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TWELFTH PARLIAMENT

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

ON

PETITION ON THE ALLEGED UNLAWFUL ENCROACHMENT AND FORCEFUL
OCCUPATION OF BARWAQO PLOTS WITHIN BULLA MPYA WARD,
MANDERA EAST CONSTITUENCY, MANDERA COUNTY.

JUNE, 2021

② Rt Hon. Speaker
You may approve for tabling.
[Signature]
05/07/21

① DC-GE
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for approval
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List of Abbreviations/ Synonyms

CS	- Cabinet Secretary
EACC	- Ethics and Anti-Corruption Commission
EGH	- Elder of the Golden Heart
KDF	- Kenya Defence Forces
MOLPP	- Ministry of Land & Physical Planning
NLC	- National Land Commission
NYS	- National Youth Service
ODPP	- Office of the Director of Public Prosecution

PREFACE

Mr. Speaker sir,

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

A. Committee Membership

The Committee comprises of the following Members.

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

Chairperson

Vice-Chairperson

At the sitting of the Senate held on 16th May, 2019 the Honourable Speaker of the Senate, reported to the Senate that a Petition has been submitted through the office of the Clerk, by residents of Barwaqo Location, Bulla Mpya Ward, Mandera County on the alleged unlawful encroachment and forceful occupation of Barwaqo plots within Bulla Mpya Ward, Mandera East Constituency, Mandera County.

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

1. They applied for and were allocated plots in Barwaqo Location by the County Government of Mandera in or about 2013;
2. That, after complying with all the relevant requirements, the County Government of Mandera issued them with allotment letters;

3. That, they have dutifully paid to the County Government of Mandera, land rates and all other statutory requisite payments;
4. That, in or about February, 2014, the Government of Kenya forcefully evicted them from the land and unlawfully occupied the same; and
5. That, the action of the Government offends express provisions of the Constitution and statutes with regard to compulsory acquisition of land by Government.

The petitioners therefore pray that the Senate;

Investigates the matter with a view of ensuring that the property rights of the petitioners are upheld and the due process of the law is followed in the event of compulsory acquisition by the Government.

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

Pursuant to Articles 37 and 119(1) of the Constitution, section 5(2) the Petition to Parliament (Procedure) Act and standing order 232 of the Senate Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within the prescribed period.

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

The Committee proceeded to invite the Cabinet Secretary, Ministry of Lands and Physical Planning and the National Land Commission on the aforementioned Petition.

ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioners, the Cabinet Secretary, Ministry of Lands and Physical Planning Ms. Farida Karoney, EGH, and Mr. Gershom Otachi, Chairperson, National Land Commission, for their submissions and contribution to the resolution of this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present the Report of the Standing Committee on Lands, Environment and Natural Resources on the Petition regarding the alleged unlawful encroachment and forceful occupation of Barwaqo plots within Bulla Mpya Ward, Mandera East Constituency, Mandera County.

Signed:  Date: 10/06/2021

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

CHAPTER I

INTRODUCTION

1. At the sitting of the Senate held on 16th May, 2019 the Honourable Speaker of the Senate, reported to the Senate that a Petition has been submitted through the office of the Clerk, by residents of Barwaqo Location, Bulla Mpya Ward, Mandera County on the on the alleged Unlawful encroachment and forceful occupation of Barwaqo plots within Bulla Mpya Ward, Mandera East Constituency- Mandera County.
2. The salient issues raised in the Petition are as follows-
 - i) They applied for and were allocated plots in Barwaqo Location by the County Government of Mandera in or about 2013;
 - ii) That, after complying with all the relevant requirements, the County Government of Mandera issued them with allotment letters;
 - iii) That, they have dutifully paid to the County Government of Mandera, land rates and all other statutory requisite payments;
 - iv) That, in or about February, 2014, the Government of Kenya forcefully evicted them from the land and unlawfully occupied the same; and
 - v) That, the action of the Government offends express provision of the Constitution and statutes with regard to compulsory acquisition of land by Government.

The petitioners therefore pray that the Senate;

Investigates the matter with a view of ensuring that the property rights of the petitioners are upheld and the due process of the law is followed in the event of compulsory acquisition by the Government.

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

B. LEGAL BASIS FOR PETITIONS

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

CHAPTER 2

CONSIDERATION OF THE PETITION

Approach taken by the Committee

1. In considering the Petition, the Committee observed that it would be important to verify the facts alleged by the Petition. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.
2. In this regard the Committee received the Petition from the Petitioner through the House and further sought for written responses from the County Government of Mandera.
3. Thereafter, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning and the Chairperson, National Land Commission who appeared before the Committee virtually on Thursday, 13th August, 2020.

C. Responses by the Cabinet Secretary, Ministry of Lands and Physical Planning

Vide a letter Ref: SEN/DCS/LENR/2/2020/(38) dated 15th July, 2020, the Committee requested for information from the Cabinet Secretary, Ministry of Lands and Physical Planning to respond to the Petition in its entirety. The MoLPP responded on the matters raised via a response dated 5th October, 2020. Based on the concerns raised, the Ministry responded as indicated below:

Background and Context

The Petitioners state that they applied for and were allocated plots in Barwaqo location by the County Government of Mandera on or about the year 2013, and were issued with letters of allotment. They state that in 2014, the National Government through the National Police Service (Rapid Deployment Unit), the National Youth Service (NYS) and the Kenya Defence Forces (KDF) unlawfully encroached and forcefully occupied the plots under the guise of security.

The encroachment and occupation of the land according to the Petitioners violates the Constitutional and statutory provisions on compulsory acquisition of land. The Petitioners therefore request the Committee to investigate the matter with a view to ensure that their property rights are upheld and that the National Government follows due process in the event of compulsory acquisition.

Response by the Ministry

1. That the letters of allotment issued to the Petitioners by the County Government of Mandera have not been forwarded to the Ministry through the National Land Commission and therefore the Ministry could not confirm on the ownership of the plots;
2. A report of the Mandera County Commissioner, Mr. Onesmus M. Kyatha Ref. No. CC/MDR/LDM48/CF/VOL.K112) dated September 2, 2020 on the matter indicates that occupation of the plots by the security forces was a result of the prevailing insecurity incidences in 2013/2014 due to frequent attacks by the Al-Shabaab militia in the County.
3. The report stated that the County leadership led by the Hon. Governor Captain Ali Roba petitioned the National Government to fully secure the County by provision of Special Forces. In 2014, the Mandera County department of Lands, Housing and Physical Planning identified and allocated parts of vacant areas in Barwaqo location to the Rapid Deployment Unit of the National Police Service. The County Government put up three pit latrines, a kitchen and officers' mess for the security personnel. In addition, the County Government provided the unit with four water tanks and a generator for lighting.
4. The National Youth Service (NYS) and Kenya Defence Forces (KDF) were also allocated an adjacent portion by the County Government in the same area to beef up security. From the report, the security forces have not encroached on the plots but have settled in the area with the consent of the County Government.

5. The Ministry invited the Committee to engage the County Government of Mandera on the petition.

D. Responses by the Ministry of Interior and Coordination of National Government

1. That the occupation of the said plots was occasioned by the prevailing insecurity incidences in 2013 /2014 occasioned by frequent attacks by the al-Shabaab militia that made Mandera town a ghost town;
2. That the County leadership led by the Hon. Governor, Captain Ali Roba petitioned the top leadership of the National Government to fully secure the county by provision of special forces to secure, protect their lives and property in Mandera as a result of the rampant shootings, burning of Government offices, vital installations and laying improvised explosive devices in Mandera town;
3. That in 2014 the Mandera County department of lands, housing and physical planning identified and allocated parts of vacant vast areas in Barwaqo location to the Rapid Deployment Unit;
4. That the County Government put up three pit latrines, a kitchen, an officers' mess and other ranks mess for smooth settlement of the security personnel. In addition, the County Government provided the unit with four water tanks and a generator for lighting to the Kapedo camp;
5. Later on the National Youth Service was also allocated an adjacent portion by the County Government in the same area followed by KDF who were also settled on the site among other units to beef up security.;
6. That the security forces have never encroached on the above parcels as alleged by the petitioners and were only settled in the area with the full consent and blessings of the County Government; and

7. That in 2014 the said area was an empty vast land with no human settlements, dwelling and was just an empty field and the recent demarcations of the plots were only carried out later after the officers had settled on the land after tremendous improvement of security in Mandera town.

E. Responses by the County Government of Mandera

Vide a letter referenced SEN/DCS/LENR/2/2020/(20d) of 26th May, 2020, the Committee requested for information and supportive documents relating to the Petition by residents of Barwaqo area of Bulla Mpya Ward of Mandera Sub county. The County Government of Mandera submitted as follows-

1. The area occupied by Insecurity Agencies- The Rapid Deployment Unit and Renta Defence Forces Kapedo Camp was a notorious access route for Al-Shabaab militants who would sneak into Kenya from Somalia and carry out deadly attacks on innocent civilians, security officers, residences and businesses;
2. There were comprehensive stakeholder consultations involving leaders, the community, security agencies and the owners of the land;
3. At the beginning of demolition, the area was not occupied at all but was already surveyed and planned for. As part of security arrangements, it was agreed that a border wall between Kenya and Somalia be built as a project of the National Government;
4. The National Youth Service was enlisted to construct the wall and they mobilized personnel and equipment and they needed a camp to operate from.
5. It was then agreed that the land identified in Barwaqo be used temporarily as shifter; period during the project, *(see attached; letter requesting owners to allow the NYS camping site)*.
6. It was agreed that the land would revert to the rightful owners after the site was demobilized and NYS would later on be replaced by Kenya Defence Forces who occupied the same land to carry out border wall security project;

7. That the camp becomes a buffer zone from the attacks by militants and since 2013 to date the number of terror attacks in Mandera Town have reduced from an average nine attacks per month to virtually zero with exception of one incident;
8. It is important to note that the border securitization project is still on-going and has taken longer than was envisaged at the beginning. It is not clear when the project will be completed by the relevant National Government agencies;
9. Mandera County Government backs the position that the parcels of plots revert to the lawful land owners and have the security camps relocated to some other areas free of any encumbrances or the government to go for compulsory acquisition and compensate the owners at market rates. Our responses to the issues raised in the petition are as follows;
 - a) It is true the petitioners are the lawful owners of the land. The land allocation was done by the defunct Mandera Town Council before inception of devolution.
 - b) Mandera County Government issued allotment letters to formalize the ownership of the land in 2013. (*Attached find samples of allotment letters*).
 - c) Yes, some have complied with land rate payments but some have defaulted.
 - d) At the time of erecting a camp at the said land, there were no developments or settlements and therefore the question of forceful eviction does not arise. Owners were notified of government intentions through letters issued by the Mandera County Ministry of lands, Housing and Physical Planning as evidenced in the letters attached.
 - e) There are only temporary structures at the site and no permanent structures as alleged in the petition have been approved by the County Government. Structures include tents and temporary shelters.

Attached kindly find supportive documents as well as a physical plan for the area mentioned.

F. Responses by the National Land Commission

Vide a letter Ref: SEN/DCS/LENR/2/2020/(38) dated 15th July, 2020, the Committee requested for written information regarding the Petition and the Committee was informed

as follows:

1. That a number of people from Bulla Mpya Ward of Mandera County stated that they are owners of plots in an area called Barwaqo having been allotted the plots by the County Government of Mandera;
2. That they have reported that on allocation, they paid for the plots and continue to pay rates for the plots but have not been able to develop the plots. They state that in the year 2014, the National Police Service (through RDU) took possession of the plots and have continued to occupy the plots that's displacing the genuine allottees who have made this petition;
3. Having gone through this petition, it was clear that there is a dispute over ownership and occupation of plots in Barwaqo area. Barwaqo is a residential area within Mandera Municipality;
4. That under the assistance of the Ministry of Northern Kenya, the County Council of Mandera undertook to plan some sections of the Municipality with the aim of formalizing occupation and legalizing ownership. Barwaqo was planned and surveyed and plots were allotted to residents;
5. In the year 2014, there was insecurity in Mandera and the National Police Service and other security agents requested the County Government of Mandera to identify an area for temporary camps for purposes of security management. The area where the camps were set up happens to be the area prior planned for residential use and allocated to the Petitioners;
6. The National Police service has been on the ground since 2014 and hence the Petitioners request for determination of their rights since they still hold documents of ownership and pay rates for the plots;
7. The Petitioners want to be compensated should the National Police Service want to continue with the use of the Camp sites;
8. From the reading of the petition is that the residents do not have an objection with the security agents occupying the plots. They only want compensation.

9. There are two ways of dealing with their concern:
- a) Since the petitioners are legitimate allottees of the plots, The Ministry of Interior and Coordination of National Government could approach the County Government for formalization of its occupation through re-planning the area to change use from residential to use compatible with the Ministry of Interior's intended use. The County government affected allottees (petitioners) may then be compensated through compulsory acquisition procedures;
 - b) Alternatively, the Ministry of Interior could request the County Government to formalize its occupation by way of re-planning and issuance of alternative plots to the Petitioners anywhere else within Mandera Municipality; and
 - c) The Ministry of Interior is recommended to engage the County Government of Mandera in order to resolve the conflict of ownership and use of land in Barwaqo area.

CHAPTER 5

COMMITTEE OBSERVATIONS

In accordance with the Prayers of the Petitioners that the Senate -

Investigates the matter with a view of ensuring that the property rights of the petitioners are upheld and due process of the law is followed in the event of compulsory acquisition by the Government, the Committee observes as follows:

- 1. While the Ministry of Lands and Physical Planning and Ministry of Interior and Coordination of National Government could not authoritatively confirm the owners of the contested pieces of land, the County Government of Mandera and the National Land Commission submitted that the petitioners were the legitimate owners of the plots;**
- 2. The County Government of Mandera submitted to the Committee a sample of allotment letters that were issued to the petitioners prior to devolution;**
- 3. There was no dispute that the petitioners were the rightful owners of the pieces of land;**
- 4. The petitioners had no objection of the government acquiring the land through compulsory acquisition as long as they were adequately compensated;**
- 5. The Process of Compulsory acquisition of land in Kenya is governed by Article 40 (3) (b) of the Constitution and Part VIII (sections 107-133) of the Land Act, 2012. Article 40 (3) (b) of the Constitution states as follows:**

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

(b) is for a public purpose or in the public interest and is carried out in

accordance with this Constitution and any Act of Parliament that—

- (i) requires prompt payment in full, of just compensation to the person; and*
- (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.*

CHAPTER 6

COMMITTEE RECOMMENDATIONS

The Committee having investigated the matter in accordance with its mandate under standing order 223 of the Senate Standing Orders recommends as follows-

In accordance with the Prayers of the Petitioners that the Senate -

Investigates the matter with a view of ensuring that the property rights of the petitioners are upheld and the due process of the law is followed in the event of compulsory acquisition by the Government, the Committee recommends as follows:

- 1. The Committee recommends that the security forces continue with the use of the Camp Sites to safeguard the lives and properties of the people of Mandera County;**
- 2. The Ministry of Interior and Coordination of National Government should immediately commence compensation of the allottees in line with the laid down legal processes pertaining to compulsory acquisition of land by a government entity or vacate the land altogether; and**
- 3. The National Land Commission to monitor the compensation processes and gives status report within 4 months of tabling of this Report in the Senate.**

APPENDICES

ANNEX I: MINUTES OF THE MEETINGS

ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS

(Attached separately)

MINUTES OF THE 32ND SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 10TH JUNE, 2021 AT SAROVA WHITESANDS HOTEL, MOMBASA AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. Mwaruma Johnes, MP
4. Sen. Ndwiga Peter Njeru, EGH, MP
5. Sen. Boy Issa Juma, MP

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. George Khaniri, MGH, MP - Member
2. Sen. Gideon Moi, CBS, MP - Member
3. Sen. (Dr.) Lelegwe Ltumbesi, MP - Member
4. Sen. Sylvia Kasanga, MP - Member

IN ATTENDANCE

1. Ms. Veronicah Kibati
2. Mr. Victor Bett
3. Mr. Crispus Njogu
4. Mr. Yussuf Shimoy
5. Ms. Mitchell Otoro
6. Ms. Lucianne Limo
7. Ms. Sakina Halako
8. Mr. John Pere
9. Mr. James Kimiti
10. Mr. Naftali Ondiba
11. Mr. Benard Oteyo

SECRETARIAT

- Principal Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Legal Counsel
- Media Relations Officer
- Personal Secretary
- Sergeant-At-Arms
- Audio Recording
- Finance Officer
- Office Assistant

MINUTE SEN/SCLN/180/2021: PRELIMINARIES

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

MINUTE SEN/SCLN/181/2021: ADOPTION OF AGENDA

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

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Adoption of the following Petition Reports;**
 - a) Draft Report of the Committee on the Petition regarding the Unlawful encroachment and forceful occupation of Barwaq plots within Bulla Mpya

- Ward, Mandera East Constituency- Mandera County (Residents of Barwaqo Area)
- b) Draft Report of the Committee on the Petition regarding Acquisition of Karare land in Marsabit County, by the Kenya Defence Forces
 - c) Draft Report of the Committee on the Petition regarding Mwakitau land ownership dispute between Mwakitau Residents and IsangaIwishi Group Ranch (Residents of Taita Taveta County, Mwatate Sub County, Mwakitau Location)
- 5. Any other Business;
 - 6. Date of the next meeting;
 - 7. Adjournment.

MINUTE SEN/SCLNR/182/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Committee differed the confirmation of Minutes.

MINUTE SEN/SCLNR/183/2021: ADOPTION OF THE FOLLOWING PETITION REPORTS:

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

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby **adopted its report** with the following recommendations in accordance with the Prayers of the Petitioner—

Investigates the matter with a view of ensuring that the property rights of the petitioners are upheld and the due process of the law is followed in the event of compulsory acquisition by the Government, the Committee recommends as follows:

Should the National Police Service want to continue with the use of the Camp Sites, the Ministry of Interior and Coordination of National Government should immediately commence compensation of the petitioners in line with the laid down legal processes pertaining to compulsory acquisition of land by a government entity or vacate the land altogether.

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Boy Issa Juma, MP and Sen. Philip Mpaayei, MP respectively.

- (b) Draft Report of the Committee on the Petition regarding Acquisition of Karare land in Marsabit County, by the Kenya Defence Forces**

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby **adopted its report** with the following recommendations in accordance with the Prayers of the Petitioner—

The Specific prayer by the Petitioner is that the Committee recommends halting the process of compulsory acquisition of Karare land for the benefit of the Rendille and Samburu communities residing in the area and make appropriate recommendations on the matter.

The Committee therefore recommends as follows:

1. That the Ministry of Tourism and Wildlife objects to the acquisition of the part of Marsabit National Reserve by KDF to safeguard wildlife protected areas and that the Ministry of Defence halts all activities on the said parcel of land.
2. That the County Government of Marsabit allocates an alternative land to KDF and both the County and KDF ensure there is adequate and effective public participation carried out.

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Philip Mpaayei, MP respectively.

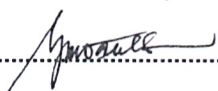
(c) Draft Report of the Committee on the Petition regarding Mwakitau land ownership dispute between Mwakitau Residents and Isangalwishi Group Ranch (Residents of Taita Taveta County, Mwatate Sub County, Mwakitau Location)

The Committee was unable to conclude on the Report after noting that it would be important to invite the Isangaiwishi Group Ranch members to give their side of the matter.

The Committee therefore resolved to have them invited for a meeting on 17th June, 2021 at 11.00 am.

MINUTE SEN/SCLNDR/184/2021: ANY OTHER BUSINESS;
There was no other business discussed.

MINUTE SEN/SCLNDR/185/2021: DATE OF NEXT MEETING;
The meeting was adjourned at 1.00 pm and the next meeting was to follow in the afternoon.

Signed:.....

Date:..... 23/6 /2021.....

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

MINUTES OF THE 38TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 9TH SEPTEMBER, 2020 VIA ZOOM ONLINE PLATFORM AT 1.45 PM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. Boy Issa Juma, MP
4. Sen. Sylvia Kasanga, MP
5. Sen. Mwaruma Johnes, MP

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Philip Mpaayei, MP
2. Sen. Ndwigwa Peter Njeru, EGH, MP
3. Sen. Gideon Moi, CBS, MP
4. Sen. (Dr.) Lelegwe Ltumbesi, MP

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

IN ATTENDANCE

A. MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Mr. Gideon Mungaro - CAS
2. Ms. Caroline Menin - Legal
3. Mr. P.K. Mwangi - Director, Land Adjudication
4. Mr. Robert Nyakeruma - Snr. Asst. Director
5. Mr. Benson Onditi - Dep. Director, Land and Settlement
6. Mr. Michael Kagwe - Dep. Director, Land and Settlement
7. Ms. Pauline Gitition - Ag. Director of Survey

B. NATIONAL LAND COMMISSION

1. Mr. Gershom Otachi - Chairperson
2. Ms. Getrude Nguku - Vice Chairperson
3. Mr. Bor - Dep. CEO
4. Ms. Rose Kitur

C. SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Judy Ndegwa - Legal Counsel
3. Ms. Clare Kidombo - Researcher/Policy Analyst
4. Mr. John Ngang'a - Audio Recording

MINUTE SEN/SCLNDR/211/2020: PRELIMINARIES

The meeting was called to order at 1.50 pm by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNDR/212/2020: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. Sylvia Kasanga, MP as follows –

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Meeting with the **Cabinet Secretary, Ministry of Lands & Physical Planning and the Chairperson, National Land Commission** on the following **Petitions and Statements** as follows:
 - i. Statement requested by Sen. Boniface Kabaka, MP, on 16th October, 2019 regarding the impending eviction of a section of residents of Mavoko, Machakos County, from their land by the East Africa Portland Cement Company;
 - ii. Petition by residents of Kericho and Bomet Counties on the status of land owned by multinationals in Kericho and Bomet Counties;
 - iii. Petition by Mr. Joel Kenduiywa on the resettlement of the minority Ngerek Community following their proposed eviction from South Nandi Forest, Nandi County;
 - iv. Petition by Mr. Jeremiah Lemako, Chairperson, POKA Group Ranch on the alleged unlawful acquisition and disposition of the Poka Group Ranch Land;
 - v. Petition by Mr. John Njogu Njoroge on the Resettlement of East Mau Forest Evictees;
 - vi. Petition by Dundori Forest Evictees on the forceful eviction from Dundori Forest and compensation of land for the excised area from the forest for resettlement;
 - vii. Petition by residents of Barwaqo Area on the alleged unlawful encroachment and forceful occupation of Barwaqo plots within Bulla Mpya Ward, Mandera East Constituency, Mandera County
 - viii. Statement requested by Sen. Johnes Mwaruma, MP, on 26th February, 2020 regarding land adjudication allocation in Mwakingali “A” in Voi Sub-County, Taita Taveta County; and
 - ix. Statement requested by Sen. (Dr.) Alice Milgo, MP on 5th March, 2020 regarding the implementation of the National Land Use Policy in the Counties.
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNDR/213/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The confirmation of Minutes of previous sittings was differed to a later date.

MINUTE SEN/SCLNDR/214/2020: MEETING WITH THE CABINET SECRETARY, MINISTRY OF LANDS & PHYSICAL PLANNING AND THE

CHAIRPERSON, NATIONAL LAND COMMISSION ON PETITIONS AND STATEMENTS

Statement requested by Sen. Boniface Kabaka, MP, on 16th October, 2019 regarding the impending eviction of a section of residents of Mavoko, Machakos County, from their land by the East Africa Portland Cement Company;

Response by the Ministry of Lands and Physical Planning

The Statement reads that, the Committee should;

- 1) Explain why the East African Portland Cement Company and Government Agencies have threatened to have a section of residents of Mavoko evicted from their lands, known as L.R. NO. 8784/4, L.R. NO. 8786 and L.R. NO. 10425.
- 2) Further explain why the cement company reneged on its Board of Directors' resolutions of September 30, 2010 and July 23, 2013 that it would surrender the said land to the Government free of charge for the benefit of the local community or give the locals an irrevocable option to purchase the said land upon exhaustion of the raw material used in manufacturing cement from the said land.
- 3) Explain why the National Government wants to repossess part of the said land known as L.R. NO. 10425 measuring 4,256 acres for the construction of affordable housing under its big four development agenda yet the land is occupied by locals and state whether there's no alternative land in Mavoko for the project.
- 4) Explain why the cement company is discriminating against the locals in the sale and disposal of the afore-described parcels of land.
- 5) Explain what plans the National Government has in place to either resettle and/or compensate the Mavoko Community Association for anticipatory loss and damage to their property and livelihoods upon eviction from the parcels of land; and
- 6) Explain why the National Government has refused to release to the public the outcome of the Mavoko Land Task Force set up to look into the state of ownership of land and invasions by squatters in Mavoko, Machakos County.

The responded as follows: -

According to our records, the following parcels are registered under the East African Portland Cement Company Limited;

LR No.	Size	Transactions
--------	------	--------------

IR No.		
LR No. 8784/4 IR No. 19637	1,392.5 Acres.	<p>Originally owned by Ignancy Mann and Erica Mann Parcel was sold to Kitangilu on 4th Sept 1969 EAPC PLC bought parcel from Kitangilu on 14th Nov 1979 for Ksh1,200,000</p> <p>In 1983 parcel subdivided into 4 portions: <i>8784/1 – 154.7Ha and 8784/2 – 154.6Ha sold to Kimani Wanyoike, 8784/3 – 72.9Ha sold to Julius Mulandi</i> 8784/4 which is 1329.3 acres remained with EAPC PLC. Has a leasehold of 949 years and an annual rent of Ksh266,700 User: Agricultural</p>
LR No. 7815/1 IR No: 18389	2,095 Acres.	<p>The original owner was East Africa Sisal Estates Ltd for a term of 999 years from 1st Aug 1948 and an annual rent of Ksh419 East Africa Sisal Estates Ltd changed to Mitchell Cotts (1968) EAPC PLC bought the land for 2 million shillings from Mitchell Cotts together with LR No. 10424 Land was transferred to EAPC PLC in 9th March 1977 with an annual rent of Ksh377</p>
LR No. 10425 IR No. 17839	4,272 Acres.	<p>This land was a direct allocation to EAPC PLC in 1960 for a term of 945 years from April 1, 1960 for an annual rent of Ksh854.40 User: Agricultural</p> <p>Current status: Subdivided into two parcels LR No 10425/25 transferred to Cabinet Secretary the National Treasury. The user for the parcel of land is mixed urban development (residential, commercial and industrial). The acreage is 4260.75 acres.</p> <p>LR No 10425/2 was acquired by Kenya Power and Lighting Company for a power sub-station acreage 10 acres.</p>

(copies of official searches are marked as **Annexure 5**)

LR NO. 8786 IR	745 Acres	This was a direct allocation to EAPC PLC with a total acreage of 745 Acres Leasehold land for 951 years w.e.f 1 st Jan 1955 and an annual rent of Ksh149 User: Agricultural Land The property is charged to Kenya Commercial Bank.
LR No. 10424 IR 17951	4,298 Acres.	Originally owned by Douglas Harcourt Stanley from 1 Nov 1960 for 952 years Land was transferred to East Africa Sisal Estates Ltd in April 10, 1961 East Africa Sisal Estates Ltd changed name to Mitchell Cotts Limited (1968) Mitchell Cotts in 1970 transferred land to EAPC PLC at a consideration of 2 million shillings together with LR No. 7815/1 User is Agricultural

The Committee was informed that the Ministry is not aware of any planned evictions.

Response by the National Land Commission

1. The statement concerns Parcels of land L.R.Nos.8784/4 L.R No. 8786 and L.R.No. 10425.

The three parcels of land are registered in the name of East Africa Portland Cement Company. In as far as sanctity of title is concerned and as information held in the land registry the titles to this land have been held by the company as provided for by the records.

According to the Constitution, the land falls under the category of private land

64. Private land consists of —

- (a) Registered land held by any person under any freehold tenure;
- (b) Land held by any person under leasehold tenure; and
- (c) Any other land declared private land under an Act of Parliament.

As such anybody purporting to be the owner of this land is a trespasser. The Company and the Government can deal with them as provided for in the Land Act.

2. **The question of why the Company, has reneged on the Board of Directors resolution** of 30th September 2010 and 23rd July 2010, can only be explained by the CEO of EAPCC or the Chairman of the Board

3. **On the alleged discrimination by the company against locals in sale of land:** this question can be responded to in a better way by East African Portland Cement Compan. The company is in a better position to answer

5. **Resettlement and compensation:** An agency within the Ministry of Lands and Physical Planning (Settlement Fund Trustee Board) is mandated with resettling the

Landless and where compensation is required deposit the funds with the NLC for redistribution to the beneficiaries

6. Question on release of Mavoko Task Force Report: The Mavoko Land Task Force Report was officially handed over to the Cabinet secretary ministry of Lands and Physical Planning on 8th November 2019. The Implementation of the report is to be spearheaded by the Ministry of Lands and Physical Planning

Ownership of EAPCC in percentage

NSSF 27

Gok 25.30

Cementia Holdings 14.60

Associated International cement 14.60

Committee intervention:

The Committee had invited the Senator responsible for the Statement as a friend to the Committee to enrich deliberations. Being the Senator from the region, he was not contended with the responses submitted given that the MOLPP had only done a search and nothing to do with his question.

The CAS MOLPP pleaded with the Committee to also pose the questions to the Ministry of Industrialization.

The Committee therefore resolved to have the matter brought again before the Committee and the following Stakeholders be invited:

- Ministry of Lands and Physical Planning
- Ministry of Industrialization
- Ministry of Interior and Coordination of National Government
- East Africa Portland Cement
- Kenya Commercial Bank
- National Land Commission

Thereafter the Committee can then proceed to conduct a site visit.

The Committee could not exhaust all the Pending submissions on the Petitions and Statements due to constraints of time and therefore allowed the Secretariat to work on the submissions and should there be gaps existing then the Committee can make a decision.

MINUTE SEN/SCLN/215/2020: ANY OTHER BUSINESS;

The was no other business discussed.

MINUTE SEN/SCLN/216/2020: DATE OF NEXT MEETING;

The meeting was adjourned at 2.55 pm and the date of the next meeting was to be called on notice.

Signed: **For:** 

Date: **19/11/2020**

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

**PETITIONERS
SUBMISSIONS**



MANDERA COUNTY GOVERNMENT

P.O. Box 13-70300, Manderla, Kenya

MANDERA TOWNSHIP

LETTER OF ALLOTMENT

DIIS NOOR ALI

Date: 11/09/2014

P.O BOX 13-70300 MANDERA

No. MCG/ 5346

User RESIDENTIAL

Plot No. 372

I am pleased to inform you that the County Government of Manderla hereby offers you allocation of the above plot in BARWAQQ area of Manderla Township subject to your formal acceptance of the following conditions and the payment of the charges as prescribed hereunder:

AREA 0.045 Ha (approximately) - Subject to adjustment on survey.

Your acceptance in writing, together with payment of the amount set out below within thirty (30) days from the date of this offer will secure your allocation of the plot.

- a) Annual Rent (revisable) Kshs. 1000
- b) Registration Fees Kshs. 500
- c) County Government Service Charge Kshs. 500

If acceptance of the offer and payment of above fees are not received within the said thirty (30) days from the date hereof, the offer will be considered to have lapsed.



Consulting Surveying and Mapping Services
(Specialized: Surveying, Topographical Land Engineering Surveying, GIS/GPS Mapping)

Receipt

SPATIAL RESEARCH
RESOURCE SURVEYERS
P.O. Box 71327 - 00072
Nairobi, Kenya
Tel: +254 714 574 172
Fax: +254 254 241 020
Email: info@spatialresearch.com
NO: 2123213254

Received from: DIIS NOOR ANI Date: 10/04/13

The sum of: Ten thousand only

Being payment for Survey fee for Plot No 377

Cash / Cheque No.: BAWAKO

Bank BSI

KSUS 10,000/-

With Thanks

SMET
For Consulting Surveying and Mapping Services

04/04/13



MANDERA COUNTY GOVERNMENT
 P.O. BOX 13 -00700 MANDERA
DEPARTMENT OF LANDS
FEE RECEIPT



S/No: 000008

Station: BARWAKO

Date: 29/10/2014

Received from.....	NATURE OF FEE	Amount	
		Shs	Cts
<u>SALAT HASSAN</u> <u>AHMED</u>	Registration	<u>500</u>	
	Search certificate		
	Opening New Register		
	Survey Fee		
	Land Rent	<u>3000</u>	
	Stand Premium		
	Stamp Duty		
	Approval plan		
	Total (Kshs)	<u>3,500</u>	<u>00</u>

Cash/Cheque Amount in Kenya Shillings
Three thousand five
hundred shillings

As per marginal statement nature of transaction

2012-2014

Plot number: 1990





MANDERA COUNTY GOVERNMENT
P.O. BOX 13 -00700 MANDERA
DEPARTMENT OF LANDS
FEE RECEIPT



S/No: 001908

Date: 29/11/2015

Station: BURWAKO

Received from	NATURE OF FEE	Amount	
		Shs	Cts
<u>DIIS NOUR AH</u>	Registration	<u>500</u>	
	Search certificate		
	Opening New Register		
	Survey Fee		
	Land Rent	<u>3000</u>	
	Stand Premium		
	Stamp Duty		
	Approval plan		
	Total (Kshs)	<u>3500</u>	

Cash /Cheque Amount in Kenya Shillings

Three thousand five hundred Shillings

As per marginal statement nature of transaction

land rent fee for 2012-2014
372

Plot number



MANDERA COUNTY GOVERNMENT
 P.O. BOX 13-00700-MANDERA
DEPARTMENT OF LANDS
FEE RECEIPT



S/No: 000197

Date: 17/11/2014

Station: BARWAKO

Received from: MUKTAR
ABDI CMAR

Cash/Cheque Amount in Kenya Shillings:
Three thousand
Five hundred
only

As per marginal statement nature of transaction

land rent Fee
2012-2014
194

Plot number: _____

NATURE OF FEE	Shs	Cts
Registration	500	
Search certificate		
Opening New Register		
Survey Fee		
Land Rent	3000	
Stand Premium		
Stamp Duty		
Approval plan		
Total (Kshs)	3500	00





MANDERA COUNTY GOVERNMENT

P.O. Box 13-70300, Mandera, Kenya

MANDERA TOWNSHIP

LETTER OF ALLOTMENT

MUKTAR ABDI OMAK

Date: 11/06/2014

P.O BOX 13-70300 MANDERA

No. MCG/5244

User RESIDENTIAL Plot No. 104

I am pleased to inform you that the County Government of Mandera hereby offers you allocation of the above plot in BARWAQO area of Mandera Township subject to your formal acceptance of the following conditions and the payment of the charges as prescribed hereunder:

AREA 0.045 Ha (approximately) - Subject to adjustment on survey.

Your acceptance in writing, together with payment of the amount set out below within thirty (30) days from the date of this offer will secure your allocation of the plot.

- | | |
|-------------------------------------|-----------------|
| a) Annual Rent (revisable) | Kshs. 1000 |
| b) Registration Fees | Kshs. 500 |
| c) County Government Service Charge | Kshs. 500 |

If acceptance of the offer and payment of above fees are not received within the said thirty (30) days from the date hereof, the offer will be considered to have lapsed.



P.O. Box 71227 - 00922,
NAIROBI, KENYA.
Tel: +254 714 714 777,
Fax: +254 (020) 0097078,
Email: khalif@98@hotmail.com

Consulting Surveying and Mapping Services
(Boundary Surveying, Topographical and Engineering Surveying, GIS/GIS Mapping)

NO: 693

Receipt

Date: 14/03/13

Received from: MUKTAR ABDI OMAR

The sum of: ten thousand only

Being payment for Survey fee for PLOT NO 1914
Barwako

KSHS. 10,000/-

Cash / Cheque No.:

Bank: Bank slip

With Thanks

For: Consulting Surveying and Mapping Services

13/03/13





MANDERA COUNTY GOVERNMENT
P.O. BOX 13 -00700 MANDERA
DEPARTMENT OF LANDS
FEE RECEIPT

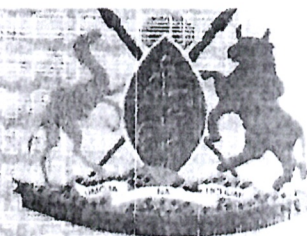


S/No: 000250

Station Barwko

Date: 20/11/14

	NATURE OF FEE	Shs	Cts
Received from <u>ALI GORAT</u> <u>ADAN</u>	Registration	<u>500</u>	
	Search certificate		
	Opening New Register		
Cash/Cheque Amount in Kenya Shillings..... <u>three thousand</u> <u>five hundred</u> <u>only</u>	Survey Fee		
	Land Rent	<u>3000</u>	
✓	Stand Premium		
As per marginal statement nature of transaction <u>land rent fee for</u> <u>2012-2014</u>	Stamp Duty		
Plot number <u>203</u>	Approval plan		
	Total (Kshs)	<u>3500</u>	



MANDERA COUNTY GOVERNMENT

P.O. Box 13-70300, Mandera, Kenya

MANDERA TOWNSHIP

LETTER OF ALLOTMENT

Date: _____

P.O. BOX 13-70300 MANDERA

No. MCG/7353 ✓

User ROSEMARY Plot No. 13194

I am pleased to inform you that the County Government of Mandera hereby offers you allocation of the above plot in BARKWAD area of Mandera Township subject to your formal acceptance of the following conditions and the payment of the charges as prescribed hereunder:

AREA 0.0471 (approximately) - Subject to adjustment on survey.

Your acceptance in writing, together with payment of the amount set out below within thirty (30) days from the date of this offer will secure your allocation of the plot.

- a) Annual Rent (revisable) Kshs.
- b) Registration Fees Kshs.
- c) County Government Service Charge Kshs.

If acceptance of the offer and payment of above fees are not received within the said thirty (30) days from the date hereof, the offer will be considered to have lapsed.



Consulting Surveying and Mapping Services
(Boundary Surveying, Topographical and Engineering Surveying, GIS/GPS Mapping)

P.O. Box 71227 - 00622,
NAIROBI, KENYA.
Tel: +254 714 714 777,
Fax: +254 (020) 8097078,
Email: khalif888@hotmail.com

NO: 702

Receipt

Date: 14/03/13

Received from: ALI GORAT ADAN
The sum of: ten thousand only
Being payment for SURVEY fee for PLOT NO 203

Cash / Cheque No.:

Bank: Bank slip

13/03/13

KSHS. 10,000/-

With Thanks

[Signature]
For: Consulting Surveying and Mapping Services





MINISTRY OF LANDS AND PHYSICAL PLANNING

RESPONSE TO THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES ON THE PETITION BY RESIDENTS OF BARWAQO AREA ON ALLEGED UNLAWFUL ENCROACHMENT AND FORCEFUL OCCUPATION OF BARWAQO PLOTS WITHIN BULLA MPYA WARD, MANDERA EAST CONSTITUENCY, MANDERA COUNTY

Honourable Chair,

Pursuant to a letter Ref. NA/DCS/LENR/2/2020/ (38) dated July 15, 2020, the Committee requested the Cabinet Secretary Ministry of Lands and Physical Planning to provide a response to the referenced petition by the residents of Barwaqo Area within Bulla Mpya Ward, Mandera Constituency, Mandera County.

Honourable Chair, I wish to submit as follows;

Background and Context

The Petitioners state that they applied for and were allocated plots in Barwaqo location by the County Government of Mandera on or about the year 2013, and were issued with letters of allotment. They state that in 2014, the National Government through the National Police Service (Rapid Deployment Unit), the National Youth Service (NYS) and the Kenya Defence Forces (KDF) unlawfully encroached and forcefully occupied the plots under the guise of security.

The encroachment and occupation of the land according to the Petitioners violates the Constitutional and statutory provisions on compulsory acquisition of land. The Petitioners therefore request the Committee to investigate the matter with a view to ensure that their property rights are upheld and that the National Government follows due process in the event of compulsory acquisition.

Response

Honourable Chair, the letters of allotment issued to the Petitioners by the County Government of Mandera have not been forwarded to the Ministry through the National Land Commission and therefore we cannot comment on the ownership of the plots.

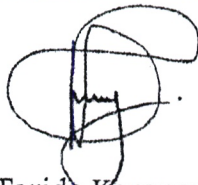
A report of the Mandera County Commissioner, Mr. Onesmus M. Kyatha Ref. No. CC/MDR/LDM48/CF/VOL.1(112) dated September 2, 2020 (**Annexure 1**) on the matter indicates that occupation of the plots by the security forces was a result of the prevailing insecurity incidences in 2013/2014 due to frequent attacks by the Al-Shabaab militia in the County.

The report states that the County leadership led by the Hon. Governor Captain Ali Roba petitioned the National Government to fully secure the County by provision of Special Forces. In 2014, the Mandera County department of Lands, Housing and Physical Planning identified and allocated parts of vacant areas in Barwaqo location to the Rapid Deployment Unit of the National Police Service. The County Government put up three pit latrines, a kitchen and officers' mess for the security personnel. In addition, the County Government provided the unit with four water tanks and a generator for lighting.

The National Youth Service (NYS) and Kenya Defence Forces (KDF) were also allocated an adjacent portion by the County Government in the same area to beef up security. From the report, the security forces have not encroached on the plots but have settled in the area with the consent of the County Government.

Honourable Chair, I invite the Committee to engage the County Government of Mandera on the petition.

Honourable Chair, I submit.



Farida Karoney, EGH
CABINET SECRETARY

October 5, 2020

STAKEHOLDER'S SUBMISSIONS



MANDERA COUNTY GOVERNMENT

OFFICE OF THE GOVERNOR
P. O. Box 13-70300, Mandera, Kenya, TEL: 046 2104000,
Email: info@mandera.go.ke



Our Ref: MCG/SEN/010/2020

Date: 2nd June, 2020

Mr. J.M. Nyegenye,
Clerk of the Senate/Secretary Parliamentary Service Commission
Parliament Buildings
P.O. Box 41842-00100
Nairobi Kenya

Dear Sir,

RE: RESPONSE TO A PETITION BY RESIDENTS OF BARWAQO, MANDERA EAST SUBCOUNTY.

The above subject matter refers.

Your letter referenced SEN/DCS/LENR/2/2020/(20d) of 26th May 2020 requested information and supportive documents related to a petition by residents of Barwaqo area of Bulla Mpya Ward of Mandera East Subcounty

Our response is as follows:

Background; The area currently occupied by the security agencies- The Rapid Deployment Unit, and Kenta Defence Forces Kapedo Camp was a notorious access route for Al-Shabaab militants who would sneak into Kenya from Somalia and carry out deadly attacks on innocent civilians, security officers, residences and businesses. There were comprehensive stakeholder consultations involving leaders, the community, security agencies and the owners of the land. At the beginning of devolution, the area was not occupied at all but was already surveyed and planned for. As part of security arrangements, it was agreed that a border wall between Kenya and Somalia be built as a project of the National Government. The National Youth Service was enlisted to construct the wall. They mobilized personnel and equipment and they needed a camp to operate from. It was agreed that the land identified in Barwaqo be used temporarily as site for a shorter period during the project. (see attached letter requesting owners to allow the NYS camping site). It was agreed that after the site is demobilized the land would revert to the rightful owners. NYS would later on be replaced by Kenya Defence Forces who occupied the same land to carry out border wall security project. It is important to note that the camp become a buffer zone from the attacks by militants and since 2013 to date the number of terror attacks in Mandera Town have reduced from an average nine attacks per month to virtually zero to date with exception of one incident.

It is important to note that the border securitization project is still on-going and has taken longer than was envisaged at the beginning. It is not clear when the project will be completed by the relevant National Government agencies.

H.E Capt. Ali Ibrahim Roba

Cell: 0722 466 499, 0733 466 499, Email: aliroba@mandera.go.ke, aliroba@hotmail.com

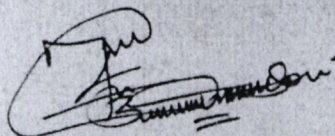
In view of the above, Mandera County Government backs the position that the parcels of plots revert to the lawful land owners and have the security camps relocated to some other areas free of any encumbrances or the government to go for compulsory acquisition and compensate the owners at market rates.

Our responses to the issues raised in the petition are as follows:

- a) It is true the petitioners are the lawful owners of the land. The land allocation was done by the defunct Mandera Town Council before inception of devolution.
- b) Mandera County Government issued allotment letters to formalize the ownership of the land in 2013. (Attached find samples of allotment letters).
- c) Yes some have complied with land rate payments but some have defaulted.
- d) At the time of erecting a camp at the said land, there were no developments or settlements and therefore the question of forceful eviction does not arise. Owners were notified of government intentions through letters issued by the Mandera County Ministry of lands, Housing and Physical Planning as evidenced in the letters attached.
- e) There are only temporary structures at the site and no permanent structures as alleged in the petition has been approved by the County Government. Structures include tents and temporary shelters.

Attached kindly find supportive documents as well a physical plan for the area mentioned.

Sincerely Yours,



H.E. CAPT. ALI IBRAHIM ROBA
GOVERNOR, MANDERA COUNTY

ANNEXURE 1

CONFIDENTIAL
THE PRESIDENCY



MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

Telegraphic Address: "County"
Email: ccmandera@hotmail.com
When replying please quote

The County Commissioner
P. O. Box 77 - 70300
MANDERA

Ref No: CC/MDR /LDM48/CF/VOL1(112)

2nd September 2020.

The Principal Secretary
Ministry of Lands and Physical Planning

RE: PETITION BY RESIDENTS OF BARWAQO ON ALLEGED UNLAWFUL ENCROACHMENT AND FORCEFUL OCCUPATION OF BARWAQO PLOTS WITHIN BULLA MPYA WARD MANDERA EAST CONSTITUENCY

Reference is made to your letter MOLPP/ADMIN/25/8/20(5) dated 29th August 2020 in regard to the above subject.

This is to confirm that the occupation of the above plots was occasioned by the prevailing insecurity incidences in 2013 /2014 occasioned by frequent attacks by the alshabaab militia who had made Mandera town a ghost town. The then current County leadership led by the Hon Governor Captain Ali Roba petitioned the top leadership of the National Government to fully secure the county by provision of special forces to secure, protect their lives and property in Mandera as a result of the rampant shootings, burning of Government offices, vital installations and laying improvised explosive devises in Mandera town.

In 2014 the Mandera County department of lands, housing and physical planning identified and allocated parts of vacant vast areas in Barwaqo location to the Rapid Deployment Unit. The County Government put up three pit latrines, a kitchen, an officers mess and other ranks mess for smooth settlement of the security personnel.

In addition, the County Government provided the unit with four water tanks and generator for lighting to the Kapedo camp.

Later on the national youth service were also allocated an adjacent portion by the County Government in the same area followed by KDF who were also settled on the site among other units to beef up security. **It must be noted that the security forces have never encroached on the above parcels as alleged by the petitioners and where only settled in the area with the fully consent and blessings of the County Government.**

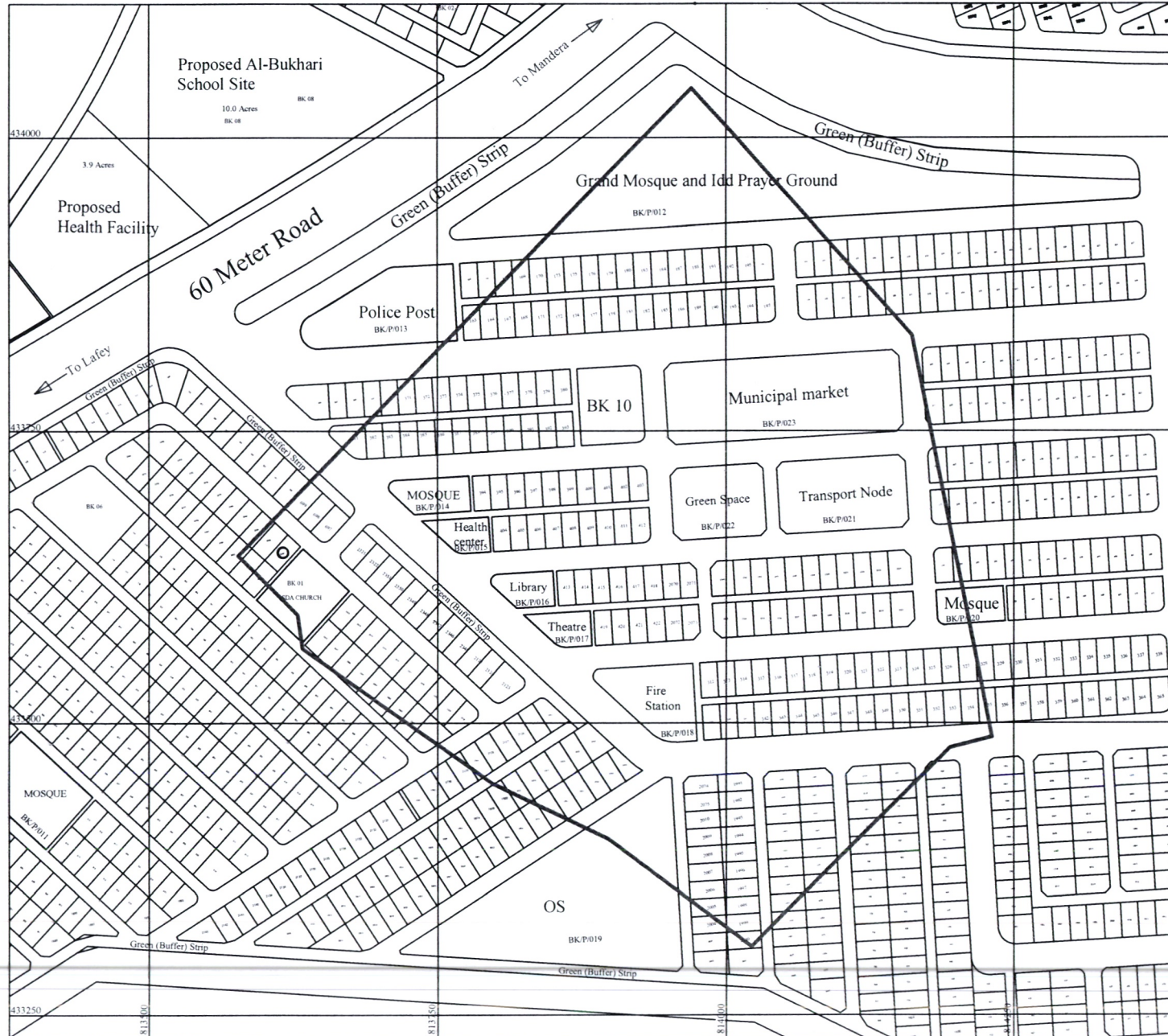
It is also important to note that the said area in 2014 was an empty vast land with no human settlements, dwelling and just an empty field and the recent demarcations of the plots were only carried out later after the officers had settled on the land after tremendous improvement of security in Mandera town.

A handwritten signature in black ink, appearing to read 'Onesmus M. Kyatha'.

ONESMUS M. KYATHA
COUNTY COMMISSIONER
MANDERA COUNTY

CONFIDENTIAL

RDU CAMP





MINISTRY OF LANDS AND PHYSICAL PLANNING

RESPONSE TO THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES ON THE PETITION BY RESIDENTS OF BARWAQO AREA ON ALLEGED UNLAWFUL ENCROACHMENT AND FORCEFUL OCCUPATION OF BARWAQO PLOTS WITHIN BULLA MPYA WARD, MANDERA EAST CONSTITUENCY, MANDERA COUNTY

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Honourable Chair, I wish to submit as follows;

Background and Context

The Petitioners state that they applied for and were allocated plots in Barwaqo location by the County Government of Mandera on or about the year 2013, and were issued with letters of allotment. They state that in 2014, the National Government through the National Police Service (Rapid Deployment Unit), the National Youth Service (NYS) and the Kenya Defence Forces (KDF) unlawfully encroached and forcefully occupied the plots under the guise of security.

The encroachment and occupation of the land according to the Petitioners violates the Constitutional and statutory provisions on compulsory acquisition of land. The Petitioners therefore request the Committee to investigate the matter with a view to ensure that their property rights are upheld and that the National Government follows due process in the event of compulsory acquisition.

Response

Honourable Chair, the letters of allotment issued to the Petitioners by the County Government of Mandera have not been forwarded to the Ministry through the National Land Commission and therefore we cannot comment on the ownership of the plots.

A report of the Mandera County Commissioner, Mr. Onesmus M. Kyatha Ref. No. CC/MDR/LDM48/CF/VOL.1(112) dated September 2, 2020 (**Annexure 1**) on the matter indicates that occupation of the plots by the security forces was a result of the prevailing insecurity incidences in 2013/2014 due to frequent attacks by the Al-Shabaab militia in the County.

The report states that the County leadership led by the Hon. Governor Captain Ali Roba petitioned the National Government to fully secure the County by provision of Special Forces. In 2014, the Mandera County department of Lands, Housing and Physical Planning identified and allocated parts of vacant areas in Barwaqo location to the Rapid Deployment Unit of the National Police Service. The County Government put up three pit latrines, a kitchen and officers' mess for the security personnel. In addition, the County Government provided the unit with four water tanks and a generator for lighting.

The National Youth Service (NYS) and Kenya Defence Forces (KDF) were also allocated an adjacent portion by the County Government in the same area to beef up security. From the report, the security forces have not encroached on the plots but have settled in the area with the consent of the County Government.

Honourable Chair, I invite the Committee to engage the County Government of Mandera on the petition.

Honourable Chair, I submit.



Farida Karoney, EGH
CABINET SECRETARY

October 5, 2020

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THE PRESIDENCY



MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

Telegraphic Address: "County"
Email: cmandera@hotmail.com
When replying please quote

The County Commissioner
P. O. Box 77 - 70300
MANDERA

Ref No: CC/MDR /LDM48/CF/VOL1(112)

2nd September 2020.

The Principal Secretary
Ministry of Lands and Physical Planning

RE: PETITION BY RESIDENTS OF BARWAQO ON ALLEGED UNLAWFUL ENCROACHMENT AND FORCEFUL OCCUPATION OF BARWAQO PLOTS WITHIN BULLA MPYA WARD MANDERA EAST CONSTITUENCY

Reference is made to your letter MOLPP/ADMIN/25/8/20(5) dated 29th August 2020 in regard to the above subject.

This is to confirm that the occupation of the above plots was occasioned by the prevailing insecurity incidences in 2013 /2014 occasioned by frequent attacks by the alshabaab militia who had made Mandera town a ghost town. The then current County leadership led by the Hon Governor Captain Ali Roba petitioned the top leadership of the National Government to fully secure the county by provision of special forces to secure, protect their lives and property in Mandera as a result of the rampant shootings, burning of Government offices, vital installations and laying improvised explosive devises in Mandera town.

In 2014 the Mandera County department of lands, housing and physical planning identified and allocated parts of vacant vast areas in Barwaqo location to the Rapid Deployment Unit. The County Government put up three pit latrines, a kitchen, an officers mess and other ranks mess for smooth settlement of the security personnel.

In addition, the County Government provided the unit with four water tanks and generator for lighting to the Kapedo camp.

Later on the national youth service were also allocated an adjacent portion by the County Government in the same area followed by KDF who were also settled on the site among other units to beef up security. **It must be noted that the security forces have never encroached on the above parcels as alleged by the petitioners and where only settled in the area with the fully consent and blessings of the County Government.**

It is also important to note that the said area in 2014 was an empty vast land with no human settlements, dwelling and just an empty field and the recent demarcations of the plots were only carried out later after the officers had settled on the land after tremendous improvement of security in Mandera town.

A handwritten signature in black ink, appearing to read 'Onesmus M. Kyatha'.

ONESMUS M. KYATHA
COUNTY COMMISSIONER
MANDERA COUNTY

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