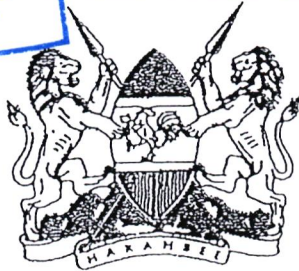


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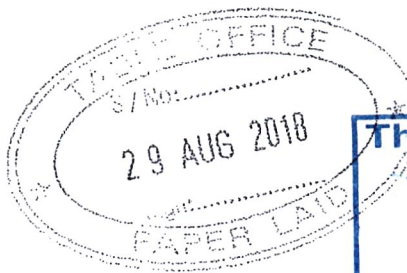
and Natural Resources

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL
RESOURCES on

Wednesday 29/08/2018

(Afternoon)

REPORT ON AN INQUIRY INTO COMPLAINTS OF ENVIRONMENTAL
POLLUTION BY LONDON DISTILLERS KENYA LIMITED.



The National Assembly
(TABLE OFFICE)
Report as Adopted by the
11 OCT 2018
House on theDay
of20.....

DIRECTORATE OF COMMITTEE SERVICES,
CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.

AUGUST, 2018

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LIST OF ABBREVIATION

BOD	Biochemical Oxygen Demand
COD	Chemical Oxygen Demand
EMCA	Environmental Management and Coordination Act
EPL	Erdemann Property Limited
EPZA	Export Processing Zones Authority
LDK	London Distillers Kenya Limited
NEMA	National Environment Management Authority
PCC	Public Complaints Committee

FOREWORD

Industrial pollution is directly linked with industry, in contrast to other pollution sources. This form of pollution is one of the leading causes of pollution worldwide. Because of its size and scope, industrial pollution is a serious problem for the entire planet, especially in nations which are rapidly industrializing. This form of pollution dates back to ancient days, but widespread industrial pollution accelerated rapidly in the 1800s, with the start of the Industrial Revolution. Prominent forms of industrial pollution include water and air pollution. The two forms are equally at the centre of the inquiry at hand.

Erdemann Property Limited (EPL) is based in Nairobi and was founded in 2003. It is a limited Liability Company specializing in property development. EPL operates under the Investment Promotion Centre and was pioneered by a Chinese investor, Mr. Zeyun Yang. EPL provides decent, low-cost shelter to its clients. EPL has built more than 4,000 housing units from the year 2003 to-date.

London Distillers Kenya Limited (LDK) started its operations in the year 1986 in Athi River, Kenya in an area designated as an industrial zone. LDK was allocated its land in 1982. The company has 125 years' experience in liquor manufacturing in other parts of the world. The company has presence in other countries in the East African region as well. LDK head offices are based in Nairobi, with its distillery spread over 350 acres of land in Athi River, the premises that are the source of the complaints.

Erdemann Property Limited, as a representative of the residents and workers in Great Wall Gardens Estate which is located on Shanghai Road, Athi River, Mavoko Sub-County Machakos County, through a letter dated 22nd January, 2018 to the National Environment Management Authority (NEMA) and raised issues regarding environmental pollution through toxic fumes and effluent from London Distillers Kenya Limited which is negatively affecting the lives of the residents of the larger Athi river area.

The residents of Great Wall Garden Estate were requesting the National Environmental Management Authority (NEMA) to thoroughly investigate LDK and firmly ask them to adhere to all measures regarding to air quality and effluent discharge as stipulated in the Air and Water Quality Regulations.

Before this, NEMA through a letter dated 6th February, 2017 had written to London Distillers (K) Limited ordering a closure of the company pursuant to Environmental Management and Coordination Act (EMCA), CAP 387 Part II, Section 3. This was after the company failed to comply with three improvement orders issued to them dated 6th May, 2016, 21st July, 2016 and 8th September, 2016.

Despite the orders issued by NEMA, London Distillers Kenya Limited were yet to reduce the environmental pollution a year later, according to Erdemann Property Limited. The National Assembly, Departmental Committee on Environment and Natural Resources seized the matter after receiving a copy of the said letter by Erdemann Property Limited. The Committee then scheduled meetings with the following entities aimed at gathering evidence on the matter:

- a) Erdeman Property Limited
- b) London Distillers Kenya Limited
- c) National Environment Management Authority (NEMA)

The objective of the enquiry was to establish the extent of environmental pollution by London Distillers Kenya Limited and therefore recommend stringent measures that will ensure environmental protection, conservation and mitigation for the benefit of Kenyans.

The Committee equally wrote to the Ministry of Lands and Physical Planning and the Ministry of Environment and Forestry seeking the policy direction on issues surrounding the inquiry and touching on the mandates of the two ministries.

Having reviewed the oral and written evidence submitted to it, the Committee observed that:

1. Families, especially expectant mothers and children, could be suffering from long term health complications from the pollution. It was therefore important to deal with the matter expeditiously to eliminate the threat to lives and investments in the area.
2. A close down order was given to LDK on 6th February, 2017 due to its air pollution and releasing effluent that was not meeting set standards. However, the Distillery reopened but it was not clear whether it had met the expected conditions. There was therefore need to scrutinize the relationship between NEMA and LDK.
3. London Distillers Kenya Limited had been in existence for over 30 years in Kenya and therefore it ought to have invested in technologies that mitigate against air pollution, recycle solid waste, and escalate or institute internal self-regulation.
4. The National Environment Management Authority (NEMA) only acted after complaints were raised by EPL. The Authority needed to act proactively in order to stem environmental degradation in line with the precautionary principle in International Environmental Law.
5. NEMA licensed EPL to develop a residential property in the vicinity of LDK. NEMA knew or ought to have known about the potential conflict of such a decision.

6. Erdermann Property Limited acquired the land adjacent to the LDK fully aware that the area and its environs were zoned for industrial use. The land on which Great Wall Garden Estate by Edermann Property Limited was situated initially belonged to London Distillers but sold off to second parties by the Kenya Commercial Bank. The second users subsequently changed user status from industrial to residential use and subsequently sold to Edermann Property Limited in 2015.
7. The NEMA Director General produced before the Committee environmental audit reports largely commissioned by LDK to prove compliance of LDK with environmental standards. NEMA ought to have provided independently commissioned tests since the authenticity of results from self-initiated compliance tests would not be easy to vouch for.
8. The Report on Air Quality Measurement at London Distillers Limited was received at the Company on 24th March, 2018, days after receiving an invitation to appear before the Committee. This could imply that the report was merely done to exonerate the company from the accusations levelled against it. The report could have been a public relations exercise geared purely at hoodwinking the Committee.
9. London Distillers Limited had an agreement for sewer connection with the Export Processing Zones Authority (EPZA). However, a letter dated 14th January, 2015 indicated the polluting nature of the company, in which the introductory paragraph of the letter stated in part that: *“after rigorous analytical /quality assessment of your pre-treated effluent it is a fact that you are unable to achieve the values of COD and BOD set at 1000mg/l and 500 mg/l respectively as stipulated in the Environmental Management and Coordination (Water Quality) Regulations, 2006 of Legal Notice No.120”*. The letter went on to give conditions for connection to the EPZA sewer line which included higher charges for its effluent that did not meet set standards. The company accepted the set conditions.
10. The former Mavoko County Council allowed change of user for the parcel of land owned by EPL from industrial to residential. Such change could have led to the environmental pollution conflict between the two parties.
11. There was need for NEMA to expand the monitoring of the industrial pollution issue in Athi River to other industries in the area to ensure protection of the environment and residents of the larger Athi River area and across the country in general.
12. The Fourth Schedule of the Constitution assigns the National Government the function of developing general principles of land planning, capacity building and technical assistance

to the counties. The counties have been assigned the function of county planning and development which may include; formulating a county policy on physical planning, approving a county policy on physical planning, approving county development plans, monitoring and overseeing the planning function.

13. There was need for counties to create a master plan for land use in the area to avoid the mixed user of land which in the first place generated the environmental pollution conflict.

14. Edermann Property Limited was established in 2003 and started its development activities in Athi River in 2015, by which time London Distillers Kenya Limited was already established within the vicinity. Therefore, Edermann Property Limited engaged in its property development business in the area fully aware of its neighborhood.

15. Despite the complaints by the residents of Great Wall Gardens Estate regarding the pollution emanating from LDKL, the property development company (Edermann Property Limited) was engaged in an ambitious expansion of its housing estate in the same location.

THE HON. KAREKE MBIUKI, M.P
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND
NATURALRESOURCES.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

The Departmental Committee on Environment and Natural Resources is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates, pursuant to the *Standing Order 216 (5)*, are as follows:

- a) 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;
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) 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;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

The subject matter of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

1.2 Oversight

In executing its mandate, the Committee oversees the following State Departments, namely:

- The Ministry of Water and Sanitation;
- The Ministry of Environment and Forestry;
- The State Department for Wildlife; and
- The State Department for Mining.

1.3 Committee Membership

The Committee on Environment and Natural Resources was constituted by the House in December, 2017 and comprises of the following Members: -

1. The Hon. Kareke Mbiuki, M.P. Chairperson
2. The Hon. Sophia Abdi Noor, M.P. Vice Chairperson
3. The Hon. Benjamin Jomo Washiali, M.P., CBS
4. The Hon. David Kangogo Bowen, M.P.
5. The Hon. Francis Chachu Ganya, M.P.
6. The Hon. Ali Wario Guyo, M.P.
7. The Hon. Beatrice Cherono Kones, M.P.
8. The Hon. Charity Kathambi Chepkwony, M.P.
9. The Hon. Hilary Kiplang'at Kosgei, M.P.
10. The Hon. Peter Kinari Kihara, M.P.
11. The Hon. Benjamin Dalu Tayari, MP.
12. The Hon. Charles Ong'ondo Were, M.P.
13. The Hon. Nasri Sahal Ibrahim, M.P.
14. The Hon. Rossa Buyu. M.P.
15. The Hon. Said Hiribae, M.P.
16. The Hon. Hassan Oda Hulufu, M.P.
17. The Hon. Amin Deddy Mohamed Ali, M.P.
18. The Hon. Rehema Hassan, M.P.
19. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.

Committee Secretariat

- | | |
|-----------------------------|-------------------------------------|
| 1. Ms. Esther Nginyo | - Second Clerk Assistant/Lead Clerk |
| 2. Mr. Dennis Mogare Ogechi | - Third Clerk Assistant |
| 3. Mr. Salem Lorot | - Legal Counsel II |
| 4. Ms. Winnie Kulei | - Research officer III |
| 5. Ms. Yunis Amran | - Fiscal Analyst III |

1.4 Committee Recommendations

The Committee recommends that:

1. The National Environment Management Authority (NEMA) should:
 - i. Ensure that the London Distillers Kenya Limited within six (6) months from the date of tabling of this Report, invests in state-of-art technologies that contain air pollution mitigation mechanisms, recycles solid waste, and escalates and/or institutes stringent internal self-regulation. Such technologies can include, but not limited to: physical/chemical methods and biological treatment methods of odour control.
 - ii. Expand the investigation and monitoring of the industrial pollution issue in Athi River to other industries in the area to ensure protection of the environment and residents of the larger Athi River area and the whole country in general.

- iii. Ensure due diligence in execution of its mandate to administer Environmental Impact Assessments to forestall such environmental pollution conflicts.
- iv. Review the conduct of its officers directly involved in administering Environmental Impact Assessment on the EPL's Greatwall Gardens project.
- v. Act proactively in addressing such pollution related issues in order to stem environmental degradation in line with the precautionary principle in International Environmental Law.

2. London Distillers Kenya Limited should:

- i. Within six (6) months from the date of tabling of this report, invest in state-of-art technologies that contain air pollution, recycles solid waste, and escalates and/or institutes stringent internal self-regulation. Such technologies can include, but not limited to: physical/chemical methods and biological treatment methods of odour control.
- ii. Strictly comply with the provisions of the Environmental Management and Coordination Act (No. 8 of 1999), the Environmental Management and Coordination (Water Quality) Regulations, 2006, the Environment Management and Co-Ordination (Air Quality) Regulations, 2014 and any other relevant legislation, including the obligation to keep all necessary environmental records;
- iii. Design, construct, operate and maintain structures of the highest standards that ensure safe and healthy disposal of waste.
- iv. Implement the culture of reduction, recycling and reuse of waste in daily operations such as waste utilization for energy production.
- v. Implement the best structures and use of the best technology toward cleaning of all resultant industrial by-products from its premises before release to the environment.
- vi. Implement within six months from the date of tabling of the report the procedures for assessing and reviewing the environment, health and safety policies, procedures, programmes and impact of the industry's activities.
- vii. Carry out regular and documented internal and third party audits of the progress made towards environmental protection.
- viii. Failure to implement the above recommendations, the factory should be closed and/or be relocated to other suitable areas at the owners cost.

3. Edermann Property Limited should exercise a certain degree of tolerance and co-existence as London Distillers Kenya Limited puts in place state of the art technology in environmental protection and mitigation within the period of six months as directed in this report.

4. The Ministry of Lands and Physical Planning should intensify the capacity building activities to counties and regularly monitor and evaluate progress on the extent of adherence to policies by the county governments.

5. The County Government of Machakos should;

- i. Create a master plan for land use in the Athi River area to avoid the mixed user status of land which in the first place generated the environmental pollution conflict.
- ii. Ascertain whether due process was followed during processing and approval of the applications submitted by London Distillers Company and Great Wall Estate before their construction. If the process was not properly followed, the officers directly involved in approving the change of user status of the parcel of land occupied by the EPL's Greatwall Gardens project should be held culpable.
- iii. Prepare a zoning plan to guide development within this area which is developing very fast. It should enforce strict adherence to the zoning plan.

6. The Ministry of Environment and Forestry should:

- i. Ensure an Environmental Audit is undertaken by a NEMA certified independent Lead Expert to confirm and recommend mitigation measures regarding complaints raised by the residents in Athi River. The audit reports should be submitted to the National Assembly within 60 days of tabling of the report.
- ii. Ensure that a report is submitted to the National Assembly detailing progress made by NEMA and by extension London Distillers Kenya Limited in complying with the recommendations of this report within 60 days of its tabling.
- iii. Cause closure and/or relocation of London Distillers Kenya Limited Athi River Factory within six months and at their own cost in case they fail to implement recommendations under 2 above.

2.0 BACKGROUND INFORMATION

Industrial pollution is directly linked with industry, in contrast to other pollution sources. This form of pollution is one of the leading causes of pollution worldwide. Because of its size and scope, industrial pollution is a serious problem for the entire planet, especially in nations which are rapidly industrializing. This form of pollution dates back to ancient days, but widespread industrial pollution accelerated rapidly in the 1800s, with the start of the Industrial Revolution.

The Industrial Revolution mechanized means of production, allowing for a much greater volume of production, and generating a corresponding increase in pollution. The problem was compounded by the use of fuels like coal, which is notoriously unclean, and a poor understanding of the causes and consequences of pollution.

Prominent forms of industrial pollution include water and air pollution. The two forms are equally at the centre of the inquiry at hand.

The true effects of industrial water pollution have yet to be measured. While individual toxins and pollutants have been measured and laws regulating the individual toxins and pollutants exist, the cumulative effect of the whole picture has yet to be well measured. The potential effects of industrial water pollution could grow to catastrophic levels. Not only does the potential for destruction of fish and other water dwelling creatures exist, but the potential for serious human illness also exists. Additional studies on the toxicity and hazardous waste need to be done in order to determine whether more stringent regulations are necessary in order to save the planet's natural waterways.

Manufacturing industries also release large amount of carbon monoxide, hydrocarbons, organic compounds, and chemicals into the air thereby depleting the quality of air. Such industrial air pollution had adverse effects including:

- a) Causing respiratory and heart problems,
- b) Contributing to global warming,
- c) Acid rain which refers to harmful gases like nitrogen oxides and sulfur oxides are released into the atmosphere during the burning of fossil fuels. When it rains, the water droplets combines with these air pollutants, becomes acidic and then falls on the ground in the form of acid rain. Acid rain can cause great damage to human, animals and crops,
- d) Eutrophication, a condition where high amount of nitrogen present in some pollutants gets developed on sea's surface and turns itself into algae and adversely affect fish, plants and animal species,
- e) Effect on Wildlife - Just like humans, animals also face some devastating effects of air pollution. Toxic chemicals present in the air can force wildlife species to move

to new place and change their habitat. The toxic pollutants deposit over the surface of the water and can also affect sea animals and depletion of Ozone layer

2.1 Comparative Analysis on Industrial Waste Management Policies.

a. Finland

The Finnish Waste legislation Finnish waste legislation covers all wastes except certain special types of waste such as radioactive wastes, which are covered by separate laws. The waste legislation is largely based on EU legislation, but in some cases includes stricter standards and limits than those applied in the EU as a whole. The purpose of the Waste Act is to support sustainable development by promoting the rational use of natural resources, and preventing and combating the hazard and harm to health and the environment arising from wastes. There are also assigned general duties for producers, manufactures, importers and authorities to minimise generation of waste in all activities and to ensure that waste doesn't significantly hamper or complicate the organisation of waste management, or result in hazard or harm to health or the environment.

The principle of producer responsibility is also an important instrument in Finland to minimise the generation of and to enhance recovery of certain types of wastes. The objective of the Environmental Protection Act is to:

- i. prevent the pollution of the environment and to repair and reduce damage caused by pollution, to safeguard a healthy, pleasant ecologically diverse and sustainable environment;
- ii. prevent the generation and the harmful effects of waste; to improve and integrate assessment of the impact of activities that pollute the environment;
- iii. improve citizens' opportunities to influence decisions concerning the environment; to promote sustainable use of natural resources; and
- iv. combat climate change and otherwise support sustainable development.

b. Germany

The objective of the German government's policy on waste is to achieve a recycling based economy that conserves resources and reduces adverse impacts on the environment. The aim is to increase and optimise the efficient use of raw materials, to maximise recovery quotas and to permanently remove from the environment any residual waste that can no longer be used. Waste management legislation is based on European law, German federal law, the regional laws of the federal states and the statutes of the local authority waste management services. It is also based on the precautionary principle, the polluter-pays principle and the principle of co-operation.

The main pillar is the Closed Substance Cycle and Waste Management Act makes industry and the commercial sector to be responsible for the recovery of waste, i.e. they also have to bear the

costs. The enforcement of waste legislation in Germany is mainly the task of the federal states. It is governed by requirements for waste supervision contained in the Closed Substance Cycle and Waste Management Act and supported by requirements on waste recovery and disposal records, transport licenses and specialised waste management companies.

c. United States of America

In the United States, the Environmental Protection Agency (EPA) regulates all waste material under the 1976 Resource Conservation and Recovery Act (RCRA). The RCRA includes provisions on the disposal of solid and hazardous waste materials. This legislation encourages individual states to create comprehensive plans to manage non-hazardous and municipal wastes.

2.2 Complaint Against Environmental Pollution by the London Distillers Kenya Limited.

Erdemann Property Limited was founded in 2003 and is based in Nairobi – Kenya. It is a limited Liability Company specializing in property development. EPL operates under the Investment Promotion Centre and was pioneered by a Chinese investor, Mr. Zeyun Yang. EPL provides decent, low-cost shelter to its clients. EPL has built more than 4,000 housing units from the year 2003 to-date.

London Distillers Kenya Limited started its operations in the year 1986 in Athi River, Kenya in an area designated as an industrial zone. LDK was allocated its land in 1982. The company has 125 years' experience in liquor manufacturing in other parts of the world. The company has presence in other countries in the East African region as well. LDK head offices are based in Nairobi, with its distillery spread over 350 acres of land in Athi River, the premises that are the source of the complaints.

Erdemann Property Limited, as a representative of the residents and workers in Great Wall Gardens Estate which is located on Shanghai Road, Athi River, Mavoko Sub-County Machakos County, through a letter dated 22nd January, 2018 to the National Environment Management Authority (NEMA) and raised issues regarding environmental pollution through toxic fumes and effluent from London Distillers Kenya Limited which is negatively affecting the lives of the residents of the larger Athi river area.

The residents were requesting NEMA to thoroughly investigate LDK and firmly ask them to adhere to all measures regarding air quality and effluent discharge as stipulated in the Air and Water quality regulations.

The National Environment Management Authority on a letter dated 6th February, 2017 had written to London Distillers (K) Limited ordering a closure of the company pursuant to Environmental Management and Coordination Act (EMCA), CAP 387 Part II, Section 3. This was after the

company failed to comply with three improvement orders issued to them dated 6th May, 2016, 21st July, 2016 and 8th September, 2016.

Despite the orders issued by NEMA, London Distillers Kenya Limited was yet to reduce the environmental pollution a year later, according to Erdemann Property Limited.

The National Assembly, Departmental Committee on Environment and Natural Resources seized the matter after receiving a copy of the said letter by Erdemann Property Limited.

The Committee then scheduled meetings with the following entities aimed at gathering evidence on the matter:

- a) Erderman Property Limited
- b) London Distillers Kenya Limited
- c) National Environment Management Authority (NEMA)
- d) Residents of Great Wall Gardens.

The Committee equally wrote to the Ministry of Lands and Physical Planning and the Ministry of Environment and Forestry seeking for policy direction on issues surrounding the inquiry and touching on the mandates of the two ministries.

2.3 Legal Basis

The subject matter of this inquiry is governed by the Environment Management and Co-Ordination Act, 1999 and the following regulations anchored on the Act:

- a) The Environment Management and Co-Ordination (Air Quality) Regulations, 2014

The objective of the Regulations is to provide for prevention, control and abatement of air pollution to ensure clean and healthy ambient air. It provides for the establishment of emission standards for various sources such as mobile sources (e.g. motor vehicles) and stationary sources (e.g. industries) as outlined in the Environmental Management and Coordination Act, 1999. It also covers any other air pollution source as may be determined by the Minister in consultation with NEMA. Emission limits for various areas and facilities have been set. The regulations provide the procedure for designating controlled areas, and the objectives of air quality management plans for these areas.

- b) The Environmental Management and Coordination, (Water Quality) Regulations 2016

These Regulations shall apply to drinking water, water used for industrial purposes, water used for agricultural purposes, water used for recreational purposes, water used for fisheries and wildlife, and water used for any other purposes.

2.4 Objective of the Inquiry

The Committee instituted the inquiry to:

- i. Establish the extent of environmental pollution by London Distillers Kenya Limited.
- ii. Recommend stringent measures that will ensure environmental protection, conservation and mitigation for the benefit of Kenyans.

3.0 INQUIRY INTO COMPLAINTS OF ENVIRONMENTAL POLLUTION BY LONDON DISTILLERS KENYA LIMITED.

In enquiring into the matter of Complaints of Environmental Pollution by London Distillers Kenya Limited, the Committee scheduled meetings with the following entities aimed at gathering evidence on the matter:

- a) Erdermann Property Limited
- b) London Distillers Kenya Limited
- c) National Environment Management Authority (NEMA)

The Committee equally wrote to the Ministry of Lands and Physical Planning and the Ministry of Environment and Forestry seeking the policy direction on the issues surrounding the inquiry and touching on the mandates of the two ministries.

The evidence gathered is recorded hereunder.

3.1 Submissions by Managing Director, Erdermann Property Limited, Mr. Zeyun Yang
Mr. Zeyun Yang, Managing Director Erdermann Property Limited, appeared before the Committee on Tuesday 20th March, 2018 and submitted that:

1. Erdemann Property Limited's vision was to see a Kenya where every Kenyan is in a position to own or rent a decent house. Its mission was to provide decent and affordable housing for the low and middle income earners. The company had done 4,000 housing units in the country. The Great Wall Gardens site was surrounded by other developments projects too.
2. In the past, EPL had experienced challenges in various projects e.g. financial issues but for the Great Wall Gardens, it had experienced a unique challenge of environmental pollution. Buyers complained of the bad smell in the vicinity.
3. The User of the land EPL bought neighboring LDK was a Residential User. EPL bought the land when its title indicated it was meant for residential purpose only. The User of a parcel of land is defined by the government authorities and specifically the Ministry responsible for Lands.
4. Any claim that the area is strictly industrial does not hold any water as the place is surrounded by several homes.
5. EPL got all the requisite approvals before undertaking the development of the Great Wall Gardens Project and these could be verified by the relevant government bodies and to check any special conditions in the approvals.

6. There are over 15,000 people living in the Athi River area and who were suffering silently as they did not have an avenue to share their suffering.
7. LDK was not meeting the set standards by NEMA and instead was playing games with the authorities by releasing the gas from evening up to morning when it cannot be seen by residents of Athi River.
8. NEMA had indicated that LDK had hired a company of international repute, SGS to conduct compliance tests and revert to them.
9. LDK Pollution
 - i) Air/Gas which is also further broken down into three
 - H_2S – Dihydrogen Monosulfide - Hydrogen Sulfide
 - PH_3 – Phosphorous Trihydride - Phosphine
 - NH_3 – Nitrogen Trihydride - Ammonia
 - ii) Liquid discharge/effluent
 - EPL collected a sample from the sewer line of LDK on Sunday 18th March, 2018 that was supplied to the Committee.
 - EPL has estimated the amount of discharge from LDK over the years it has been in operation to be over 100,000 metric tonnes based on current discharge which shows a big impact to the environment.
 - The effluent discharged does not meet the standard BOD and COD requirements of waste to be discharged. The standard BOD requirement for waste is 30mg/l or below and Standard COD should be 50mg/l or below.
10. This discharge ends up in River Athi and later Tana River and affects human, animal and plant life all the way to Indian Ocean and this has been happening for over the past 30 years. The area supplied water by these two rivers is a big portion of the population of Kenya.
11. The harm caused by the pollution includes adverse effects on human, livestock, game animals, fish, water animals and plants. Effects are noted on the skin, possibility of getting cancer of the skin or respiratory issues and even death of people and animals.
12. Environmental protection is a priceless cause as the environment should be sustained for future generations. The government bodies should strike a balance between development and environmental sustainability since a destroyed environment would affect tourism which was a backbone of the Kenyan economy.

13. The prayers by Erdemann Property Limited included that:

- i) LDK puts up a proper functional treatment plant for its kind of waste.
- ii) LDK to meet the standards set by the law and NEMA regulations.
- iii) NEMA to ensure compliance with the law and its rules.
- iv) LDK should invite NEMA, The Parliamentary Departmental Committee on Environment and Natural Resources and representatives of the neighbors or local leaders to show them and explain the measures they have put in place to stop or minimize the pollution.
- v) Failure of the above should lead to a shutdown of the distillery until they comply as a permanent solution to the pollution menace brought about by LDK.

3.2 Submissions by Representatives of Residents, Great Wall Gardens

The following representatives of residents appeared before the Committee on Tuesday 20th March, 2018 and made their presentations as indicated below:

1. CPA Charles Wambugu, - Chairman of Home Owners Lecturer/ Homeowner, stated that:
 - He noted the extensive pollution in the area at the point of purchase of his housing unit but was assured by EPL that it would be resolved.
 - The smell emanating from LDK was a nuisance and disrupted sleep.
 - He had researched and learnt that emissions from a distillery could cause central nervous system breakdown, respiratory complications, and cancer.
 - He prayed that the LDK be compelled to contain the pollution to acceptable standards internationally.
2. Roselyne Kagiri, Homeowner, Great Wall Gardens, stated that:
 - She moved into Great Wall Gardens in September, 2017
 - She had a 10-year old child who she one time noted to heave in the morning as if to vomit as a result of the smell.
 - The Smell affected women, especially the expectant ones and this could lead to complications
 - There were also slum dwellers who had no voice who were suffering and needed help of the Committee for a healthier environment
 - Had to re-adjust her lifestyle - by 5p.m. the windows and doors have to be closed and up to 9a.m. the following day
 - LDK should not be allowed to continue doing wrong simply because they had been doing wrong for the past over 30 years.
3. Jesse Charagu – Lawyer/ Homeowner, stated that:
 - It was difficult to explain to the children why the smell was persistent in the morning and evening

- There was an aspect of negligence as the law of strict liability provides that if you keep anything in your compound that is likely to cause mischief to others, you have a responsibility to keep it under check (this can refer to a pet and now in this case, the smell/discharge). The law therefore presumes that you are answerable and the responsibility was squarely yours. Hence strict liability is on LDK to contain its waste
- EMCA Act was put in the recent years but this does not exonerate one from taking responsibility.
- The foul smell in the early morning and evening cannot allow jogging as you will experience bloated stomach in a short distance of running.

4. Joseph Ng'ang'a – Industrialist/ Homeowner, stated that:

- He runs a factory in Kariobangi and has employed about 30 staff. In Kariobangi, there are several industries but there was no such blatant pollution.
- He was grateful to EPL for taking the lead and LDK should be tasked to either contain their waste or be shut down.
- Fears that LDK could bribe or compromise the authorities
- Other factories would also start blatantly polluting the environment if nothing was done to LDK.

3.3 Submissions by the National Environment Management Authority (NEMA)

The Director General, NEMA, Prof. Geoffrey Wahungu appeared before the Committee Tuesday 20th March, 2018 and informed it that:

1. London Distillers Kenya Limited (LDK) was established in 1982 on plots LR.No.12867/16, 18, and 19. & 20. This was before EMCA and NEMA was established. However, it was built in an area marked for industrial development. Its activities involve recycling of molasses into alcoholic beverages which lessens the environmental impacts of molasses as its evidenced elsewhere.
2. On 21st October 2015 Edermann Property Limited submitted an environmental impact assessment study report for issuance of EIA license for the Great Wall Gardens Estate by the Authority. It was issued with an EIA license No. NEMA/EIA/PSL/2534.
3. The Authority had since received several complaints of environmental pollution by London Distillers Kenya Limited (LDK) from proprietors of Edermann Property Limited as indicated below:
 - a) 19/4/2016: The Authority investigated allegations of environmental pollution by London Distillers Kenya Limited and noted that:
 - The facility was connected to the EPZA sewer line;
 - There had been cases of vandalism of metallic joints from their feeder sewer line before discharge to the EPZA main sewer on 19/4/2016.

- b) 6/5/2016: The Authority issued an improvement order to the facility advising them to:
 - secure their feeder sewer line to avoid vandalism;
 - rehabilitate sites affected by discharge from the vandalism activities;
 - Submit effluent analysis report for the pretreated waste water.

- c) 21/7/2016: The Authority issued another improvement order to the facility directing them to:
 - Submit the effluent analytical report of the pre-treated waste water;
 - Submit stack emission measurement report, fast-track commissioning of the clarifier for their waste water pre-treatment plant;
 - Ensure all waste water is pretreated before discharge into the environment or the EPZA sewer line.

- d) 29/7/2016: London Distillers Kenya Limited (LDK) submitted responses to the above improvement orders.

- e) 8/9/2016: The Authority advised the proponent to:
 - i) cease operations whenever feeder sewer line malfunctioned i.e. it is in-operational;
 - ii) submit stack emission measurements for boilers;
 - iii) Indicate measures they intended to institute to comply with the Effluent Discharge Licence limits.

- f) 8/9/2016: The Authority requested the proponent to submit stack emission measurements for their boilers;

- g) 26/10/2016: London Distillers Kenya Limited submitted their stack emission report to the Authority.

- h) 8/12/2016: The Authority received complaints of environmental pollution by London Distillers Kenya Limited (LDK) from Edermann Property Limited.

- i) 21/1/2017: The Authority requested the proponent to submit Emission Compliance Plan for the facility.

- j) 6/2/2017: The Authority issued closure order to London Distillers Kenya Limited (LDK) after failing to fully comply with the improvement orders issued earlier.

- k) 28/2/2017: Environmental Inspectors inspected the facility to confirm compliance with the closure order and recommended that all effluent discharges be through the waste water treatment plant.
- l) 13/3/2017: The Authority lifted the closure after observing that the facility management had:
 - i) Repaired the sections of the vandalised sewer line;
 - ii) Submitted effluent analytical report;
 - iii) Submitted stack emission measurement report;
 - iv) Installed a clarifier at the effluent treatment plant to enhance its operations
 - v) Contracted a NEMA licensed transporter for their waste.
- m) 20/3/2017: London Distillers Kenya Limited (LDK) confirmed receipt of the letter lifting the closure order.
- n) 22/1/2018: The Authority received complaints of air pollution by London Distillers Kenya Limited from Erdermann Property Limited who are adjacent neighbours.
- o) 31/1/2018: The Authority received a response from London distillers on allegations of their environmental pollution by Erdermann property Limited. London Distillers Kenya Limited reported that the Erdermann Property Limited constructed houses on industrial plots LR.No.12867/9-13 &17 which are adjacent to it - an industrial enterprise.
- p) 8/2/2018: The Authority advised London Distillers Kenya Limited (LDK) to submit:
 - i) stack emission reports;
 - ii) Ambient air quality measurements within the facility along the waste water reticulation system as well as along the boundary lines between 5 am and 9 am in the morning and after 6 pm in the evening.
 - iii) An emission Compliance Plan for the fugitive emissions within the premises.
 - iv) Apply for the stack emission license within Twenty-one (21) days from the date of that letter.
- q) 9/2/2018: Environmental Inspectors inspected the London Distillers Kenya Limited and reported no cases of non-compliance to environmental requirements.
- r) 5/3/2018: London Distillers Kenya Limited submitted their preliminary stack emission measurement report awaiting the final one in 21 days.

- s) 19/3/2018: The Authority received an invitation from Parliamentary Committee on Environment to provide brief on London Distillers Kenya Limited.
4. As per the Air Quality Regulations, 2014, facilities located within industrial areas are expected to persevere with the recommended ambient air quality standards for industrial areas and vice versa for industries intending to operate within residential areas in order to co-exist.
5. In the case of London Distillers Kenya Limited, other neighbours include Mavuno Church about 300meters and other upcoming 5 residential estates.

3.3 Submissions by the Ministry of Lands

The Committee wrote a letter Ref: No. NA/DCS/ENR/2018 (024) dated 11th April, 2018 to the Ministry of Lands request for information on the the policy on change of user, the interface between the ministry and the county government in the implementation of the policy, possible solutions to the issues raised and policy directions and best practices to be applied for similar cases across the country. In its response, the ministry submitted as follows, that;

1. On the policy for change of user, it was defined as a development application involving any alteration in the use, purpose or level of activity within any land, space or building that involves material change which does not conform to the existing plans and policies. The basis for approval of development applications including change of user is an approved development plan, zoning plan and policies and regulations contained therein;
2. The Physical Planning Act, 286 Section 31 on development application states that any person requiring development permission shall make an application in the form prescribed in the Fourth Schedule, to the planning authority responsible for the area in which the land concerned is situated. It further provides that such application shall be accompanied by such plans and particulars as are necessary to indicate the purposes of the development, and in particular shall show the proposed use and density;
3. The procedure for change of user comprises of: pre-application which involves consultation with a registered and practicing Physical Planner; Submission of duly filled development application to the respective County Government planning department; Consideration of the submitted application for approval after circulation by the planning authority to various departments for sectoral comments/opinions; decision making based on the submitted comments and communication of the decision to the applicant within 30 days of the decision being made. The process has an appeal mechanism if the applicant is not satisfied by the decision of the approving authority through respective physical planning liaison committee;
4. On the interface between the Ministry and County Governments on the development control process, development Control as a Physical Planning function by the National

Government was devolved to the County Governments. Under Article 186(2) and (3) of the Constitution and the 4th schedule sections (21) and (32), the National Government is mandated to among others; Provide general principles of land planning and co-ordination of planning by counties including guidelines on Development Control and offer capacity building and technical assistance to the counties. However, the day to day development control activities including change of user are undertaken by county governments from inception to approval;

5. On the findings on The London Distillers Company and Great Wall Estate matter, the two were located off Mombasa road just after the interchange to Namanga. The area was outside the approved development Plan for Mavoko Town. However from the ministry's records, the LR.NO.12867 seemed to have been planned through a subdivision of the mother title, in this case the approved plan was the basis for guiding developments within these parcels. From records parcels LR.NO.s 12867 /1-30 seemed to have been amalgamated then subdivided and a Change of User done. Plots allocated for industrial use included LR.NOs 12867/9-20 and LR.NOs 12867/20-30 were allocated for residential use.
6. The ministry therefore recommended as follows, that:
 - i. Further interrogation of the matter through Machakos County Government is required to ascertain whether due process was followed during processing and approval of the applications leading to London Distillers Company and Great Wall Estate.
 - ii. The Physical Planning Act provides for applications which are likely to cause pollution such as industrial to seek approval from NEMA through environmental impact assessment reports, it is therefore important to find whether this applied to London Distillers Company
 - iii. An Environmental Audit should be undertaken by a NEMA certified Lead Expert to confirm and recommend mitigation measures regarding complains raised by the applicants
 - iv. A zoning plan should be prepared by the Machakos County Government to guide development within this are which is developing very fast.

3.4 Submissions by the Managing Director, London Distillers Kenya Limited, Mr. Alvin Galot

The Managing Director, London Distillers Kenya Limited, Mr. Alvin Galot, appeared before the Committee on Tuesday 27th March, 2018 and informed it that:

1. London Distillers Kenya Limited (LDK) was aware of a complaint levelled against it by Erdermann Property Limited dated 22nd January, 2018.

2. LDK was not a polluter of the environment. The activities carried out by LDK in its premises were not environmentally harmful to its own staff, some of whom reside within the factory premises, nor did its activities affect other neighbours or workers as alleged by the Great wall Garden Estate workers.
3. LDK regularly submits itself to the compliance measures established by the National Environment Management Authority (NEMA).
4. Erdemann Properties Limited had not established an evidence based case against LDK save for wild allegations and arrogating to itself the role NEMA.
5. Erdemann Properties Limited made unfounded allegations against NEMA and LDK, acted in bad faith and was not honest in their complaint. This was demonstrated by copying their letter dated 5th February 2018, to the Presidency, the Cabinet Secretary for Environment and Natural resources, the Governor of Machakos, the Clerk to the National Assembly as well a total of 22 other players including the media.
6. LDK was a responsible corporate citizen which pays its taxes, employs Kenyans and through them, benefits their families. LDK was the only company in Kenya that has a robust climate change policy, embraces green energy through solar equipment and biogas plant. It has regenerated the environment through tree planting and proper waste management processes.
7. London Distillers Kenya Limited started its operations in the year 1986 in Athi River in an area designated as industrial zone, long before Erdemann Properties Limited, Hillcrest Park, the Kraal among other recent arrivals like Mavuno Church, Everest Park Estate, Safaricom Staff Pension Scheme, City Carton residents, and Jam City Estate Residents. It is located in premises zoned off for industrial and ancillary purposes as per the title documents which also apply to the surrounding premises.
8. LDK was allocated its land in 1982 but doesn't not know when Edermann Properties gained access to the land they occupy and whether they ever subjected themselves to change of user from industrial to housing. Subsequent subdivision of land in this area had yielded into an untidy semblance of mixture of land use including industrial, residential and agricultural.
9. LDK had endured complaints from similar actors in the past. On 16th of January, 2006 and 3rd of February 2006 E.H.S Resource Centre filed a complaint with the Public Complaints Committee (PCC) on the Environment under PCC Recommendation No: 115/2006.
10. One of the findings and recommendations of the PCC no 115/2006 was that Mavoko Municipal Council as it was then known should cease, in the absence of a Master Development Plan, granting individual change of user permits in areas where there is likely to be conflict where such permits are granted.

11. The Export Processing Zones authority has a sewer line to which industries connect upon payment of a fee and observance of certain standards. The EPZA then directs the effluent in their sewer line to their final treatment plant before final discharge into the environment.
12. On 6th February, 2017, the National Environment Management Authority issued a closure Order for LDK because as they said, they had received numerous complaints from the public about environmental pollution. The letter referred to ground inspections carried out on 6th May of 2016, 21st July, 2016 and 8th September, 2016. The letter alleged that LDK had failed to comply with the orders.
13. The NEMA letter of closure failed to disclose the fact that LDK responded on May 19th to the issues raised in the May 6th 2016 inspection vide letter Ref LDK/AD/584/16 received at the NEMA County offices on 24th May 2016 with the promise of compliance and a copy of third party analysis report from SGS and gave a programme for continuing improvement of the management of the effluent discharge.
14. The NEMA closure letter failed to disclose the fact that LDK had responded to their inspection report of 6th July 2016 vide their letter dated 27th July, 2016, in which LDK appended copies of the latest quarterly third party analysis reports from SGS, internal effluent analysis records, licensed garbage/waste handlers and a work plan to addressing issues raised in the improvement order.
15. In responding to the closure order, LDK pointed out the fact that as a result of their earlier letters and actions, the NEMA inspectors who visited on 28th of February 2017, had noted that that LDK had complied with all the improvement orders issued. LDK confirmed that all the improvements procedures were in place to effect the orders. They appealed against the closure through their heir letter dated March 7, 2017 and referenced LDK/MG/184/17.
16. On March 13th 2017, NEMA wrote a letter lifting the closure order for LDK in which they confirmed that the organization had undertaken the following: 1) Repaired sections of the damaged sewer line, 2) Submitted effluent analysis Report to NEMA, 3) Submitted Stack emission analysis report to NEMA, 4) had installed clarifiers at the effluent treatment plant and lastly, 5) contracted a NEMA approved/licensed waste transporter – Kinca Trading Company to collect and discharge waste water that had leaked/spilled from the sewer system.
17. NEMA then made additional recommendations on: 1) Installation of sludge drying beds to manage the environmental impacts of sludge, 2) Ensuring no spillage at entry points of the sewer system and all illegal discharges of waste water are controlled, 3) Submission of Quarterly effluent analysis report for the pre-treated waste water before discharge to the sewer line, and lastly, 5) Strict adherence to Environmental Management Plan (EMP) and periodic consultations with environmental experts and full implementation of the Audit reports.
18. On 20th March 2017 in response to the lifting of the closure order, LDK confirmed that the management team was in the process of implementing the recommendations and

keeping track of appropriate checklists. This letter also attached a work-plan to implement the proposed recommendations.

19. LDK was making serious investments in environmental conservation including tree planting. Over ten thousand trees had been planted to green the area.
20. LDK had invested over USD 1,205, 432.81 in the solar energy in a bid to manage carbon emissions.
21. LDK had as of 7th December 2016 concluded an agreement with PRAJ Industries Limited to upgrade technology, design, engineering and supply of equipment worth USD 1,250,000.
22. He concluded that Industries world over emit effluent which, if not treated, can be harmful. LDK was aware of this and continued to work with the regulator to ensure that its activities were not harmful to the environment.

3.5 Inspection Visit to Edermann Property Limited (Great Wall Gardens Estate).

The Committee conducted an inspection visit to Edermann Property Limited (Great Wall Gardens Estate) on 3rd May, 2018. During the inspection visit, the Committee met with the management and residents of Edermann Property Limited (Great Wall Gardens Estate). In a meeting, after a tour of the estate, the following were highlighted:

1. The management complained of a bad odour coming from the London Distillers Kenya Limited (Athi River Plant) which had forced them to move their reporting time to work for the workers in the estate from 7am to 8am.
2. The offensive odour had been limited on the inspection day and 3 days prior to the visit.
3. Initially the odour was not strong but it had increased in intensity over time. Edermann Property Limited management had made efforts to visit the distillery in 2015 and were informed that they were installing systems to clear the smell.
4. The residents feared for their health and hoped that the company could control their waste to avoid pollution and hence health related issues.
5. The residents informed the Committee that they were not informed that the distillery was not effectively managing its waste before they purchased their houses in the estate.

At the end of the visit, the Committee Members observed that despite the complaints by the residents of Great Wall Gardens Estate regarding the pollution emanating from LDKL, the company (Edermann Property Limited) was engaged in an ambitious expansion of its housing estate in the same location.

3.6 Inspection Visit to London Distillers Limited (Athi River Plant).

The Committee conducted an inspection visit to London Distillers Limited (Athi River Plant) on 3rd May, 2018. The visit was done in two phases on the material day. First, the Committee visited the vicinity of London Distillers Limited (Athi River Plant) at 4.30 am to ascertain the veracity of the allegations of early morning odour in the vicinity of the plant and later made a tour of the plant and held a meeting with the company's management at 10 am.

The areas in the plant that were visited included:

- (i) The Distillery
- (ii) The Production Line
- (iii) The Molasses Tanks
- (iv) The Waste Analysis Laboratory
- (v) The Biogas Plant
- (vi) The Effluent Treatment Plant

At the end of the visit, the Committee members observed that:

1. The Molasses Tanks and the Biogas Plant were located just next to the wall separating the plant from the Great Wall Gardens Estate, the probable source of the odour that the residents were complaining about.
2. There was a strong stench emanating from the Biogas Plant and the Effluent Treatment Plant (ETP) which needed **urgent** measures to curb.
3. The LDK needed to come up with an improvement plan and a technology to contain the offensive odour emanating from its operations and waste.
4. There were many other housing estates in the vicinity other than the Great Wall Gardens Estate.
5. The Committee lacked the technical knowhow to test samples at various points in the plant. However, the samples were collected.

3.7 Submission from the Governor, Machakos County

The Committee paid a courtesy visit to the Machakos Governor, H.E Alfred Mutua, on 3rd May, 2018 with respect to the allegations of pollution by LDK Limited. The governor informed it that:

1. There were many industries in Athi River area, London Distillers Kenya Limited being one of them.

2. The distillery had been shut down following a court order but was later reopened under unclear circumstances. Attempts to implement the Court Order by the Machakos County Government were thwarted by NEMA. Hitherto, NEMA had been reluctant to act to implement the court orders.
3. The County Government of Machakos was concerned with the high pollution levels which were causing the Ukambani region to have the highest cancer levels in the country due to pollution of Athi and Nairobi Rivers.
4. The Committee could help county governments by engaging NEMA and instituting measures to reduce pollution by industries and stamping their authority.
5. The Machakos County Government was planning a rezoning exercise especially along Mombasa road to curb such environmental conflicts between residents and industries.

At the end of the visit it was resolved that the Machakos County Government would prepare and submit to the Committee a report on the matter of pollution by the London Distillers Kenya Limited within one month.

4.0 COMMITTEE OBSERVATIONS

Having reviewed the oral and written evidence submitted to it, the Committee observed that:

1. Families, especially expectant mothers and children, could be suffering from long term health complications from the pollution. It was therefore important to deal with the matter expeditiously to eliminate the threat to lives and investments in the area.
2. A close down order was given to LDK on 6th February, 2017 due to its air pollution and releasing effluent that was not meeting set standards. However, the Distillery reopened but it was not clear whether it had met the expected conditions. There was therefore need to scrutinize the relationship between NEMA and LDK.
3. London Distillers Kenya Limited had been in existence for over 30 years in Kenya and therefore it ought to have invested in technologies that mitigate against air pollution, recycle solid waste, and escalate or institute internal self-regulation.
4. The National Environment Management Authority (NEMA) only acted after complaints were raised by EPL. The Authority needed to act proactively in order to stem environmental degradation in line with the precautionary principle in International Environmental Law.
5. NEMA licensed EPL to develop a residential property in the vicinity of LDK. NEMA knew or ought to have known about the potential conflict of such a decision.
6. Erdermann Property Limited acquired the land adjacent to the LDK fully aware that the area and its environs were zoned for industrial use. The land on which Great Wall Garden Estate by Edermann Property Limited was situated initially belonged to London Distillers but sold off to second parties by the Kenya Commercial Bank. The second users subsequently changed user status from industrial to residential use and subsequently sold to Edermann Property Limited in 2015.
7. The NEMA Director General produced before the Committee environmental audit reports largely commissioned by LDK to prove compliance of LDK with environmental standards. NEMA ought to have provided independently commissioned tests since the authenticity of results from self-initiated compliance tests would not be easy to vouch for.
8. The Report on Air Quality Measurement at London Distillers Limited was received at the Company on 24th March, 2018, days after receiving an invitation to appear before the Committee. This could imply that the report was merely done to exonerate the company from the accusations levelled against it. The report could have been a public relations exercise geared purely at hoodwinking the Committee.
9. London Distillers Limited had an agreement for sewer connection with the Export Processing Zones Authority (EPZA). However, a letter dated 14th January, 2015 indicated the polluting nature of the company, in which the introductory paragraph of the letter stated in part that: "*after rigorous analytical /quality assessment of your pre-treated effluent it is a fact that you are unable to achieve the values of COD and BOD set at 1000mg/l and 500 mg/l respectively as stipulated in the Environmental Management and Coordination (Water Quality) Regulations, 2006 of Legal Notice No.120*". The letter went on to give conditions for connection to the EPZA sewer line which included higher charges for its effluent that did not meet set standards. The company accepted the set conditions.

10. The former Mavoko County Council allowed change of user for the parcel of land owned by EPL from industrial to residential. Such change could have led to the environmental pollution conflict between the two parties.
11. There was need for NEMA to expand the monitoring of the industrial pollution issue in Athi River to other industries in the area to ensure protection of the environment and residents of the larger Athi River area and across the country in general.
12. The Fourth Schedule of the Constitution assigns the National Government the function of developing general principles of land planning, capacity building and technical assistance to the counties. The counties have been assigned the function of county planning and development which may include; formulating a county policy on physical planning, approving a county policy on physical planning, approving county development plans, monitoring and overseeing the planning function.
13. There was need for counties to create a master plan for land use in the area to avoid the mixed user of land which in the first place generated the environmental pollution conflict.
14. Edermann Property Limited was established in 2003 and started its development activities in Athi River in 2015, by which time London Distillers Kenya Limited was already established within the vicinity. Therefore, Edermann Property Limited engaged in its property development business in the area fully aware of its neighbourhood.
15. Despite the complaints by the residents of Great Wall Gardens Estate regarding the pollution emanating from LDKL, the property development company (Edermann Property Limited) was engaged in an ambitious expansion of its housing estate in the same location.

5.0 COMMITTEE RECOMMENDATIONS

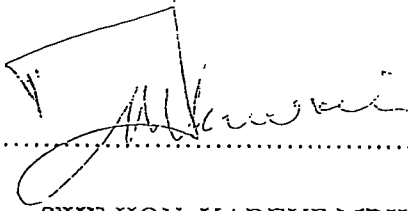
The Committee recommends that:

1. The National Environment Management Authority (NEMA) should:
 - i. Ensure that the London Distillers Kenya Limited within six (6) months from the date of tabling of this Report, invests in state-of-art technologies that contain air pollution mitigation mechanisms, recycles solid waste, and escalates and/or institutes stringent internal self-regulation. Such technologies can include, but not limited to: physical/chemical methods and biological treatment methods of odour control.
 - ii. Expand the investigation and monitoring of the industrial pollution issue in Athi River to other industries in the area to ensure protection of the environment and residents of the larger Athi River area and the whole country in general.
 - iii. Ensure due diligence in execution of its mandate to administer Environmental Impact Assessments to forestall such environmental pollution conflicts.
 - iv. Review the conduct of its officers directly involved in administering Environmental Impact Assessment on the EPL's Greatwall Gardens project.
 - v. Act proactively in addressing such pollution related issues in order to stem environmental degradation in line with the precautionary principle in International Environmental Law.

2. London Distillers Kenya Limited should:
 - i. Within six (6) months from the date of tabling of this report, invest in state-of-art technologies that contain air pollution, recycles solid waste, and escalates and/or institutes stringent internal self-regulation. Such technologies can include, but not limited to: physical/chemical methods and biological treatment methods of odour control.
 - ii. Strictly comply with the provisions of the Environmental Management and Coordination Act (No. 8 of 1999), the Environmental Management and Coordination (Water Quality) Regulations, 2006, the Environment Management and Co-Ordination (Air Quality) Regulations, 2014 and any other relevant legislation, including the obligation to keep all necessary environmental records;
 - iii. Design, construct, operate and maintain structures of the highest standards that ensure safe and healthy disposal of waste.
 - iv. Implement the culture of reduction, recycling and reuse of waste in daily operations such as waste utilization for energy production.
 - v. Implement the best structures and use of the best technology toward cleaning of all resultant industrial by-products from its premises before release to the environment.

- vi. Implement within six months from the date of tabling of the report the procedures for assessing and reviewing the environment, health and safety policies, procedures, programmes and impact of the industry's activities.
 - vii. Carry out regular and documented internal and third party audits of the progress made towards environmental protection.
 - viii. Failure to implement the above recommendations, the factory should be closed and/or be relocated to other suitable areas at the owners cost.
3. Edermann Property Limited should exercise a certain degree of tolerance and co-existence as London Distillers Kenya Limited puts in place state of the art technology in environmental protection and mitigation within the period of six months as directed in this report.
 4. The Ministry of Lands and Physical Planning should intensify the capacity building activities to counties and regularly monitor and evaluate progress on the extent of adherence to policies by the county governments.
 5. The County Government of Machakos should;
 - i. Create a master plan for land use in the Athi River area to avoid the mixed user status of land which in the first place generated the environmental pollution conflict.
 - ii. Ascertain whether due process was followed during processing and approval of the applications submitted by London Distillers Company and Great Wall Estate before their construction. If the process was not properly followed, the officers directly involved in approving the change of user status of the parcel of land occupied by the EPL's Greatwall Gardens project should be held culpable.
 - iii. Prepare a zoning plan to guide development within this area which is developing very fast. It should enforce strict adherence to the zoning plan.
 6. The Ministry of Environment and Forestry should:
 - i. Ensure an Environmental Audit is undertaken by a NEMA certified independent Lead Expert to confirm and recommend mitigation measures regarding complaints raised by the residents in Athi River. The audit reports should be submitted to the National Assembly within 60 days of tabling of the report.
 - ii. Ensure that a report is submitted to the National Assembly detailing progress made by NEMA and by extension London Distillers Kenya Limited in complying with the recommendations of this report within 60 days of its tabling.
 - iii. Cause closure and/or relocation of London Distillers Kenya Limited Athi River Factory within six months and at their own cost in case they fail to implement recommendations under 2 above.

SIGNED:



THE HON. KAREKE MBIUKI, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE: 28th August 2018


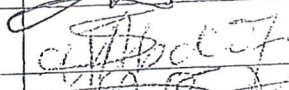
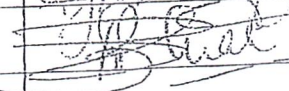
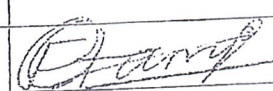
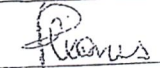
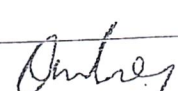
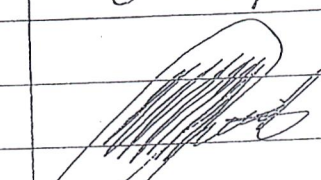
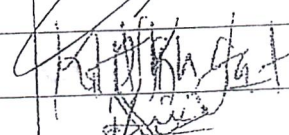
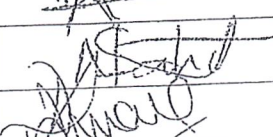


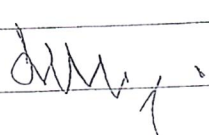
ATTENDANCE REGISTER

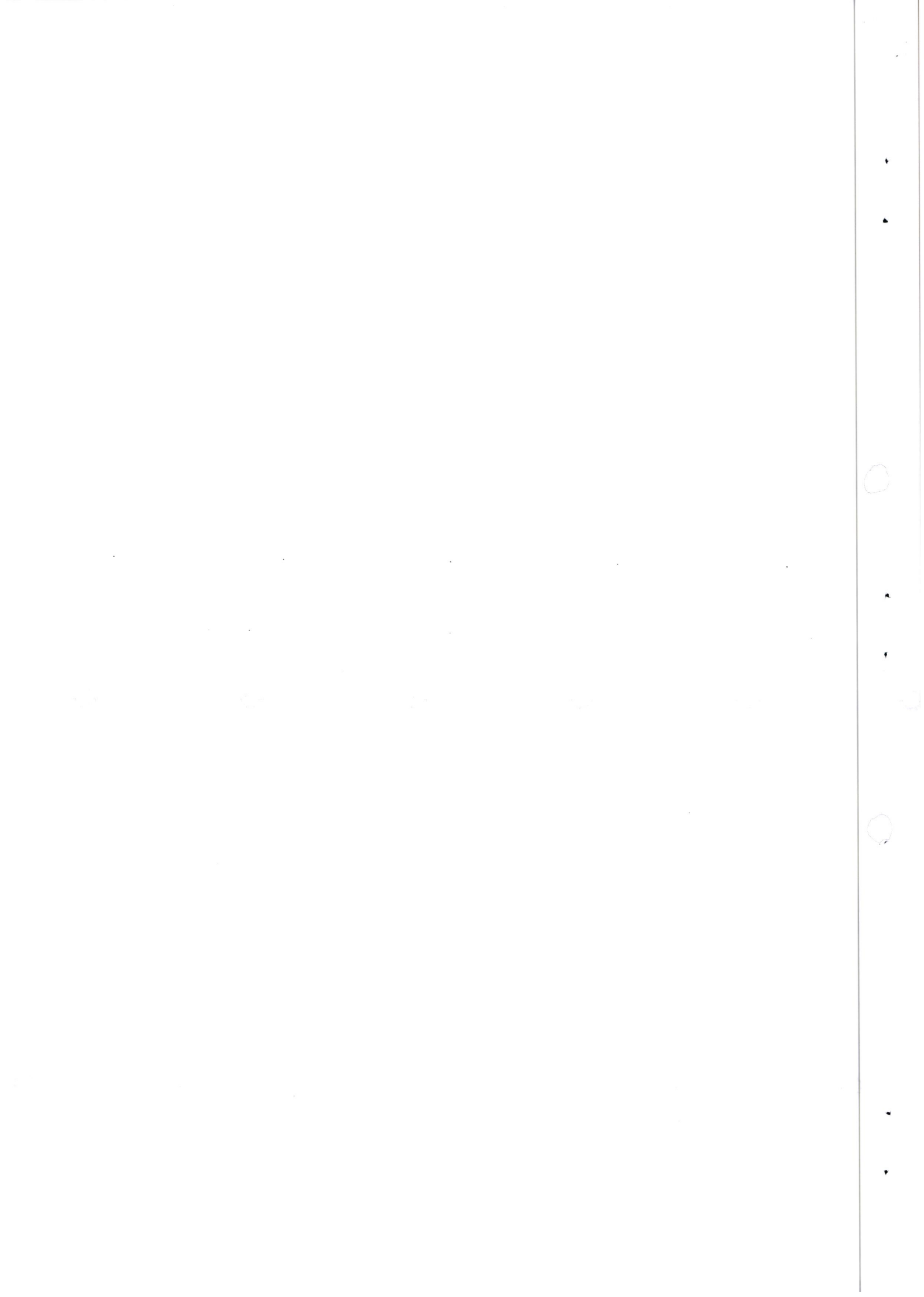
AGENDA:

MEMBERS ADOPTION LIST OF THE REPORT ON THE ENQUIRY INTO ENVIRONMENTAL POLLUTION BY LONDON DISTILLERS KENYA LTD.

DATE: 14/8/2018

VENUE: CPA ROOM

	NAME	SIGNATURE
1.	The Hon. Kareke Mbiuki, M.P. - Chairperson	
2.	The Hon. Sophia Abdi Noor, M.P. - Vice Chairperson	
3.	The Hon. Benjamin Jomo Washiali, M.P., CBS	
4.	The Hon. David Kangogo Bowen, M.P.	
5.	The Hon. Francis Chachu Ganya, M.P.	
6.	The Hon. Beatrice Cherono Kones, M.P.	
7.	The Hon. Benjamin Dalu Tayari, MP.	
8.	The Hon. Amin Deddy Mohamed Ali, M.P.	
9.	The Hon. Charity Kathambi Chepkwony, M.P.	
10.	The Hon. Charles Ong'ondo Were, M.P.	
11.	The Hon. Hassan Oda Hulofo, M.P.	
12.	The Hon. Hilary Kiplang'at Kosgei, M.P.	
13.	The Hon. Ali Wario Guyo, M.P.	
14.	The Hon. Nasri Sahal Ibrahim, M.P.	
15.	The Hon. Peter Kimari Kihara, M.P.	
16.	The Hon. (Eng.) Paul Musyimi Nzengu, M.P.	
17.	The Hon. Rehema Hassan, M.P.	
18.	The Hon. Rozaah Buyu. M.P.	
19.	The Hon. Said Hiribae, M.P.	



MINUTES OF THE 46TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY 3RD MAY, 2018 AT 10.00 AM IN ATHI RIVER/MACHAKOS COUNTY GOVERNOR'S OFFICE

PRESENT

1. The Hon. (Eng.) Paul Musyimi Nzengu, M.P. - Chairing
2. The Hon. Francis Chachu Ganya, M.P.
3. The Hon. Charity Kathambi Chepkwony, M.P.
4. The Hon. Charles Ong'ondo Were, M.P.
5. The Hon. Nasri Sahal Ibrahim, M.P.

APOLOGIES

1. The Hon. Kareke Mbiuki, M.P. Chairperson
2. The Hon. Sophia Abdi Noor, M.P. Vice Chairperson
3. The Hon. Rozaah Buyu, M.P.
4. The Hon. Amin Deddy Mohamed Ali, M.P.
5. The Hon. Benjamin Jomo Washiali, M.P.
6. The Hon. David Kangogo Bowen, M.P.
7. The Hon. Said Hiribae, M.P.
8. The Hon. Ali Wario Guyo, M.P.
9. The Hon. Hilary Kiplang'at Kosgei, M.P.
10. The Hon. Peter Kimari Kihara, M.P.
11. The Hon. Beatrice Cheroni Kones, M.P.
12. The Hon. Benjamin Dalu Tayari, MP
13. The Hon. Rehema Hassan, M.P.
14. The Hon. Hassan Oda Hulufu, M.P.

IN ATTENDANCE

MACHAKOS COUNTY GOVERNMENT

1. H.E. Alfred Mutua - Governor
2. Hon. (Eng.) Francis Maliti - Deputy Governor
3. Mr. Mwenji Mutuse - Chief of Staff
4. Mr. Joshua N. Musili - CEC, Environment and Natural Resources

EDERMANN PROPERTY LIMITED

1. Mr. Charles Wambugu - Chairperson, Residents Association
2. Ms. Susan Ndungu - Vice Chairperson, Residents Association
3. Mr. Peter Macharia - In Charge of Security
4. Mr. Jessy Charango - In Charge of Legal Affairs
5. Mr. John Rajwayi

6. Mr. Victor Odera
7. Mr. Thomas Miya
8. Mr. Joseph Barasa

LONDON DISTILLERS KENYA LIMITED

- | | | |
|------------------------|---|---------------------|
| 1. Mr. Alvin Galot | - | Managing Director |
| 2. Ms. Mina Galot | - | Director |
| 3. Mr. Martin Oloo | - | Company Advocate |
| 4. Mr. Parvan Gehlat | - | Manager, Operations |
| 5. Mr. Crispus Michira | - | EHS Officer |
| 6. Mr. Justus Mombis | | |
| 7. Mr. P.S. Mann | | |
| 8. Mr. Ashoh Datta | | |
| 9. Mr. Fred Ayuyo | | |

THE NATIONAL ASSEMBLY

- | | | |
|-------------------------|---|-------------------------|
| 1. Mr. Dennis M. Ogechi | - | Clerk Assistant III |
| 2. Mr. Stanley Lagat | - | Serjeant-at-Arms II |
| 3. Ms. Winnie Kulei | - | Research Officer III |
| 4. Ms. Rahab Chepkilim | - | Audio Recording Officer |

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) Inspection Visit to London Distillers Limited (Athi River Plant) and Edermann Property Limited (Great Wall Gardens Estate).
- v) Any Other Business
- vi) Date of the next Sitting

MIN.NO. DC/ENR/239/2018:

- PRELIMINARIES

The meeting was called to order at 10.15 a.m. after which prayers were said. The Acting Chairperson then stated that the main agenda of the meeting was conducting an inspection visit to London Distillers Limited (Athi River Plant) and Edermann Property Limited (Great Wall Gardens Estate). He then asked all those present to introduce themselves.

The Members adopted the agenda of the meeting.

MIN.NO.DC/ENR/240/2018:

CONFIRMATION OF MINUTES

Confirmation of minutes of the previous sitting was deferred to the next meeting.

MIN.NO. DC/ENR/241/2018:

INSPECTION VISIT TO EDERMANN
PROPERTY LIMITED (GREAT WALL
GARDENS ESTATE).

During the inspection visit, the Committee met with the management and residents of Edermann Property Limited (Great Wall Gardens Estate). In a meeting, after a tour of the estate, the following were highlighted:

1. The management complained of a bad odour coming from the London Distillers Kenya Limited (Athi River Plant) which had forced them to move their reporting time to work for the workers in the estate from 7am to 8am.
2. The offensive odour had been limited on the inspection day and 3 days prior to the visit.
3. Initially the odour was not strong but it had increased in intensity over time. Edermann Property Limited management had made efforts to visit the distillery in 2015 and were informed that they were installing systems to clear the smell.
4. The residents noted that the odour had been limited for three days prior to the visit. The residents feared for their health and hoped that the company could control their waste to avoid pollution and hence health related issues.
5. The residents informed the Committee that they were not informed that the distillery wasn't effectively managing its waste before they purchased their houses in the estate.

MIN.NO. DC/ENR/242/2018:

INSPECTION VISIT TO LONDON
DISTILLERS LIMITED (ATHI RIVER
PLANT).

1. The Committee visited the vicinity of London Distillers Limited (Athi River Plant) at 4.30 am and later had a meeting with the company's management at 10 am.
2. The areas in the plant that were visited included:
 - (i) The Distillery
 - (ii) The Production Line
 - (iii) The Molasses Tanks
 - (iv) The Waste Analysis Laboratory
 - (v) The Biogas Plant
 - (vi) The Effluent Treatment Plant

MIN.NO. DC/ENR/243/2018:

COURTESY CALL TO THE
GOVERNOR, MACHAKOS COUNTY

After the inspection visit, the Committee paid a courtesy visit to the Machakos Governor, H.E Alfred Mutua, who informed it that:

1. There were many industries in Athi River area, London Distillers Kenya Limited being one of them.
2. The distillery had been shut down following a court order but was later reopened under unclear circumstances. Attempts to implement the Court Order by the Machakos County Government were thwarted by NEMA. Hitherto, NEMA had been reluctant to act to implement the court orders.
3. The County Government of Machakos was concerned with the high pollution levels which were causing the Ukambani region to have the highest cancer levels in the country due to pollution of Athi and Nairobi Rivers.
4. The Committee would help county governments by engaging NEMA and instituting measures to reduce pollution by industries and stamping their authority.
5. The Machakos County Government was planning a rezoning especially along Mombasa road to curb such environmental conflicts between residents and industries.
6. The Machakos County Government would prepare and submit to the Committee a report on the matter of pollution by the London Distillers Kenya Limited within one month.

MIN.NO. DC/ENR/244/2018:

OBSERVATIONS AND RESOLUTIONS

OBSERVATIONS

Members observed that:

1. Despite the complaints by the residents of Great Wall Gardens Estate regarding the pollution emanating from LDKL, the company (Edermann Property Limited) was engaged in an ambitious expansion of its housing estate in the same location.
2. The Molasses Tanks and the Biogas Plant were located just next to the wall separating the plant from the Great Wall Gardens Estate, the probable source of the odour the residents were complaining about.
3. There was a strong stench emanating from the Biogas Plant and the Effluent Treatment Plant (ETP) which need urgent measures to curb.

4. The LDK needed to come up with an improvement plan and a technology to contain the offensive odour emanating from its operations and waste.
5. There were many other housing estates in the vicinity other than the Great Wall Gardens Estate.
6. The Committee lacked the technical knowhow to test samples at various points in the plant. However, the samples were collected.

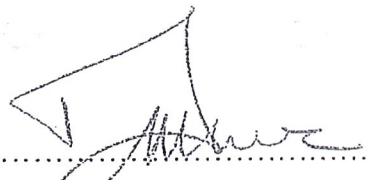
RESOLUTIONS

It was resolved that:

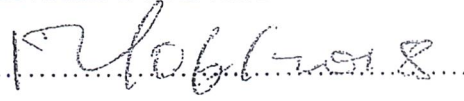
1. The London Distillers Limited shall, within one month, come up with an improvement plan / roadmap on the strategies and/or technologies to deploy to drastically reduce the offensive odour that was a nuisance to its neighbours.
2. The Machakos County Government shall prepare and submit to the Committee a report on the matter of pollution by the London Distillers Limited within one month.

MIN.NO. DC/ENR/245/2018: - ADJOURNMENT

There being no other business the meeting was adjourned at 2.43 pm.

SIGNED: 

THE HON. KAREKE MBIUKI, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE: 



MINUTES OF THE 21ST SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY 13TH MARCH, 2018 AT 11.00 AM IN THE 2ND FLOOR BOARD ROOM, PROTECTION HOUSE, PARLIAMENT BUILDINGS.

PRESENT

1. The Hon. Kareke Mbiuki, M.P. Chairperson
2. The Hon. Benjamin Jomo Washiali, M.P.
3. The Hon. Hilary Kiplang'at Kosgei, M.P.
4. The Hon. Peter Kimari Kihara, M.P
5. The Hon. Charity Kathambi Chepkwony, M.P
6. The Hon. Nasri Sahal Ibrahim, M.P.
7. The Hon. Rehema Hassan, M.P.

APOLOGIES

1. The Hon. Sophia Abdi Noor, M.P. Vice Chairperson
2. The Hon. Rozaah Buyu. M.P.
3. The Hon. David Kangogo Bowen, M.P.
4. The Hon. Beatrice Cherono Kones, M.P.
5. The Hon. Francis Chachu Ganya, M.P.
6. The Hon. Hassan Oda Hulufu, M.P.
7. The Hon. Amin Deddy Mohamed Ali, M.P.
8. The Hon. Ali Wario Guyo, M.P.
9. The Hon. Benjamin Dalu Tayari, MP
10. The Hon. Charles Ong'ondo Were, M.P.
11. The Hon. Said Hiribae, M.P.
12. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.

THE NATIONAL ASSEMBLY

- | | | |
|----------------------|---|-------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant |
| 2. Mr. Salem Lorot | - | Legal Counsel II |
| 3. Ms. Winnie Kulei | - | Researcher |
| 4. Mr. Stanley Lagat | - | Serjeant-at-Arms |
| 5. Mr. Simon Muinde | - | Audio Recording Officer |

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) Briefing on the Petition Against Environmental Pollution by London Distillers Kenya Limited (LDK).
- v) Briefing on the Green Bond Program under the Kenya Bankers Association.
- vi) Any Other Business

vii) Date of the next Sitting

MIN.NO. DC/ENR/099/2018: - PRELIMINARIES

The meeting was called to order at 11.30 am after which prayers were said. The Chairperson then stated that the main agenda of the meeting was to receive briefing on the Petition on Environmental Pollution by London Distillers Kenya Limited (LDK) and on Green Bond Program under the Kenya Bankers Association.

The Members adopted the agenda of the meeting as was proposed and seconded by the Hon. Charity Kathambi, M.P. and the Hon. Peter Kihara, M.P. respectively.

MIN.NO.DC/ENR/100/2018: - CONFIRMATION OF MINUTES

Minutes of the 15th Sitting held on Friday 23rd February, 2018 at 9.00 a.m. were confirmed as a true record of deliberations after being proposed by Hon. Peter Kihara, M.P. and seconded by Hon. Nasri Sahal Ibrahim, MP.

Minutes of the 16th Sitting held on Friday 23rd February, 2018 at 2.30 p.m. were confirmed as a true record of deliberations after being proposed by Hon. Benjamin Washiali, M.P and seconded by Hon. Charity Kathambi Chepkwony, M.P.

Minutes of the 17th Sitting held on Saturday 24th February, 2018 at 9.30 a.m. were confirmed as a true record of deliberations after being proposed by Hon. Benjamin Washiali, M.P. and seconded by Hon. Nasri Sahal Ibrahim, M.P.

Minutes of the 18th Sitting held on Saturday 24th February, 2018 at 2.30 p.m. were confirmed as a true record of deliberations after being proposed by Hon. Hilary Kiplang'at Kosgei, M.P. and seconded by Hon. Charity Kathambi Chepkwony, M.P.

Minutes of the 19th Sitting held on Tuesday 27th February, 2018 at 10.30 a.m. were confirmed as a true record of deliberations after being proposed by Hon. Benjamin Washiali, M.P. and seconded by Hon. Rehema Hassan, M.P.

Minutes of the 20th Sitting held on Thursday 1st March, 2018 at 11.00 a.m. were confirmed as a true record of deliberations after being proposed by Hon. Charity Kathambi Chepkwony, M.P. and seconded by Hon. Rehema Hassan, M.P.

MIN.NO.DC/ENR/101/2018: - MATTERS ARISING

The following matters arose:

- i) The Members noted that it was important to have the Minutes availed to them in advance so as to effectively prosecute the Agenda on the Confirmation of Minutes. The Secretariat

was therefore requested to be sending the Minutes to the Members through their email addresses before the meetings.

- ii) Under MIN.NO. DC/ENR/076/2018: On the role of Parliament on the issuance of mining licences, the Legal Counsel was tasked to research on the same and report to the Committee in the next meeting.
- iii) Under MIN.NO. DC/ENR/084/2018: On the issue of establishment of the Kenya Water Tower Agency, it was noted that it was established through Legal Notice No. 27 of 2012. Members resolved that there was need to anchor the Agency in law and therefore tasked the Legal Counsel research on how best it can be anchored in law.
- iv) Under MIN.NO. DC/ENR/087/2018: on the issue of budgetary allocation for water and sanitation programs, it was reported that the Committee's recommendation for additional Kshs. 1 billion in the budget policy statement for the same was approved by the Budget and Appropriation Committee. It was however noted that there was need to ensure that the allocation would be included in the printed estimates for FY 2018/2019.
- v) Under MIN.NO. DC/ENR/096/2018: on the inspection visits to the Mau Forest Complex and the Aberdare Forest, it was reported that the visits were scheduled for Thursday, 16th March to Sunday, 19th March, 2018. The Members were requested to confirm participation.

MIN.NO. DC/ENR/102/2018: - BRIEFING ON ENVIRONMENTAL
POLLUTION BY LONDON DISTILLERS
KENYA LTD

The Researcher briefed the Committee on the Complaint against the London Distillers Kenya Limited as follows, that;

Erdemann Property Limited, as a representative of the residents and workers in Great Wall Gardens Estate located on Shanghai road, Athi River, Mavoko Sub county Machakos County through a letter dated 22nd January, 2018 to the National Environment Management Authority (NEMA) and raised the issues that:

- i. There had been complaints of environmental pollution through toxic fumes and effluent from London Distillers Kenya Limited which is negatively affecting the lives of the residents of the larger Athi river area;
- ii. The residents were requesting NEMA to thoroughly investigate LDK and firmly asked them to adhere to all measures regarding air quality and effluent discharge as stipulated in the Air and Water quality regulations;
- iii. The residents would like LDK to give a written commitment to its neighbors that it would desist from blatantly polluting the environment and that it would adhere to NEMA standards before discharging any effluent or fumes to the environment.

- iv. Erdemann Property Limited further wrote a letter to NEMA dated 5th February, 2018 stating they were yet to get a relevant response from London Distillers (K) Limited on how they would manage their wastes, especially the bad odour;
- v. London Distillers Kenya Limited is the sole distillery in Kenya licensed to distil and produce branded alcoholic beverages. It is renowned for its wide range of products comprising of over 20 brands of Whisky, Brandy and Madafu liquor
- vi. The National Environment Management Authority on a letter dated 6th February, 2017 wrote to London Distillers (K) Limited ordering a closure of the company pursuant to Environmental Management and Coordination Act (EMCA), CAP 387 Part II, Section 3. This was after the company failed to comply with three improvement orders issued to them dated 6th May, 2016, 21st July, 2016 and 8th September, 2016.
- vii. Despite the orders issued by NEMA, London distillers are yet to reduce their environmental pollution a year later.

COMMITTEE OBSERVATIONS

The Members observed that;

- i. There was need to establish whether proper procedures were used in the change of use for the land in question from residential to industrial land or vice versa. The Researcher was tasked to establish on the compliance of change of use for the land by the involved parties.
- ii. Despite the change of use for the land, it was the responsibility of the user to guarantee environmental protection and conservation in consideration of the citizens as provided for in Article 42 of the Constitution.
- iii. Although the National Environment Management Authority through a letter dated 6th February, 2017 to London Distillers (K) Limited had ordered a closure of the company pursuant to Environmental Management and Coordination Act (EMCA), CAP 387 Part II, Section 3, the orders had not been enforced and therefore concerns were raised of inactivity on the part of NEMA on big manufacturers who pollute the environment.

Resolution

From the foregoing, the Committee resolved to invite for a meeting the following;

- i. The Management of Erdemann Property Limited together with the representatives of the residents and workers of Great Wall Garden Estate.
- ii. The Management of London Distillers Kenya Limited
- iii. The National Environment and Management Authority.

The Researcher briefed the Committee on the Green Bond Program as follows, that:

- 1) The country's ambition for sustainable development was outlined in the *Vision 2030, the Green Economy Strategy and Implementation Plan (GESIP) and the National Policy on Climate Finance*. These policies constitute the Government's efforts to advance the sustainable development agenda focused on addressing key challenges such as poverty, unemployment, environmental degradation, climate change and variability, infrastructure gaps and food security. These policies identify priority sectors to support sustainable development and the transition to a green economy.
- 2) Access to finance had been identified as one of the key challenges to achieving the green transition. Green bonds are a tool to mobilize private capital towards financing the transition, tapping into the demand for low-carbon and climate resilient investments
- 3) Green bonds were *innovative financial instruments* where the proceeds are invested exclusively in green projects that generate climate or other environmental benefits, for example in renewable energy, energy efficiency, sustainable waste management, sustainable land use, biodiversity, clean transportation and clean water. Their structure, risk and returns are otherwise identical to those of traditional bonds. They can be issued by Governments, Parastatals, Corporations, and Special Purpose Vehicles, among others, to finance new projects or refinance existing projects or portfolios.
- 4) The IFC (World Bank) had identified Kenya as one of the 24 countries that will benefit from its maiden Green Bond Cornerstone Fund.
- 5) The Kenya Green Bond Program was coordinated by Kenya Bankers Association (KBA), Nairobi Securities Exchange (NSE) and Climate Bonds Initiative (CBI) in conjunction with the Sustainable Finance Initiative. The Green Bond program is endorsed by the Central Bank of Kenya, Capital Markets Authority and National Treasury.
- 6) In 2017 Kenya launched the Green Bond where KBA, the NSE, Financial Sector Deepening Africa (FSD) and CBI signed a Cooperation Agreement to support the development of a green bonds market in Kenya. FSD Africa committed USD 600,000 over a period of three years, to fund the programme with the objective of aiding KBA to be in a position to tap the growing investor demand for green investments.

7) The Green Bond Kenya Program seeks to align capital to Sustainable Development and specifically the Green Economy. It focuses on the following work streams and outputs to support the issuance of the first Kenyan green bond and the development of a domestic green bond market:-

- i. Researching the potential of green bond issuance in Kenya
- ii. Developing a pipeline of green investments and engaging with local and international investors
- iii. Supporting demonstration green bond issuance from leading banks and corporates
- iv. Promoting green Islamic finance
- v. Developing a pool of Kenya-based licensed verifiers
- vi. Development of a cooperative fixed income fundraising facility that would allow smaller banks and corporates to also take advantage of wholesale debt capital markets
- vii. Leveraging the Kenya experience to catalyze similar programs across East Africa Community

8) The Government however postponed the first green bond to the 2018-2019 Financial Year. This was aimed at giving the Capital Markets Authority (CMA) ample time to put in place regulatory framework and guidelines for the government bond.

COMMITTEE OBSERVATION

The Committee observed that the Green Bond Program was good for the country as it seeks to align capital to Sustainable Development and specifically the Green Economy.

Resolution

The Committee resolved to engage with the Kenya Bankers Association (KBA) on the Green Bond Program in a breakfast meeting. It was proposed that the meeting with KBA be held on Wednesday, 21st March, 2018.

MIN.NO. DC/ENR/104/2018: - AOB

The following matters were raised under this agenda item, that;

- i. The KEPSA Environment, Water and Natural Resources Sector Board had requested to have a courtesy call meeting with the Committee on Thursday, 22nd March, 2018 at 9.00 am. The Committee assented to the request.

- ii. The Committee was in receipt of a Public Petition on Human Wildlife Conflict by the residents of Laikipia West Constituency as presented to the House by the Hon. Patrick Mariru, MP. The Committee resolved to invite the petitioner and the Kenya Wildlife Service management in consideration of the petition pursuant to Standing Order 227.
- iii. The Committee noted that there was need to meet with the Cabinet Secretary, Ministry of Environment and Forestry to address the status of forest logging across the country, the steps the Ministry was taking towards the same, progress made so far on the matter and the challenges being faced in addressing logging issue. The Committee resolved to invite the Cabinet Secretary for a meeting on Thursday, 22nd March, 2018 at 11.00 a.m.

MIN.NO. DC/ENR/105/2018: - ADJOURNMENT

There being no other business the meeting was adjourned at 1.47 pm.

SIGNED:

THE HON. KAREKE MBIUKI, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE: 10/04/2018



MINUTES OF THE 27TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY 20TH MARCH, 2018 AT 10.00 AM IN THE CPA ROOM, MAIN PARLIAMENT BUILDINGS.

PRESENT

1. The Hon. Kareke Mbiuki, M.P. Chairperson
2. The Hon. Sophia Abdi Noor, M.P. Vice Chairperson
3. The Hon. Benjamin Jomo Washiali, M.P.
4. The Hon. Francis Chachu Ganya, M.P.
5. The Hon. Beatrice Cheron Kones, M.P.
6. The Hon. Hilary Kiplang'at Kosgei, M.P.
7. The Hon. Charity Kathambi Chepkwony, M.P.
8. The Hon. Charles Ong'ondo Were, M.P.
9. The Hon. Ali Wario Guyo, M.P.
10. The Hon. Benjamin Dalu Tayari, MP

APOLOGIES

1. The Hon. Rozaah Buyu. M.P.
2. The Hon. David Kangogo Bowen, M.P.
3. The Hon. Said Hiribae, M.P.
4. The Hon. Peter Kimari Kihara, M.P.
5. The Hon. Hassan Oda Hulufu, M.P.
6. The Hon. Nasri Sahal Ibrahim, M.P.
7. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.
8. The Hon. Amin Deddy Mohamed Ali, M.P.
9. The Hon. Rehema Hassan, M.P.

IN ATTENDANCE

ERDEMANN PROPERTY LIMITED

- | | | |
|------------------------|---|---|
| 1. Mr. Zeyun Yang | - | Managing Director |
| 2. Ms. Ruth Hinga | - | Legal Officer |
| 3. Ms. Roselyne Anguzu | - | Marketing Officer |
| 4. Ms. Roseleen Kagiri | - | Homeowner, Great Wall Gardens |
| 5. CPA Charles Wambugu | - | Lecturer/ Homeowner |
| 6. Mr. Joseph Baraza | - | Communications Consultant |
| 7. Mr. Jesse Charagu | - | Advocate/Homeowner |
| 8. Mr. Joseph Mganga | - | Chairman, Residents Association |
| 9. Mr. Thomas Miya | - | Management Office, Great Wall Gardens |
| 10. Mr. John Rajwayi | - | Personal Assistant To The Managing Director |
| 11. Mr. Victor Odera | - | Property Manager |

LONDON DISTILLERS LIMITED

- | | | |
|------------------------|---|---|
| 1. Mr. Peter Muli | - | Human Resource and Administration Manager |
| 2. Mr. Crispus Michira | - | Safety Officer |

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)

- | | | |
|---------------------------|---|------------------|
| 1. Prof. Geoffrey Wahungu | - | Director General |
| 2. Mr. Mwitungi Mwai | - | Engineer |

THE NATIONAL ASSEMBLY

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant |
| 2. Mr. Dennis M. Ogechi | - | Third Clerk Assistant |
| 3. Mr. Joseph Okongo | - | Media Relations Officer |
| 4. Ms. Winnie Kulei | - | Researcher |
| 5. Mr. Stanley Lagat | - | Serjeant-at-Arms |

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) Meeting with the Following Entities on a Complaint Regarding Environmental Pollution by London Distillers Kenya Limited:
 - a) Erdermann Property Limited
 - b) London Distillers Kenya Limited
 - c) National Environment Management Authority (NEMA)
- v) Any Other Business
- vi) Date of the next Sitting

MIN.NO. DC/ENR/127/2018: - PRELIMINARIES

The meeting was called to order at 10.24 am after which prayers were said. He then asked all those present to introduce themselves. The Chairperson then stated that the main agenda of the meeting was meeting with the following entities on a complaint regarding environmental pollution by London Distillers Kenya Limited:

- a) Erdermann Property Limited
- b) London Distillers Kenya Limited
- c) National Environment Management Authority (NEMA)

The Members adopted the agenda of the meeting.

MIN.NO.DC/ENR/128/2018: - MEETING WITH ERDERMANN PROPERTY LIMITED ON A COMPLAINT REGARDING ENVIRONMENTAL POLLUTION BY LONDON DISTILLERS LIMITED

Mr. Zeyun Yang, Managing Director Erdermann Property Limited, appeared before the Committee and informed it that:

1. Erdemann Property Limited's vision was to see a Kenya where every Kenyan is in a position to own or rent a decent house. Its mission was to provide decent and affordable housing for the low and middle income earners. The company had done 4,000 housing units in the country.
2. The Great Wall Gardens site was surrounded by other developments projects too
3. In the past, EPL had experienced challenges in various projects e.g. financial issues but for the Great Wall Gardens, it had experienced a unique challenge of environmental pollution. Buyers complained of the bad smell in the vicinity.
4. The User of the land EPL bought neighboring LDK was a Residential User. EPL bought the land when its title indicated it was meant for residential purpose only. The User of a parcel of land is defined by the government authorities and specifically the Ministry responsible for Lands.
5. Any claim that the area is strictly industrial does not hold any water as the place is surrounded by several homes.
6. EPL got all the requisite approvals before undertaking the development of the Great Wall Gardens Project and these could be verified by the relevant government bodies and to check any special conditions in the approvals.
7. There are over 15,000 people living in the Athi River area and who were suffering silently as they did not have an avenue to share their suffering.
8. LDK was not meeting the set standards by NEMA and instead was playing games with the authorities by releasing the gas from evening up to morning when it cannot be seen by residents of Athi River.
9. NEMA had indicated that LDK had hired a company of international repute, SGS to conduct compliance tests and revert to them.
10. LDK Pollution
 - i) Air/Gas which is also further broken down into three
 - H₂S – Dihydrogen Monosulfide - Hydrogen Sulfide
 - PH₃ – Phosphorous Trihydride - Phosphine
 - NH₃ – Nitrogen Trihydride - Ammonia
 - ii) Liquid discharge/effluent
 - EPL collected a sample from the sewer line of LDK on Sunday 18th March, 2018 that was supplied to the Committee.
 - EPL has estimated the amount of discharge from LDK over the years it has been in operation to be over 100,000 metric tonnes based on current discharge which shows a big impact to the environment.
 - The effluent discharged does not meet the standard BOD and COD requirements of waste to be discharged. The standard BOD requirement for waste is 30mg/l or below and Standard COD should be 50mg/l or below.
11. This discharge ends up in River Athi and later Tana River and affects human, animal and plant life all the way to Indian Ocean and this has been happening for over the past 30

years. The area supplied water by these two rivers is a big portion of the population of Kenya.

12. The harm caused by the pollution includes adverse effects on human, livestock, game animals, fish, water animals and plants. Effects are noted on the skin, possibility of getting cancer of the skin or respiratory issues and even death of people and animals.
13. Environmental protection is a priceless cause as the environment should be sustained for future generations. The government bodies should strike a balance between development and environmental sustainability since a destroyed environment would affect tourism which was a backbone of the Kenyan economy.
14. The prayers by Erdemann Property Limited included that:
 - i) LDK puts up a proper functional treatment plant for its kind of waste.
 - ii) LDK to meet the standards set by the law and NEMA regulations.
 - iii) NEMA to ensure compliance with the law and its rules.
 - iv) LDK should invite NEMA, The Parliamentary Departmental Committee on Environment and Natural Resources and representatives of the neighbors or local leaders to show them and explain the measures they have put in place to stop or minimize the pollution.
 - v) Failure of the above should lead to a shutdown of the distillery until they comply as a permanent solution to the pollution menace brought about by LDK.

PRESENTATION BY REPRESENTATIVES OF RESIDENTS

The following representatives of residents made their presentations as indicated below:

1. CPA Charles Wambugu, - Chairman of Home Owners Lecturer/ Homeowner, stated that:
 - He noted the extensive pollution in the area at the point of purchase of his housing unit but was assured by EPL that it would be resolved.
 - The smell emanating from LDK was a nuisance and disrupted sleep.
 - He had researched and learnt that emissions from a distillery could cause central nervous system breakdown, respiratory complications, and cancer.
 - He prayed that the LDK be compelled to contain the pollution to acceptable standards internationally.
2. Roselyne Kagiri, Homeowner, Great Wall Gardens, stated that:
 - She moved into Great Wall Gardens in September, 2017
 - She had a 10-year old child who she one time noted to heave in the morning as if to vomit as a result of the smell.

- The Smell affected women, especially the expectant ones and this could lead to complications
 - There were also slum dwellers who had no voice who were suffering and needed help of the Committee for a healthier environment
 - Had to re-adjust her lifestyle - by 5p.m. the windows and doors have to be closed and up to 9a.m. the following day
 - LDK should not be allowed to continue doing wrong simply because they had been doing wrong for the past over 30 years.
3. Jesse Charagu – Lawyer/ Homeowner, stated that:
- It was difficult to explain to the children why the smell was persistent in the morning and evening
 - There was an aspect of negligence as the law of strict liability provides that if you keep anything in your compound that is likely to cause mischief to others, you have a responsibility to keep it under check (this can refer to a pet and now in this case, the smell/discharge). The law therefore presumes that you are answerable and the responsibility was squarely yours. Hence strict liability is on LDK to contain its waste
 - EMCA Act was put in the recent years but this does not exonerate one from taking responsibility.
 - The foul smell in the early morning and evening cannot allow jogging as you will experience bloated stomach in a short distance of running.
4. Joseph Ng'ang'a – Industrialist/ Homeowner, stated that:
- He runs a factory in Kariobangi and has employed about 30 staff. In Kariobangi, there are several industries but there was no such blatant pollution.
 - He was grateful to EPL for taking the lead and LDK should be tasked to either contain their waste or be shut down.
 - Fears that LDK could bribe or compromise the authorities
 - Other factories would also start blatantly polluting the environment if nothing was done to LDK.

MIN.NO. DC/ENR/129/2018:

MEETING WITH LONDON
DISTILLERS KENYA LIMITED ON A
COMPLAINT REGARDING
ENVIRONMENTAL POLLUTION.

Mr. Peter Muli, Human Resource and Administration Manager at LDK appeared before the Committee representing LDK. He claimed that the Managing Director, LDK had travelled to London on a business trip. However, the Committee declined to take evidence from him on the following grounds:

- i) The representation of the LDK by junior officers reflected lack of seriousness on the side of LDK to address the matters raised in the complaint regarding environmental pollution.
- ii) The Committee was interested in dealing with top decision makers and the technical team (environmental matters) at LDK.

MIN.NO. DC/ENR/130/2018:

MEETING WITH THE NATIONAL
ENVIRONMENT MANAGEMENT
AUTHORITY (NEMA) ON A
COMPLAINT REGARDING
ENVIRONMENTAL POLLUTION BY
LONDON DISTILLERS KENYA.

The Director General, NEMA, Prof. Geoffrey Wahungu appeared before the Committee and informed it that:

1. London Distillers Kenya Limited (LDK) was established in 1982 on plots LR.No.12867/16, 18, and 19. & 20. This was before EMCA and NEMA was established. However, it was built in an area marked for industrial development. Its activities involve recycling of molasses into alcoholic beverages which lessens the environmental impacts of molasses as its evidenced elsewhere.
2. On 21st October 2015 Edermann Property Limited submitted an environmental impact assessment study report for issuance of EIA license for the Great Wall Gardens Estate by the Authority. It was issued with an EIA license No. NEMA/EIA/PSL/2534.
3. The Authority had since received several complaints of environmental pollution by London Distillers Kenya Limited (LDK) from proprietors of Edermann Property Limited as indicated below:
 - a) 19/4/2016: The Authority investigated allegations of environmental pollution by London Distillers Kenya Limited and noted that:
 - The facility was connected to the EPZA sewer line;
 - There had been cases of vandalism of metallic joints from their feeder sewer line before discharge to the EPZA main sewer on 19/4/2016.
 - b) 6/5/2016: The Authority issued an improvement order to the facility advising them to:
 - secure their feeder sewer line to avoid vandalism;
 - rehabilitate sites affected by discharge from the vandalism activities;
 - Submit effluent analysis report for the pretreated waste water.
 - c) 21/7/2016: The Authority issued another improvement order to the facility directing them to:
 - Submit the effluent analytical report of the pre-treated waste water;
 - Submit stack emission measurement report, fast-track commissioning of the clarifier for their waste water pre-treatment plant;
 - Ensure all waste water is pretreated before discharge into the environment or the EPZA sewer line.
 - d) 29/7/2016: London Distillers Kenya Limited (LDK) submitted responses to the above improvement orders.
 - e) 8/9/2016: The Authority advised the proponent to:

- i) cease operations whenever feeder sewer line malfunctioned i.e. it is in-operational;
 - ii) submit stack emission measurements for boilers;
 - iii) Indicate measures they intended to institute to comply with the Effluent Discharge Licence limits.
- f) 8/9/2016: The Authority requested the proponent to submit stack emission measurements for their boilers;
- g) 26/10/2016: London Distillers Kenya Limited submitted their stack emission report to the Authority.
- h) 8/12/2016: The Authority received complaints of environmental pollution by London Distillers Kenya Limited (LDK) from Erdemann Property Limited.
- i) 21/1/2017: The Authority requested the proponent to submit Emission Compliance Plan for the facility.
- j) 6/2/2017: The Authority issued closure order to London Distillers Kenya Limited (LDK) after failing to fully comply with the improvement orders issued earlier.
- k) 28/2/2017: Environmental Inspectors inspected the facility to confirm compliance with the closure order and recommended that all effluent discharges be through the waste water treatment plant.
- l) 13/3/2017: The Authority lifted the closure after observing that the facility management had:
 - i) Repaired the sections of the vandalised sewer line;
 - ii) Submitted effluent analytical report;
 - iii) Submitted stack emission measurement report;
 - iv) Installed a clarifier at the effluent treatment plant to enhance its operations
 - v) Contracted a NEMA licensed transporter for their waste.
- m) 20/3/2017: London Distillers Kenya Limited (LDK) confirmed receipt of the letter lifting the closure order.
- n) 22/1/2018: The Authority received complaints of air pollution by London Distillers Kenya Limited from Erdemann Property Limited who are adjacent neighbours.
- o) 31/1/2018: The Authority received a response from London distillers on allegations of their environmental pollution by Erdemann property Limited. London Distillers Kenya Limited reported that the Erdemann Property Limited constructed houses on industrial plots LR.No.12867/9-13 &17 which are adjacent to it - an industrial enterprise.
- p) 8/2/2018: The Authority advised London Distillers Kenya Limited (LDK) to submit:
 - i) stack emission reports;
 - ii) Ambient air quality measurements within the facility along the waste water reticulation system as well as along the boundary lines between 5 am and 9 am in the morning and after 6 pm in the evening.
 - iii) An emission Compliance Plan for the fugitive emissions within the premises.

- iv) Apply for the stack emission license within Twenty-one (21) days from the date of that letter.
- q) 9/2/2018: Environmental Inspectors inspected the London Distillers Kenya Limited and reported no cases of non-compliance to environmental requirements.
- r) 5/3/2018: London Distillers Kenya Limited submitted their preliminary stack emission measurement report awaiting the final one in 21 days.
- s) 19/3/2018: The Authority received an invitation from Parliamentary Committee on Environment to provide brief on London Distillers Kenya Limited.
4. As per the Air Quality Regulations, 2014, facilities located within industrial areas are expected to persevere with the recommended ambient air quality standards for industrial areas and vice versa for industries intending to operate within residential areas in order to co-exist.
5. In the case of London Distillers Kenya Limited, other neighbours include Mavuno Church about 300meters and other upcoming 5 residential estates.

MIN.NO. DC/ENR/131/2018:

MEMBERS' OBSERVATIONS AND
RESOLUTIONS

OBSERVATIONS

Members observed that:

1. EPL was one of the property owners in the area who had come up with the complaint. There was need to visit the area and engage other residents especially slum dwellers around the premises of LDK.
2. The EPL seemed to have a solid background and understanding of the issue of pollution in the area.
3. Families, especially expectant mothers and children, could be suffering from long term health complications from the pollution. It was there important to deal with the matter expeditiously to eliminate the threat to lives and investments in the area.
4. A close down order was given to LDK on 6th February, 2017 but the premises reopened yet it was not clear whether the LDK had met the expected conditions. There was therefore need to scrutinize the relationship between NEMA and LDK.
5. There was need for LDK to have a treatment plant utilizing the latest technologies to curb the various forms of pollution from its premises.
6. The National Environment Management Authority (NEMA) only acted after complaints were raised by EPL. The organization needs to act proactively in order to stem environmental degradation in line with the precautionary principle in International Environmental Law.

7. NEMA licensed EPL to develop a residential property in the vicinity of LDK knowing fully well that the environs were dedicated to industrial use. NEMA knew or ought to have known about the potential conflict of such a decision.
8. The NEMA Director General produced before the Committee environmental audit reports largely commissioned by LDK to prove compliance of LDK with environmental standards. NEMA ought to have provided independently commissioned tests since the authenticity of results from self-initiated compliance tests won't be easy to vouch for. The Director General, however, clarified that that was in line with the "polluter pays principle" of environmental law.
9. The production of environmental audit reports done in the year 2016 was not adding value to the investigations since such reports were done long before the complaint was raised.
10. The LDK needed to urgently procure a system or technology that would remove the odour from their emissions.
11. NEMA ought to provide the Committee with a write up on the best practices/ technology that can be used to deal with the pollution emanating from the LDK.
12. Since the Committee lacked the technical knowhow, there was need to engage experts to advise it on industrial pollution pursuant to Standing Order 203.

RESOLUTIONS

Members resolved that:

1. Another meeting with the management of LDK should be scheduled for Tuesday 27th March, 2018.
2. NEMA should provide the Committee with a write up on the best practices/ technology that can be used to deal with the industrial pollution emanating from the LDK.

MIN.NO. DC/ENR/132/2018:

ADJOURNMENT

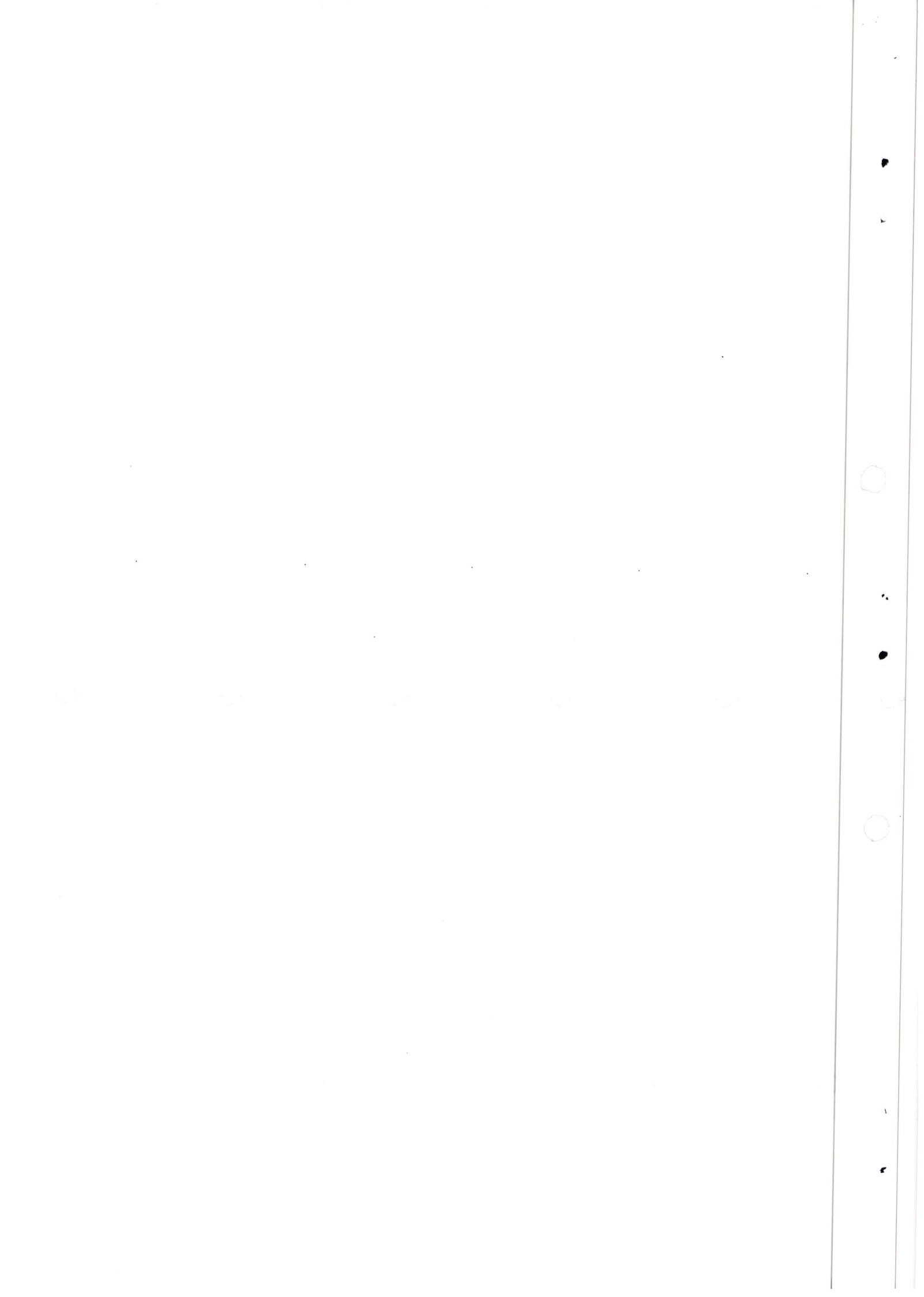
There being no other business the meeting was adjourned at 1.57 pm.

SIGNED:

THE HON. KAREKE MBIUKI, M.P.
CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE:



MINUTES OF THE 31ST SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY 27TH MARCH, 2018 AT 11.00 AM IN CPA ROOM, MAIN PARLIAMENT BUILDINGS.

PRESENT

1. The Hon. Kareke Mbiuki, M.P. Chairperson
2. The Hon. Sophia Abdi Noor, M.P. Vice Chairperson
3. The Hon. Francis Chachu Ganya, M.P.
4. The Hon. Charles Ong'ondo Were, M.P.
5. The Hon. Said Hiribae, M.P.
6. The Hon. Peter Kimari Kihara, M.P.
7. The Hon. Beatrice Cherono Kones, M.P.
8. The Hon. Charity Kathambi Chepkwony, M.P.
9. The Hon. Hilary Kiplang'at Kosgei, M.P.
10. The Hon. (Eng.) Paul Musyimi Nzengu, M.P.
11. The Hon. Rehema Hassan, M.P.
12. The Hon. Benjamin Jomo Washiali, M.P.
13. The Hon. Benjamin Dalu Tayari, MP

APOLOGIES

1. The Hon. Nasri Sahal Ibrahim, M.P.
2. The Hon. Ali Wario Guyo, M.P.
3. The Hon. Amin Deddy Mohamed Ali, M.P.
4. The Hon. Rozaah Buyu, M.P.
5. The Hon. David Kangogo Bowen, M.P.
6. The Hon. Hassan Oda Hulufu, M.P.

FRIEND OF THE COMMITTEE

The Hon. Patrick Mariru, MP

IN ATTENDANCE

LONDON DISTILLERS LIMITED

1. Mr. Alvin Galot - Managing Director
2. Mr. Alex Thangei - Company Advocate
3. Mr. Martin Oloo - Company Advocate
4. Mr. Parvan Gehlat - Manager, Operations
5. Mr. Peter Muli - Head of Human Resource and Administration
6. Mr. Justus Mombis
7. Mr. P.S. Mann
8. Mr. Crispus Michira
9. Mr. Ashoh Datta
10. Mr. Fred Ayuyo

PETITIONERS

1. Joseph M. Waitbaka
2. James Nyongio Kimeri
3. Washington Ngatia
4. Samuel Kamau
5. Peter Wanjohi
6. Charles Kiragu
7. Susan Maina
8. Peter Ndirangu Kihiko
9. John Muchangi
10. Margaret Njeri
11. Joseph Wanjau
12. Rev. F. Wambugu
13. Eutyclus Kamone
14. Abraham Rono

THE NATIONAL ASSEMBLY

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant |
| 2. Mr. Dennis M. Ogechi | - | Third Clerk Assistant |
| 3. Mr. Joe Okongo | - | Media Relations Officer |
| 4. Mr. Salem Lorot | - | Legal Counsel II |
| 5. Mr. Simon Muinde | - | Audio Recording Officer |
| 6. Mr. Stanley Lagat | - | Serjeant-At-Arms |

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) Consideration and adoption of the Report on the Vetting of the Principal Secretary nominee for the State Department of Mining, Mr. John M. Omenge.
- v) Meeting With the Management of London Distillers Limited on a Complaint of Environmental Pollution.
- vi) Meeting With Hon. Patrick Mariru, MP on the Petition Regarding the Human-Wildlife Conflict in Laikipia West Constituency.
- vii) Any Other Business
- viii) Date of the next Sitting

MIN.NO. DC/ENR/149/2018:

PRELIMINARIES

The meeting was called to order at 11.22 am after which prayers were said. The Chairperson then stated that the main agenda of the meeting was:

- i) Consideration and adoption of the Report on the Vetting of the Principal Secretary nominee for the State Department of Mining, Mr. John Morangi Omenge.

- ii) Meeting With the Management of London Distillers Limited on a Complaint of Environmental Pollution.
- iii) Meeting With Hon. Patrick Mariru, MP on the Petition Regarding the Human-Wildlife Conflict in Laikipia West Constituency.

The Members adopted the agenda of the meeting.

MIN.NO.DC/ENR/150/2018: - CONFIRMATION OF MINUTES

Minutes of the 29th Sitting held on Friday 23rd March, 2018 at 10.00 a.m. were confirmed as a true record of deliberations after being proposed by Hon. Charity Kathambi Chepkwony, M.P. and seconded by Hon. Charles Ongondo Were, MP.

Minutes of the 30th Sitting held on Monday 26th March, 2018 at 9.30 a.m. were confirmed as a true record of deliberations after being proposed by Hon. Chachu Ganya, M.P and seconded by Hon. Peter Kihara, M.P.

MIN.NO. DC/ENR/151/2018: - MATTERS ARISING

Under MIN.NO. DC/ENR/146/2018

It was noted that the vetting exercise for the Principal Secretary nominee for the State Department of Mining took place without a hitch on Monday, 26th March, 2018.

MIN.NO. DC/ENR/152/2018: -CONSIDERATION AND ADOPTION OF THE VETTING REPORT ON THE PRINCIPAL SECRETARY, STATE DEPARTMENT OF MINING, MR. JOHN M. OMENGE

The Report on the Vetting of the Principal Secretary nominee for the State Department of Mining, Mr. John Morangi Omenge was considered and adopted after being proposed and seconded by Hon.Peter Kihara, MP and Hon. Chachu Ganya, MP respectively.

The Report was adopted with the following observations that the nominee:

- i. Had satisfied the requirements of chapter six of the Constitution of Kenya on Leadership and Integrity having been cleared by: The Ethics and Anti-Corruption Commission, the Directorate of Criminal Investigations, the Kenya Revenue Authority on Tax Compliance, Higher Educations Loans Board (HELB) and the Registrar of Political Parties.

- ii. Has never been charged with a criminal offence in a court of law and has no potential conflict of interest with regard to the position he had been nominated to.
- iii. Has never been dismissed from office for contravention of the provisions of article 75 of the constitution which deals with conduct of State Officers that are adversely mentioned in any investigatory report of Parliament or any commission of inquiry.
- iv. Has the necessary qualifications and extensive experience in the public service as seen from the documentation presented to the Committee.
- v. Has the right attitude and commitment to serve in the position for which he had been nominated as observed from the way he responded to the Members' questions on mining related issues during the approval hearing.
- vi. Does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- vii. Exhibited impressive knowledge and understanding of issues relating to the docket he had been nominated for appointment.

Consequently, the recommendation of the Committee was that having considered the suitability, capacity and integrity of the nominee, and pursuant to Article 155(3) of the Constitution and Section 8 (2) of the Schedule to the Public Appointments (Parliamentary Approval) Act No. 33 of 2011 and Standing Order 216 (5) (f) of the National Assembly, the Committee recommends that the National Assembly approves the nomination of Mr. John Morangi Omenge for appointment by H.E. the President to the position of Principal Secretary for Mining.

MIN.NO. DC/ENR/153/2018: - MEETING WITH THE MANAGEMENT OF LONDON DISTILLERS LIMITED ON A COMPLAINT OF ENVIRONMENTAL POLLUTION.

The Chairperson welcomed all those present and stated that:

1. Erdemann Property Limited, as a representative of the residents and workers in Great Wall Gardens Estate located on Shanghai Road, Athi River, Mavoko Sub county Machakos County through a letter dated 22nd January, 2018 to the National Environment Management Authority (NEMA) and raised issues regarding environmental pollution through toxic fumes and effluent from London Distillers Kenya Limited which was negatively affecting the lives of the residents of the larger Athi river area.
2. The National Assembly, Departmental Committee on Environment and Natural Resources got hold of the matter after receiving a copy of the said letter by Erdemann Property Limited. It then invited the following entities to a meeting on Tuesday 20th March, 2018: Erderman Property Limited, London Distillers Kenya Limited, National Environment Management Authority (NEMA).

He then invited the Managing Director, London Distillers Limited to make his presentation.

MIN.NO. DC/ENR/154/2018: - PRESENTATION BY THE MANAGING
DIRECTOR, LONDON DISTILLERS
LIMITED

In his presentation, largely made by the firm's legal counsel, the Managing Director stated that:

1. London Distillers Kenya Limited (LDK) was aware of a complaint levelled against it by Erdemann Property Limited dated 22nd January, 2018.
2. LDK was not a polluter of the environment. The activities carried out by LDK in its premises were not environmentally harmful to its own staff, some of whom reside within the factory premises, nor did its activities affect other neighbours or workers as alleged by the Great wall Garden Estate workers.
3. LDK regularly submits itself to the compliance measures established by the National Environment Management Authority (NEMA).
4. Erdemann Properties Limited had not established an evidence based case against LDK save for wild allegations and arrogating to itself the role NEMA.
5. Erdemann Properties Limited made unfounded allegations against NEMA and LDK, acted in bad faith and was not honest in their complaint. This was demonstrated by copying their letter dated 5th February 2018, to the Presidency, the Cabinet Secretary for Environment and Natural resources, the Governor of Machakos, the Clerk to the National Assembly as well a total of 22 other players including the media.
6. LDK was a responsible corporate citizen which pays its taxes, employs Kenyans and through them, benefits their families. LDK was the only company in Kenya that has a robust climate change policy, embraces green energy through solar equipment and biogas plant. It has regenerated the environment through tree planting and proper waste management processes.
7. London Distillers Kenya Limited started its operations in the year 1986 in Athi River in an area designated as industrial zone, long before Erdemann Properties Limited, Hillcrest Park, the Kraal among other recent arrivals like Mavuno Church, Everest Park Estate, Safaricom Staff Pension Scheme, City Carton residents, and Jam City Estate Residents. It is located in premises zoned off for industrial and ancillary purposes as per the title documents which also applies to the surrounding premises.
8. LDK was allocated its land in 1982 but doesn't not know when Edermann Properties gained access to the land they occupy and whether they ever subjected themselves to change of user from industrial to housing. Subsequent subdivision of land in this area had yielded into an untidy semblance of mixture of land use including industrial, residential and agricultural.

9. LDK had endured complaints from similar actors in the past. On 16th of January, 2006 and 3rd of February 2006 E.H.S Resource Centre filed a complaint with the Public Complaints Committee (PCC) on the Environment under PCC Recommendation No: 115/2006.
10. One of the findings and recommendations of the PCC no 115/2006 was that Mavoko Municipal Council as it was then known should cease, in the absence of a Master Development Plan, granting individual change of user permits in areas where there is likely to be conflict where such permits are granted.
11. The Export Processing Zones authority has a sewer line to which industries connect upon payment of a fee and observance of certain standards. The EPZA then directs the effluent in their sewer line to their final treatment plant before final discharge into the environment.
12. On 6th February, 2017, the National Environment Management Authority issued a closure Order for LDK because as they said, they had received numerous complaints from the public about environmental pollution. The letter referred to ground inspections carried out on 6th May of 2016, 21st July, 2016 and 8th September, 2016. The letter alleged that LDK had failed to comply with the orders.
13. The NEMA letter of closure failed to disclose the fact that LDK responded on May 19th to the issues raised in the May 6th 2016 inspection vide letter Ref LDK/AD/584/16 received at the NEMA County offices on 24th May 2016 with the promise of compliance and a copy of third party analysis report from SGS and gave a programme for continuing improvement of the management of the effluent discharge.
14. The NEMA closure letter failed to disclose the fact that LDK had responded to their inspection report of 6th July 2016 vide their letter dated 27th July, 2016, in which LDK appended copies of the latest quarterly third party analysis reports from SGS, internal effluent analysis records, licensed garbage/waste handlers and a work plan to addressing issues raised in the improvement order.
15. In responding to the closure order, LDK pointed out the fact that as a result of their earlier letters and actions, the NEMA inspectors who visited on 28th of February 2017, had noted that that LDK had complied with all the improvement orders issued. LDK confirmed that all the improvements procedures were in place to effect the orders. They appealed against the closure through their heir letter dated March 7, 2017 and referenced LDK/MG/184/17.
16. On March 13th 2017, NEMA wrote a letter lifting the closure order for LDK in which they confirmed that the organization had undertaken the following: 1) Repaired sections of the damaged sewer line, 2) Submitted effluent analysis Report to NEMA, 3) Submitted Stack emission analysis report to NEMA, 4) had installed clarifiers at the effluent treatment plant and lastly, 5) contracted a NEMA approved/licensed waste transporter – Kinca Trading Company to collect and discharge waste water that had leaked/spilled from the sewer system.

17. NEMA then made additional recommendations on: 1) Installation of sludge drying beds to manage the environmental impacts of sludge, 2) Ensuring no spillage at entry points of the sewer system and all illegal discharges of waste water are controlled, 3) Submission of Quarterly effluent analysis report for the pre-treated waste water before discharge to the sewer line, and lastly, 5) Strict adherence to Environmental Management Plan (EMP) and periodic consultations with environmental experts and full implementation of the Audit reports.
18. On 20th March 2017 in response to the lifting of the closure order, LDK confirmed that the management team was in the process of implementing the recommendations and keeping track of appropriate checklists. This letter also attached a work-plan to implement the proposed recommendations.
19. LDK was making serious investments in environmental conservation including tree planting. Over ten thousand trees had been planted to green the area.
20. LDK had invested over USD 1,205, 432.81 in the solar energy in a bid to manage carbon emissions.
21. LDK had as of 7th December 2016 concluded an agreement with PRAJ Industries Limited to upgrade technology, design, engineering and supply of equipment worth USD 1,250,000.
22. He concluded that Industries world over emit effluent which, if not treated, can be harmful. LDK was aware of this and continued to work with the regulator to ensure that its activities were not harmful to the environment.

MIN.NO. DC/ENR/155/2018: - MEMBERS' OBSERVATIONS

Members observed that:

1. The London Distillers Limited had responded to the issue of discharge of hazardous effluent but had avoided addressing the issue of air pollution which was the main complaint against it.
2. The London Distillers Limited were making huge profits and therefore ought to invest in technologies that mitigate against air pollution, recycle solid waste, and escalate institute internal self-regulation.
3. The London Distillers Limited was paying substantial tax to the government and was employing a lot of Kenyans. However, that ought not to be an excuse for the pollution it was engaged in, which was likely to adversely affect the health of many Kenyans, leading to huge medical related expenses.
4. The London Distillers Limited seemed to refer to NEMA as its first line of defence in the proceedings. This could imply possible collusion with NEMA as the company

disregarded environmental laws and regulations with impunity. There was therefore need to include health officials and a reputable international entity with experience in industrial pollution to give the Committee an independent expert opinion on the issues at hand.

5. The Report on Air Quality Measurement at London Distillers Limited was received at the Company on 24th March, 2018 days after receiving an invitation to appear before the Committee. This could imply that the report was merely done to exonerate the company from the accusations levelled against it. The report may consequently be a public relations exercise geared purely at hoodwinking the Committee.
6. London Distillers Limited has an agreement for sewer connection with the Export Processing Zones Authority (EPZA). However, a letter dated 14th January, 2015 indicated the polluting nature of the company. In the introductory paragraph, the letter states in part that: "after rigorous analytical /quality assessment of your pre-treated effluent it is a fact that you are unable to achieve the values of COD and BOD set at 1000mg/l and 500 mg/l respectively as stipulated in the Environmental Management and Coordination (Water Quality) Regulations, 2006 of Legal Notice No.120". The letter goes on to give conditions for connection to the EPZA sewer line which include higher charges for its effluent which doesn't meet set standards. The company accepted the set conditions.
7. There was need to expand the investigation of the air pollution issue in Athi River to other industries in the area to ensure protection of the residents of the larger Athi River area. This may need a separate full blown inquiry by the Committee.
8. There was need to create a master plan for land use in the area to avoid the mixed user of land which in the first place generated environmental pollution conflict.

MIN.NO. DC/ENR/156/2018: - RESOLUTIONS

The Committee resolved that:

1. It shall visit the area affected by the pollution and the London Distillers Limited premises at a date to be decided later.
2. It shall include/consult health officials who will provide an independent opinion on the effect of industrial air pollution on human health.
3. It will seek then permission of the Speaker to engage a reputable international entity with experience in industrial pollution to give the Committee an independent expert opinion on the issues at hand.

MIN.NO. DC/ENR/157/2018: - MEETING WITH HON. PATRICK MARIRU,
MP ON THE PETITION REGARDING THE
HUMAN-WILDLIFE CONFLICT IN
LAIKIPIA WEST CONSTITUENCY.

The Chairperson welcomed all those present and stated that:

1. The Petition on Human – Wildlife Conflict in Laikipia West Constituency was presented to the National Assembly by the Hon. Mariru Patrick Kariuki, MP on 26th February, 2018.
2. The Petition sought to draw the attention of the House to the following, THAT:
 - a) The Wildlife Conservation And Management Act, 2013 contemplates formulation of innovative measures for mitigating Human-Wildlife conflict and compensating victims of Human-Wildlife conflict;
 - b) In the recent past, residents of Marmanet, Githiga, Salama, Rumuruti, Igwamiti and Olmoran Wards had experienced increased cases of attacks by elephants resulting in loss of lives and destruction of property.
 - c) The KWS wardens were evidently overwhelmed by the situation resulting in delays in responding to distress calls by residents.
 - d) Most parts of the Rumuruti, Marmanet, Sharmanei forests remain unfenced making it easier for the animals to stray often.
 - e) Residents of Laikipia West had held demonstrations against inaction by the KWS.
 - f) Between 2016 and 2018 more than 3 persons had lost lives and their families were yet to be compensated by the KWS.
 - g)
3. The petitioners prayed that that National Assembly through the Committee:
 - a) Recommends that KWS compensates victims and affected families for loss of lives and destruction caused and schools affected be fenced using electric fencing.
 - b) Intervenes to ensure that government expeditiously erects perimeter fences around Rumuruti, Marmanet, Sharmanei forests and private conservancies to curb the stray of wild animals.
 - c) Recommends that the KWS increases the posts in the areas for efficient surveillance and quick responses to distress calls.
 - d) Makes any other direction that it deems fit in the circumstances.
4. Upon receipt of the petition, the Committee resolved to invite:
 - The petitioner, Hon. Mariru Patrick Kariuki, MP, to brief the Committee on the petition; and
 - The KWS to respond to the issues contained in the petition.

He then invited the Hon. Mariru Patrick Kariuki, MP to make his presentation.

MIN.NO. DC/ENR/158/2018:

PRESENTATION BY HON. MARIRU
PATRICK KARIUKI, MP LAIKIPIA WEST
CONSTITUENCY

Hon. Mariru Patrick Kariuki, MP appeared before the Committee, accompanied by residents of Laikipia West Constituency. In his presentation, he informed the Committee that:

1. The Human-Wildlife conflict affected several wards in his Constituency.
2. In Marmanet Ward:
 - The ward covers Gatundia, Oljabet, Karaba, Melwa, Gatero areas and borders Rumuruti forest.
 - Six residents had been killed by elephants yet no compensation had been done so far despite making claims. These were: Wachira Gachahi, Mr Karoki, Thuo Mwangi, Kimani Kariru, Isaac Kipgetich Barno and Kiuru Mwenda.
 - Some residents had been maimed and lived desolate lives. For example Wilson Laboso, Richard Ndirangu, samuel Wachira had not yet received compensation.
 - The conflict had affected school going children. In Melwa, Murichu, Munyu and Kiriti Primary schools. The pupils report late to school due to fear of elephants attacks.
 - Elephants had been destroying fences, maize stores and homes in this ward particularly around Siron area. He gave photos of evidence of fences and stores destroyed.
 - Many farmers had lodged compensation claims yet compensation had not been forthcoming. A copy of a filled claim form was provided.
 - Farming activities in the area had been adversely affected.

Proposed Solutions

- Rumuruti Fence should be elected.
- KWS out-stations should be increased along the fence.
- A fence maintenance program should be mooted to ensure the fence was maintained.

3. In Igwamiti Ward:

- The elephants were destroying homesteads and leaving people homeless and destitute.
- Elephants had also killed people. For example, Mr Kiuru, Jane Wangari both from Maina Village, Mary Murugi and David Michobo from Mahianyu village.
- They had also maimed people like Alfred Kibogo, Charles Maina (a standard four (4) pupil at Maina Primary school), Mr Emali, Wambui Mutitu and Magdalene Wanja.
- In Maina Village, the destruction of property, farms and homes had resulted in an increase in crime levels as young people are were abandoning farming.

Proposed Solutions

- Fencing off of Marmanet and Sharmek forests
- KWS out- stations in the area be increased and facilitated
- A fence Maintenance program be mooted

4. In Salama Ward:

- Property and farms had been destroyed around Kiamariga, Raya, Kianjogu, Kiriko, Kiahiti and Pesi areas.
- Persons had been killed for example; Mr. Hassan Iten yet no compensations had been made despite claims being lodged.

Proposed Solutions

- The Mutara fence around ADC farm should be completed;
- A fence maintenance program be put in place;
- KWS Out-stations be increased and facilitated; and
- Compensations for loss of lives and properties be effected.

5. In Rumuruti Ward:

- The most affected areas are OMC, Kapkures, Kahuho, Ainampmoi, Simotwo, Olranyiro areas.
- There was destruction of farms and other properties.
- Compensation claims had been lodged but no compensation had been effected.
- Deaths had been reported there too. For example those of: Jannifer Nyokiriany, Josiah Njinu and Stephen Karanja Kingori of Rumuruti ward.
- Reported laxity on the side of KWS in response to distress calls by residents.
- Lions had been reported to roam in Lorian area and had killed 12 cows so far.
- There were also buffalos invasions reported in the ward.

Proposed Solutions

- Rumuruti fence and Mutara fence be elected.
- A fence maintenance program be instituted.
- KWS outstations be increased and facilitated
- Compensations for loss of lives and properties be effected

6. In Olmoran Ward:

- The most affected are horticultural areas of Wangwaci, Kabati, Bondeni, Ka- metha, Naiborom areas.
- No compensation for the destroyed properties and farms despite claims being lodged. This had affected livelihoods especially for the youth.
- People killed ; Paul Ndungu Wahome, Peter Maina Njororoge.

Proposed Solutions

- Completion of the Laikipia Ranching fence
- A fence maintenance program be mooted

- KWS out-stations be increased and facilitated
- Compensations for loss of lives and properties be effected

7. In Githiga Ward:

- The ward covers Kamwenje, Mutitu, Kariaini, Lobere, Ndindika, Eighteen, Njorua
- Although there was a fence, it was established using short poles.
- Cereal stores had been destroyed for instance those belonging to: James Nyogio, Daniel Ihigo .
- People had been killed for instance Jane Wairimu and Martha Nduta.
- Those maimed included: Susan Wanjiu and Ester Awoi.

Proposed Solutions

- Compensation for the lives lost and crops destroyed
 - Establishment of a fence along the entire forest boundary
 - KWS station ought to be set along the Kuki Gallman farm
 - Setting up of a trench and a fence in order to curb the movements of elephants from Kamwenje, Wangwachi to Nagum.
8. The petitioner provided photographic evidence of the destruction occasioned by the wild animals in the areas affected.

MIN.NO. DC/ENR/159/2018:

MEMBERS' OBSERVATIONS

Members observed that:

1. There were both private conservancies and KWS controlled areas in the areas affected. There was therefore need to establish the contributions that KWS and the private conservancies needed to make towards the fencing of the areas proposed by the petitioner.
2. The County Government of Laikipia had made budgetary allocations to institute urgent fencing requirements to protect lives and property. There was therefore need for the KWS to find possible areas of collaboration with the county governments across the country to ensure minimal Human-Wildlife conflict.
3. The KWS had not put forth a serious case for increased budgetary allocation for compensation claims. There was therefore need for the KWS to engage both the National Treasury and the Committee on the same. Equally, the KWS ought to prioritize compensation of victims of Human-Wildlife Conflict from funds received from the exchequer and other donor support.
4. The issue of human-wildlife conflict was a critical concern throughout the country in areas bordering wildlife habitats, there was therefore need to seek a global solution to the menace.

MIN.NO. DC/ENR/160/2018: - RESOLUTION

It was resolved that the Hon. Mariru Patrick Kariuki, MP be invited to the meeting the Committee shall hold with the KWS on the same matter.

MIN.NO. DC/ENR/161/2018: - ANY OTHER BUSINESS

1. It was reported that the Committee had been invited to a workshop by the Synergy Development Systems Limited from April 18th to 20th 2018 at the Whitesands Beach Resort, Mombasa. The workshop seeks to contribute to the dialogue on forest conservation and management and inform policy formulation and legislative processes that may come up from the environmental audit being undertaken.

Resolution: The Committee resolved to attend the workshop.

2. It was reported that the Committee delegation that participated at the 8th World Water Forum, Brasilia, Brazil from March 18th to 23rd, 2018 had a successful trip and was back to the country. Its report was under preparation.

MIN.NO. DC/ENR/162/2018: - ADJOURNMENT

There being no other business the meeting was adjourned at 2.16 pm.

SIGNED:

THE HON. KAREKE MBIUKI, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE:

10/04/2018

