act.
- vi.) Further, According to the Forests Act (2005), section 45(1), a member of a forest community may together with other members or persons resident in the same area register a **COMMUNITY FOREST ASSOCIATION** under the Society's Act.
- vii.) According to section 45 (2), an association registered under section (1) may apply to the Director of Forest Service for permission to participate in the conservation and management of a state forest or a local authority forest in accordance with the provisions of the act .
- viii.) The principle thinking of the Act is that Community involvement in forest management and environmental conservation should be encouraged to ensure the sustainability of the forest and benefit sharing.
- ix.) The Community Forest Association s present a great opportunity to reduce the current pressure on forests by forest adjacent communities for forest products and services. However, this opportunity will not be easy to tap unless deliberate effort is directed by those involved in the implementation of the Participatory Forest Management process to build on the community's strong points of concern for using the forest resource for livelihood improvement. Products.
- x.) For communities to be reasonable contributors to sustainable forest management, they have to attain a reasonable level of socio-economic development, which will lead to the use of primary or natural resources, such as forests, for basic needs such as food, shelter, and fuel. Further, they will have to be sensitized and educated on environmental issues in order to change their attitude towards the forest from being a primary source of products and services to that of a resource that is necessary for survival.

- xi.) Pursuant to section 46(2) of the Act, the director may confer on the association all or any of the following forest user rights –
- (a) Collection of medicinal herbs;
  - (b) Harvesting of honey;
  - (c) Harvesting of timber or fuel wood;
  - (d) Grass harvesting and grazing;
  - (e) Collection of forest produce for community based industries;
  - (f) Ecotourism and recreational activities;
  - (g) Scientific and education activities;
  - (h) Plantation establishment through non-resident cultivation;
  - (i) Contracts to assist in carrying out specified silvicultural operations;
  - (j) Development of community wood and non-wood forest based industries; and
  - (k) Other benefits which may from time to time be agreed upon between an association and the Service
- xii.) Opportunities for Community Forest Associations: -
- Supportive policy and law
  - Goodwill and participation of community members
  - Increasing number of community members joining community forest association
  - Dependence of community members on forest resources for their livelihood
  - The introduction of income generating activities that derive their existence of forests;
  - Continuous capacity building of Community Forest Associations. This ensures sustainability.
- xiii.) The main reason for the formation of Community Forest Association are:
- To protect the forest by assisting in patrolling and forwarding any information to the Kenya Forest Service that would assist in reducing destruction;
  - To conserve the forest through carrying out afforestation and plantation maintenance activities;
  - To protect water catchment areas through planting of appropriate tree species;
  - To uplift the standards of living of members of the participating groups by starting income-generating projects such as eco-tourism, bee keeping, grazing, and fuelwood collection; and

- To educate members on the importance of forest and environmental conservation.

## **FINDINGS.**

29. The residents are in need of building materials for their schools in order to improve their learning environment and hence better education for their children;
30. The forest plantation along the Yemit – Kapcherop Road is mature enough for harvesting and more so is consisting of exotic trees;
31. The residents of Marakwet constituency have committed to replant the forest with indigenous trees once granted authority to harvest exotic trees for the intended purposes.
32. The director Kenya Forest Service was in all means putting hindrances to the utilization of forest by adjacent communities through application of various statutes;
33. The residents of Marakwet Constituency have not formed Community Forest Association though they live close or adjacent to the forest;
34. There is need for benefit sharing in the forest sub sector in Kenya and specifically to rural communities who have been the custodians of the forest;

## **RECOMMENDATIONS**

### **35. The Committee recommends that; -**

1. The residents of Marakwet Constituency establish a Community Forest Association under the Societies Act in order to guarantee a number of benefits pursuant to the sections 45 and 46 Forest Act no. 7 of 2005; and
2. The Director, Kenya Forest Service should undertake to create awareness on the need for and benefits of Community Forest Association in Marakwet Constituency.

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