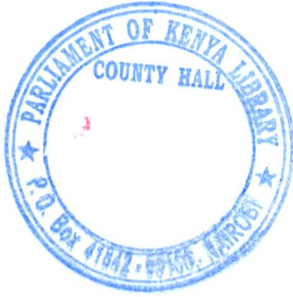


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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

12TH PARLIAMENT –SIXTH SESSION - 2022

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ON A PETITION REGARDING THE ACTIVITIES OF NZOIA
QUARRY LIMITED IN KAKAMEGA COUNTY

DIRECTORATE OF DEPARTMENTAL COMMITTEES,
CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI


 <u>APRIL, 2022</u>	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	14 APR 2022
	DAY: THURS.
TABLED BY:	HON. SOPHIA AGDI NDOO, MP CHAIR, ENVIRONMENT
CLERK AT THE TABLE:	CHRISTINE NDIRITU

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CHAIRPERSON'S FOREWORD

The Petition (No. 46 of 2020) regarding the activities of Nzoia Quarry Limited was committed to the Committee on Environment and Natural Resources on 2nd December, 2020 for consideration pursuant to Standing Order 227. The Committee consequently seized the matters raised in the Petition and processed it through deliberative meetings with the Petitioners and the Ministry of Environment and Forestry. Further, the committee conducted an inspection visit to the site on Friday 26th November, 2021 and received submissions from the Management of Nzoia Quarry, all with a view to responding to the prayers sought by the Petitioners.

The Petitioners drew the attention of the House to the following:

- a) Nzoia quarry limited acquired land with the intention of extracting resources through mining activities.
- b) The quarry the company set up on the site had negatively impacted the environment.
- c) There was land degradation which had led to destruction of buildings and latrines for individual homes and institutions.
- d) Dust from the activities and contaminated water meant for domestic use and crops.
- e) The mining process had violent eruptions leading to adverse effects on the pregnant, the sick and the elderly.
- f) School buildings affected were unsafe for use by pupils when schools reopen due to cracks on walls and collapsed latrines.
- g) Infrastructure like roads and bridges have been compromised due to heavy loading of the company's trucks.
- h) When carrying out blasting, the company never informs the local community contravening UN sustainable development goal number 3 on ensuring healthy lives and wellbeing for all.
- i) The quarry was not beneficial to the local community since the company wasn't engaged in any CSR programs.

The Petitioners therefore prayed that the Departmental Committee on Environment and Natural Resources pursuant to Standing Order 216 (5) (a):

- a) enquires into the validity of the activities of the company and their adherence to the UN Sustainable Development Goal Number 16 on promotion of peaceful and inclusive societies for sustainable development, provide justice for all and provide effective accountable institutions at all levels.
- b) makes any recommendations it deems appropriate in the circumstances of the Petition

ISSUES FOR DETERMINATION

Having received and analyzed oral and written submissions, the Committee observed as follows:

1. On whether Nzoia Quarry obtained a change of user approval, the Committee observed that indeed a change of user was obtained by Nzoia Quarry before it was established.
2. Nzoia Quarry conducted an Environmental Impact Assessment which was submitted to NEMA and referenced PR/0603. NEMA issued Nzoia Quarry with an EIA license

registration No. 0041 104 on 28th February 2017. Thereafter, Nzoia Quarry have conducted and submitted to NEMA Annual Environmental Audits in 2019 and 2020.

3. Due to the nature of its activities, the quarry is likely to cause noise pollution during blasting and stone crushing as well as dust pollution. Mitigation measures for these impacts have been provided for in the Environmental Management Plan in the EIA as well as conditions of the EIA license.
4. On whether the requirement for public participation was met during the EIA process, it was observed that Nzoia Quarry involved several people during the public participation phase. There is a record indicating 87 attendees to a baraza at Shikulu area on 19th April 2017. In the absence of a Public Participation Act in Kenya, the actual threshold of minimum number of people to be involved during public participation is uncertain. However, the fact that the Lugari Deputy County Commissioner, Mr. William Lenaremo stated that his office had not been consulted during the public participation phase and the complaints from parts of the residents, there is a likelihood that the exercise did not adequately involve all sectors of the population.
5. On whether operations of Nzoia Quarry affected learning environment and structural integrity of buildings at Manyoni Primary School, it was observed that:
 - a) Noise pollution from the blasting has an impact on the learning environment. However, ground vibration was said to extend not more than 300 m from the blast site. Given that the school is approximately a kilometer away, it is unlikely to be affected by ground vibration if the permissible blasting materials and quantities are applied.
 - b) Dust pollution, on the other hand, is a common phenomenon during stone crushing and transporting of the quarry materials by trucks on the unpaved roads. This will have an impact on the learning activities, although it would be difficult to establish the extent of this impact. Attempts by Nzoia Quarry to plant trees to trap dust at the quarry were not adequate in abating the pollution.
6. On whether the facility had undertaken Corporate Social Responsibility and to what extent, it was observed that the area residents claimed that Nzoia Quarry had agreed to provide the following as part of their CSR policy: employment opportunities to the local community, supply water to the Manyoni School and the community, school bursaries, allow residents to tap electricity from the main line leading to the quarry. Out of these, Nzoia Quarry claimed to have a workforce of about 703 with 20 people coming from the local community. Additionally, they maintained the access roads in the area. There is no proof of provision of water, school bursaries and electricity connection to the residents as promised.
7. On whether the facility was contributing to deterioration of public transport infrastructure in the area, it was observed that the nature of a stone quarry demands the use of heavy machinery and trucks accessing the area. With regular use, there is bound to be a deterioration of the unpaved road network in the area, since these roads are not designed for such use. It is also noteworthy that there are other quarries in the vicinity. According to Nzoia Quarry, they ensured that the roads were maintained as part of their Corporate Social Responsibility. The community was of the view that the road network should be tarmacked to reduce dust pollution. However, this is a responsibility of the County Government.

8. On whether there was a prevalence of respiratory infections as a result of the quarry emissions, it was observed that this allegation can only be determined by comprehensive medical research into ailments reported within the Manyoni area to establish the connection to the quarrying activities, in comparison to other areas in Kenya.
9. The Nzoia Quarries Limited was mining stones without acquisition of the requisite licences in accordance with Section 33(1) of the Mining Act, 2016.

Consequently, the Committee recommends as follows:

10. The Nzoia Quarries Ltd to apply for the requisite mining licences within three (3) months of tabling of this Report.
11. The Department of Mines and Geology in conjunction with the National Environmental Management Authority and Kakamega County Government Public Works Department should conduct a comprehensive study to determine the impacts of quarrying activities on the structural integrity of the buildings in Manyoni area and take appropriate actions within six months of tabling of this Report.
12. The National Environmental Management Authority (NEMA) and Department of Mines and Geology should conduct regular inspections of all quarries to ensure that their operations comply with the legal provisions pursuant to Section 69 (1) of EMCA,1999 together with sections 196 (2) and 197 (c) (i) of the Mining Act, 2016.
13. NEMA should:
 - (a) ensure that quarries are located in designated areas that are not less than two kilometers away from human settlements pursuant to Regulation 14(2) of The Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009
 - (b) ensure that the respondent fully implements the mitigation measures as proposed in the environmental management plan and puts up a perimeter wall round the quarry to secure the site within six months of tabling of this Report.
14. NEMA, in conjunction with the County Government of Kakamega should ensure that the burrow pits are rehabilitated during the decommissioning of the quarry site.
15. The Kakamega County Development Implementation Coordination Committee (CDICC) should address the issues raised by the community regarding the operations of the quarries and any other cross-cutting issues in the County within six months of tabling of this Report.
16. The Nzoia Quarry Company Limited should:
 - (a) control dust emitted from the activities of the quarry through reasonable means that prevent air pollution such as wet crushing and planting trees in accordance with relevant legal requirements.
 - (b) Within three months of tabling of this Report, develop a structured community liaison mechanism for grievance management mechanism and to address public concerns and other engagements that are mutually beneficial to the community and the company.
 - (c) adhere to all the legal requirements especially as pertains to blasting control, public safety and environmental concerns proactively manage dust through implementation of dust control measures including extensive dust control, watering of the rocks before crushing as well as during movement of the same
 - (d) Within six months of tabling of this report, institute own monitoring mechanisms such as ambient noise measurements particularly at sensitive receptors

- (e) Within three months of tabling of this Report, pay all required fees and acquire all permits to ensure compliance with relevant laws.
 - (f) Within three months of tabling of this report, develop and implement a phased rehabilitation plan to restore the land to acceptable standard even as the quarrying activities are ongoing;
 - (g) Within three months of tabling of this report, review their Corporate Social Responsibility (CSR) Policy to encompass the needs of the community thereby improving their welfare as well as ensure they practice environmental conservation.
 - (h) continue issuance of warnings prior to blasting activities
 - (i) ensure that the blasting process is set up ensuring that vibrations are minimized and should not result into destructive damage.
 - (j) Within three months of tabling of this report, ensure that measurement is done of the vibrations produced during the blast to determine whether the vibrations are within the permissible level. This will require the company to source for this service since the Lead Agencies concerned do not have operational Vibrometers.
17. Lead Agencies (including but not limited to the Mines and Geology Department, NEMA, Physical Planning, County Governments) should within six months of tabling of this Report, develop guidelines on measurement of noise and excessive vibrations. Further the lead agencies should engage in continuous monitoring of quarries. The area has 5 other quarries, as such it would be difficult to determine with certainty that a particular quarry is responsible for some impacts which are widespread such as vibrations and road use by trucks.

Hon. Sophia Abdi Noor, CBS, M.P
Chairperson, Departmental Committee on Environment and Natural Resources

1.0 PREFACE

1.1 Committee Mandate

1. The Departmental Committee on Environment and Natural Resources is established under the National Assembly Standing Orders No. 216 (1). The functions and mandate of the Committee are also contained under the National Assembly Standing Orders, No. 216(5) as:
 - a) **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) Study the program and policy objectives of the Ministries and departments and the effectiveness of the implementation;
 - c) Study and review all legislation referred to it;
 - d) Study, access and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
 - e) 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) Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
 - g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.
2. 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

3. In executing its mandate, the Committee oversees the following Government Ministries and Departments namely: The Ministry of Environment and Forestry; The Ministry of Water & Sanitation and Irrigation; The State Department for Wildlife; and The Ministry of Petroleum and Mining.

1.3 Members of the Committee

4. The Committee comprises the following Members:

Chairperson

The Hon. Sophia Abdi Noor, M.P.

Ijaara Constituency

Party of Development and Reforms (PDR)

Vice-Chairperson

The Hon. (Eng.) Paul M. Nzengu, M.P.

Mwingi North Constituency

Wiper Party

The Hon. David Kangogo Bowen, M.P.
Marakwet East Constituency
Jubilee Party

The Hon. Francis Chachu Ganya, M.P.
North Horr Constituency
Frontier Alliance Party (FAP)

The Hon. Ali Wario Guyo, M.P.
Garsen Constituency
Wiper Party

The Hon. Bernard Masaka Shinali, M.P.
Ikolomani Constituency
Jubilee Party

The Hon. George Macharia Kariuki, M.P.,
Ndia Constituency
Jubilee Party

The Hon. Charity K. Chepkwony, M.P.
Njoro Constituency
Jubilee Party

The Hon. Simon Ng'ang'a King'ara, M.P.
Ruiru Constituency
Jubilee Party

The Hon. Peter Kimari Kihara, M. P.
Mathioya Constituency
Jubilee Party

The Hon. Janet Ong'era, MP.
MP for Kisii County
Orange Democratic Movement (ODM)

The Hon. Charles Ong'ondo Were, M.P.
Kasipul Constituency
Orange Democratic Movement (ODM)

The Hon. Nasri Sahal Ibrahim, M.P.
Nominated
Forum for Restoration of Democracy-K

The Hon. Rozaah Buyu. M.P.
Kisumu County
Orange Democratic Movement (ODM)

The Hon. Said Hiribae, M.P.
Galole Constituency
Forum for Restoration of Democracy- K

The Hon. Hassan Oda Hulufu, M.P.
Isiolo North Constituency
Kenya Patriots' Party (KPP)

The Hon. Amin Deddy Mohamed Ali, M.P.
Laikipia East Constituency
Jubilee Party

The Hon. Rehema Hassan, M.P.
Tana River County
Maendeleo Chap Party (MCC)

The Hon. David Gikaria, M.P.
Nakuru Town West Constituency
Jubilee Party

1.4 Secretariat

5. The Committee is serviced by the following Members of Staff:

Ms. Esther Nginyo
Clerk Assistant I
Lead Clerk

Mr. Dennis Mogare Ogechi
Clerk Assistant II

Dr. Benjamin Ngimor
Senior Fiscal Analyst

Ms. Lynette Otieno
Legal Counsel I

Mr. Eugene Apaa
Research Officer

III

2.0 INTRODUCTION

6. The Petition (No. 46 of 2020) regarding the activities of Nzoia Quarry Limited was presented to the House by the Hon. Speaker, on behalf of the Manyonyi Community on 1st December, 2020. The Manyonyi Community resides in Lugari Sub-County, Kakamega County.
7. The Petitioners drew the attention of the house to the following:
 - a) Nzoia quarry limited acquired land with the intention of extracting resources through mining activities.
 - b) The quarry the company set up on the site had negatively impacted the environment.
 - c) There was land degradation which had led to destruction of buildings and latrines for individual homes and institutions.
 - d) Dust from the activities and contaminated water meant for domestic use and crops.
 - e) The mining process had violent eruptions leading to adverse effects on the pregnant, the sick and the elderly.
 - f) School buildings affected were unsafe for use by pupils when schools reopen due to cracks on walls and collapsed latrines.
 - g) Infrastructure like roads and bridges have been compromised due to heavy loading of the company's trucks.
 - h) When carrying out blasting, the company never informs the local community contravening UN sustainable development goal number 3 on ensuring healthy lives and wellbeing for all.
 - i) The quarry was not beneficial to the local community since the company wasn't engaged in any CSR programs.
8. The Petitioners therefore prayed that the Departmental Committee on Environment and Natural Resources pursuant to Standing Order 216 (5) (a):
 - a) enquires into the validity of the activities of the company and their adherence to the UN sustainable development goal number 16 – promotion of peaceful and inclusive societies for sustainable development, provide justice for all and provide effective accountable institutions at all levels.
 - b) makes any recommendations it deems appropriate in the circumstances of the Petition.

3.0 SUBMISSIONS

9. The Petition (No. 46 of 2020) regarding the activities of Nzoia Quarry Limited was committed to the Committee on 2nd December, 2020 for consideration pursuant to Standing Order 227. The Committee consequently seized the matters raised in the Petition and processed it through deliberative meetings with the Petitioners and the Ministry of Environment and Forestry. Further, the Committee conducted an inspection visit to the site on Friday 26th November, 2021 and received submissions from the Management of Nzoia Quarry, all with a view to responding to the prayers sought by the Petitioners. The evidence adduced is recorded hereunder:

3.1 Submission by the Petitioners

10. The Petitioners led by Rev. J.M. Kadima, Chairperson, Manyoni Community, appeared before the committee on Wednesday 17th March, 2021 and briefed it on the contents of the Petition as follows:

11. The Petitioners were Petitioning on behalf of the Manyoni Community that resides in Lugari Sub-County, Kakamega County.

12. They were drawing the attention of the house to the following:

- a) Nzoia quarry limited acquired land with the intention of extracting resources through mining activities.
- b) The quarry the company set up on the site had negatively impacted the environment.
- c) There was land degradation which had led to destruction of buildings and latrines for individual homes and institutions.
- d) Dust from the activities and contaminated water meant for domestic use and crops.
- e) The mining process had violent eruptions leading to adverse effects on the pregnant, the sick and the elderly.
- f) School buildings affected were unsafe for use by pupils when schools reopen due to cracks on walls and collapsed latrines.
- g) Infrastructure like roads and bridges have been compromised due to heavy loading of the company's trucks.
- h) When carrying out blasting, the company never informs the local community contravening UN Sustainable Development Goal number 3 on ensuring healthy lives and wellbeing for all.
- i) The quarry was not beneficial to the local community since the company wasn't engaged in any CSR programs.

13. Consequently, members observed that:

- a) The land in question belongs to a private entity, West Kenya Sugar. There was no clarity on the intention of using the land for mining activities at the point it was purchased.
- b) There was no public participation during the process of acquisition and change of land use. However, the proponent employed trickery and underhand tactics to push through the change of land use from agricultural to mining.
- c) Learning in local educational institutions was disrupted by the activities of the company in question.
- d) There was another quarrying company in the vicinity (Simba Quarry Limited). However, the community didn't seem to have a problem with its operations.

3.2 Submission by the Cabinet Secretary, Ministry of Environment and Forestry.

14. Hon. Mohamed Elmi, Chief Administrative Secretary Ministry of Environment and Forestry appeared before the Committee on behalf of the Cabinet Secretary, on 23rd June, 2021 and briefed it that:
15. On receipt of the Petition, the CS directed investigative teams from National Environment Management Authority (NEMA) and National Environment Complaints Committee (NECC) to establish the veracity of the claims made in the Petition.
16. The findings of the two teams were as follows:

3.2.1 Findings by the National Environment Management Authority (NEMA)

19. The Company (Nzoia Quarry Limited) is privately owned and engages in stone mining and crushing under Mr. Ekambaran Rajamohan as the Chief Geologist, and has existed in the area since 2017.
20. The land is hilly and consists of molten rocks. The area is partly fenced off and there is security in the unfenced hilly area to ensure safety by avoiding strangers from trespassing into the quarry site.
21. The quarry is located within a rural area, characterized by agricultural land- use and is sparsely populated. There is a permanent building on the project site. There is one toilet which is built using iron sheets. It also has a borehole which provides water for the quarrying activity. The quarry also has a crushing plant in it where the processing takes place. The surrounding is fenced off with barbed wire and a wall fence at the gate area.
22. The site labour requirement ranges from 15 to 20 persons a day. The labour is locally sourced except on areas requiring specialized skills such as blasting, plant operators and other management know-how.
23. The Company has its pre- phase located at the center of the land to ensure protection of their boundaries.
24. The pre-stripping was done at the center of the land due to its nature of an open-pit quarry. This is to act as a buffer to the mining area and to ensure that when blasting, the stones would only fall inside the open pit and not out of the buffer zone. Blasting in the mines is done 3 to 4 times a year where the activities produce about 100,000 tonnes of ballast and building dust annually.
25. Before the blasting is done, a notice to inform the community is circulated through:
 - a) The local Assistant Chief;
 - b) The nearby Police Station;
 - c) Use of public address system to alert the locals; and
 - d) Deploy 20 locals who walk door to door in all directions to issue warnings and alerts to the community members.

26. The project site has a borehole which is registered with Water Resource Authority within the quarry that has been serving the quarry for the past three years to sprinkle the area in order to minimize dust. The quarry is also surrounded by a green belt consisting majorly of trees that help reduce disturbance by blocking noise and also trapping excess dust.
27. The company has two trucks for transportation and a weigh bridge that ensures the trucks are not overloaded.
28. At Manyoni Primary School:
- a) there were no cracks on buildings and toilets as alleged by the Petitioners. However, noise and vibrations, it was reported that the blasting vibrations are felt in very low intensities and in some instances very low levels of noise.
 - b) The noise decibels do not affect learning activities. While the plant was operating, it was assessed that the noise reaching the school during crushing was within the permissible levels.
 - c) The school had old abandoned classrooms that did not have any kind of crack.
 - d) The school has an underground water tank that was intact.
 - e) The toilet alleged to be cracked was also intact.
 - f) The nearby road is a public road used by trucks from another nearby quarry, Simba Quarry. Dust emission and nuisance is eminent and evident.
29. The Physical Planning Act CAP 286 provides that an application for local planning development is submitted together with an Environmental Impact Assessment (EIA) license. As a requirement, a public participation forum was held on 19th April 2017 (attendance sheets and meeting notes provided).
30. The application for development approval was recommended from the following offices:
- a) Sub-county works officer Lugari Sub- County
 - b) County Land Administration Officer, Kakamega County
 - c) County Physical Planning Officer, Kakamega County vide Plan No. PPD/KK/Plan 69 1/167 for proposed Change of Use from Agricultural Use to Industrial (ballast quarry) use.
31. Environmental Impact Assessment and Audit Regulations, 2003 apply to all policies, plans, programmes, projects and activities specified in the Second Schedule of the Act which requires that (a) no proponent shall implement a project likely to have a negative environmental impact; or (b) for which an environmental impact assessment is required under the Act or these Regulations; unless an Environmental Impact Assessment (EIA) has been concluded and approved in accordance with these Regulations.
32. Environmental Impact Assessment was done for the then proposed Nzoia Quarry Limited, Reference PR/0603 and an EIA license issued on 28th February 2017 of Registration No. 0041 104. The Environmental Management Plan (EMP) included the following management measures for dust and blasting control:
- a) Controlled blasting and employ certified blasting personnel
 - b) Issue public notices before any blasting
 - c) Establish an acoustic fence around the site as noise buffers while also ensuring that necessary noise control measures are implemented

- d) Use electrostatic dust arrestors and cover the conveyor belt
33. The Mines and Geology Department, Eldoret Office carried out an inspection of the proposed project site and issued the Authority to Blast on 7th June 2017 with the following conditions:
- a) Engage a qualified and licensed firm/blaster
 - b) Controlled blasting to be employed in order to minimize/eliminate adverse effects of blasting
 - c) Provide visible and audible warning signs during the blasting process
 - d) Evacuation of the people living and working in the area before the blasting process begins
 - e) Be responsible for any accidents/incidents caused by acts of negligence or omission during blasting which must be immediately reported to the nearest police station or the Mines and Geology Department
 - f) Comply with all rules and provisions under the Explosives Act, Cap 115
34. There had been no complaints to the NEMA office in the Kakamega County prior to this Petition regarding the operations of the quarry. However, a letter of complaint was made to the NEMA Kakamega office on 23rd December 2020.
35. A group known as “Nzoia Quarry Neighbors” sent a letter to the company on 20th November, 2020 with the following issues that needed to be addressed by the company: change of blasting system, dust spraying, no more blasted stones on farms, announcement of the alarm minutes before blasting, purchase of stones from adjacent farms, channeling of any compensation through the group.
36. On 6th September 2020, a letter was sent by a group named “Nzoia Quarry Nearby Residents” to Nzoia Quarry Chief Geologist expressing gratitude for taking care of their community with respect to: enabled connectivity to the power grid, upgraded murram roads, employment to the community youths, improved living standards, improved blasting processes, water sprinkling and company’s participation in community welfare activities.
37. The investigative team did not get any evidence of: respiratory diseases infection to the community, neighboring farms that have been affected by the quarry and roads and bridges in the neighborhood that had been affected by the quarry materials transportation.
38. Consequently, NEMA recommended that the Company (Nzoia Quarry Limited) should:
- a) develop a structured community liaison mechanism for grievance management mechanism and to address public concerns and other engagements that are mutually beneficial to the community and the company.
 - b) adhere to all the legal requirements especially as pertains to blasting control, public safety and environmental concerns proactively manage dust through implementation of dust control measures including extensive dust control, watering of the rocks before crushing as well as during movement of the same
 - c) institute own monitoring mechanisms such ambient noise measurements particularly at sensitive receptors
 - d) pay all required fees and acquire all permits to ensure compliance

- e) develop and implement a phased rehabilitation plan to restore the land to acceptable standard even as the quarrying activities are ongoing;
 - f) incorporate a Corporate Social Responsibility approach to and engagement with the local community. It was noted that CSR is different from philanthropy and therefore attention to be focused on how the company can assume its responsibility in enhancing socially responsible practices and addressing environmental issues through development of environmental management systems.
 - g) continue issuance of warnings prior to blasting activities
 - h) ensure that the blasting process is set up to ensure that vibrations are minimized and should not result into destructive damage.
 - i) ensure that measurement is done of the vibrations produced during the blast to determine whether the vibrations are within the permissible level. This will require the company to source for this service since the Lead Agencies concerned do not have operational Vibrometers.
39. Further, on Lead Agencies, NEMA recommended as follows:
- a) Lead Agencies (including but not limited to the Mines and Geology Department, NEMA, Physical Planning, County Governments) to develop guidelines on measurement of noise and excessive vibrations. It was noted with concern that there are no guidelines for measurement of excessive vibrations and the mandates for the same are also not clear.
 - b) Continuous monitoring of quarries. The area has 5 other quarries, as such it would be difficult to determine with certainty that a particular quarry is responsible for some impacts which are widespread such as vibrations and road use by trucks.

3.2.2 Findings by National Environment Complaints Committee (NECC)

40. Nzoia Quarry operates a quarry and stone crushing site at Manyonyi area, Lugari Sub County in Kakamega County. The quarry sits on 13.65Ha of private land on Title Deed No. Kakamega/Lugari/4440, Manyonyi area.
41. The quarry had acquired an EIA license Ref No. 0041104 and had also undertaken EA for the year 2020.
42. The Respondent had acquired a change of user permit from agricultural use to industrial (Ballast Quarry) use.
43. Blasting operations at the quarry were undertaken by Mr. Joab Levin Wafula, a qualified and licensed blaster through Permit No. 0056456.
44. According to the report from Mines and Geology department requested by NECC:
- a) The proponent had been issued with a permit to use blasting explosives on 7th June 2017 and they have subsequently carried out blasting activities four (4) times
 - b) On 8th February 2020, the company blasted a total of 115 holes contrary to the requirement of a maximum of not more than 100 holes
 - c) There was need for a technical study by professionals from the County Structural Engineers from Public Works Department on the alleged cracks on the walls of some houses

45. They alerted the community before they undertook blasting activities by notifying the immediate neighbors through phone calls, letters to the local administration and sirens.
46. Investigations could not conclusively determine if the activities of Nzoia Quarry could have caused the cracks in the school and homesteads.
47. The activities of the quarry caused air pollution to the nearby neighbors

Issues for Determination:

48. On whether Nzoia Quarry obtained a change of user before establishment, NECC established that a change of user was obtained by Nzoia Quarry before it was established.
49. On whether proper Environmental Impact Assessment was done in accordance with the law (Section 58 of EMCA, 1999 provides for the Application for an Environmental Impact Assessment License, it was established that:
 - a) Nzoia Quarry conducted an Environmental Impact Assessment which was submitted to NEMA and referenced PR/0603. NEMA issued Nzoia Quarry with an EIA license registration No. 0041 104 on 28th February 2017. Thereafter, Nzoia quarry have conducted and submitted to NEMA Annual Environmental Audits in 2019 and 2020.
 - b) Due to the nature of its activities, the quarry is likely to cause noise pollution during blasting and stone crushing as well as dust pollution. Mitigation measures for these impacts have been provided for in the Environmental Management Plan in the EIA as well as conditions of the EIA license. Strict implementation of these provisions will therefore reduce negative impacts to the area residents.
50. On whether the requirement for public participation was met During the EIA process:
 - a) Nzoia Quarry involved several people during the public participation phase. There is a record indicating 87 attendees to a baraza at Shikulu area on 19th April 2017.
 - b) In the absence of a Public Participation Act in Kenya, the actual threshold of minimum number of people to be involved during public participation is uncertain.
 - c) However, the fact that the Lugari Deputy County Commissioner, Mr. William Lenaremo stated that his office had not been consulted during the public participation phase and the complaints from parts of the residents, there is a likelihood that the exercise did not adequately involve all sectors of the population.
51. On whether operations of Nzoia Quarry affected learning environment and structural integrity in Manyonyi Primary School:
 - a) According to the inspection report from the State Department of Mining, noise pollution from the blasting has an impact on the learning environment as stated by the school principal. Ground vibration was said to extend not more than 300 metres from the blast site. Given that the school is approximately a kilometer away, it is unlikely to be affected by ground vibration if the permissible blasting materials and quantities are applied.
 - b) Dust pollution, on the other hand, is a continuous activity during stone crushing and transporting of the quarry materials by trucks on the unpaved roads. This will have an impact on the learning activities, although it would be difficult to establish the extent of this impact. Attempts by Nzoia Quarry to plant trees to trap dust at the quarry were

not adequate in abating the pollution. However, this can be mitigated against through wet crushing and regular watering of the unpaved roads.

- c) The investigation could not determine the impact of the quarry on the structural integrity of the school and other buildings within the vicinity of the quarry. It is therefore necessary to consider a technical study by professional geologists and engineers on the matter.

52. On whether the facility had undertaken Corporate Social Responsibility and to what extent:

- a) The area residents claimed that Nzoia Quarry had agreed to provide the following as part of their CSR policy: employment opportunities to the local community, supply water to the Manyoni School and the community, school bursaries, allow residents to tap electricity from the main line leading to the quarry.
- b) Out of these, Nzoia Quarry claimed to have a workforce of about 703 with 20 people coming from the local community. Additionally, they maintained the access roads in the area.
- c) There is no proof of provision of water, school bursaries and electricity connection to the residents as promised.
- d) The proponent committed to engage the community on possible ways of improving their CSR.

53. On whether the facility was contributing to deterioration of public transport infrastructure in the area:

- a) The nature of a stone quarry demands the use of heavy machinery and trucks accessing the area. With regular use, there is bound to be a deterioration of the unpaved road network in the area, since these roads are not designed for such use. It is also noteworthy that there are other quarries in the vicinity.
- b) According to Nzoia Quarry, they ensured that the roads were maintained as part of their Corporate Social Responsibility. The community was of the view that the road network should be tarmacked to reduce dust pollution. However, this is a responsibility of the County Government.

54. On whether there was a prevalence of respiratory infections as a result of the quarry emissions, NECC did not obtain any records of prevalent respiratory infections in the area. This allegation can only be determined by comprehensive medical research into ailments reported within the Manyoni area to establish the connection to the quarrying activities, in comparison to other areas in Kenya.

55. On whether agricultural activities had been affected by the operations of the quarry, a proper study should be conducted by agricultural specialists to determine this query.

56. Consequently, NECC recommended as follows:

- a) The Department of Mines and Geology in conjunction with NEMA and Kakamega County Government Structural Engineers from Public Works Department should conduct a comprehensive study to determine the impacts of quarrying activities on the structural integrity of the buildings in Manyoni area
- b) NEMA and Department of Mines and Geology should conduct regular inspections of all quarries to ensure that their operations comply with the legal provisions pursuant to

Section 69 (1) of EMCA,1999 together with sections 196 (2) and 197 (c) (i) of the Mining Act,2016

- c) NEMA should ensure that quarries are located in designated areas that are not less than two kilometers away from human settlements pursuant to Regulation 14(2) of The Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009
- d) NEMA should ensure that the respondent fully implements the mitigation measures as proposed in the environmental management plan and puts up a perimeter wall round the quarry to secure the site
- e) Nzoia Quarry should control dust emitted from the activities of the quarry through reasonable means that prevent air pollution such as wet crushing and planting trees
- f) NEMA in conjunction with the County Government of Kakamega should ensure that the burrow pits are rehabilitated during the decommissioning of the quarry site
- g) The Kakamega County Development Implementation Coordination Committee (CDICC) should address the issues raised by the community regarding the operations of the quarries and any other cross-cutting issues in the County
- h) There is need for Nzoia quarry to review their Corporate Social Responsibility (CSR) Policy to encompass the needs of the community thereby improving their welfare as well as ensure they practice environmental conservation.

3.3 Submission by the Nzoia Quarry Limited Management

- 57. Mr. Moses Apunda, the Executive Assistant to the Managing Director of Nzoia Quarry Limited, on behalf of the management of Nzoia Quarry Limited appeared before the Committee on Friday 26th November, 2021 and submitted as follows:
- 58. On public participation, he asserted that Nzoia Quarry Limited was licensed and registered after conduct of public participation before the start of the operations of the quarry. However, he provided a public participation attendance list, of only 19 persons, dated 19th August, 2021. Subsequently, annual environmental audits are conducted to ensure continuous improvement.
- 59. On corporate social responsibility, he stated that Nzoia Quarry Limited was at hand to help members of the local community during funerals, and servicing local roads. He further indicated that a CSR file was open at the company to receive ideas on projects to engage in within the community. He however decried personal requests from individuals that were difficult to respond to since the organization focuses on the community as a whole.
- 60. On the effects of blasting activities to the community, he stated that:
 - a) It would be difficult to attribute the said effects to the company since the two quarries (Nzoia Quarry Limited and Simba Quarry) co-exist side by side.
 - b) The same professionals helping Nzoia Quarry Limited in carrying out blasting were also engaged in aiding Simba Quarry in doing the same.
 - c) Dust suppression systems were in place at the company as the wet crushing was being used during stone crushing.

- d) There was an internal air quality monitoring mechanism in place.
- e) The company had planted trees around its quarry to ensure dust suppression.
- f) On miscarriages occasioned by the company's blasting activities, he stated that the company had not received such complaints in order to commence investigations.
- g) The cracks in the buildings in the vicinity of the quarry premises could be having a myriad of causes, not necessarily due to quarrying activities. For instance, cracks in buildings can be as a result of poor workmanship. However, even if they were to be attributable to quarrying, it would not be fair to attribute them to Nzoia Quarry Limited when the company existed side by side with Simba Quarry. There was therefore need for professional analysis of the cracks before their causes can be ascertained.
- h) The company had provided employment to locals and was therefore responsive to community interests.
- i) Compensation was tenable only for justified, factual, and verified claims. He further asserted that no claim had met such a criterion so far.

4.0 COMMITTEE OBSERVATIONS

57. Having received and analyzed the submissions tabled, the Committee observed as follows.
58. On whether Nzoia Quarry obtained a change of user approval, the Committee observed that indeed a change of user was obtained by Nzoia Quarry before it was established.
59. Nzoia Quarry conducted an Environmental Impact Assessment which was submitted to NEMA and referenced PR/0603. NEMA issued Nzoia Quarry with an EIA license registration No. 0041 104 on 28th February 2017. Thereafter, Nzoia Quarry have conducted and submitted to NEMA Annual Environmental Audits in 2019 and 2020.
60. Due to the nature of its activities, the quarry is likely to cause noise pollution during blasting and stone crushing as well as dust pollution. Mitigation measures for these impacts have been provided for in the Environmental Management Plan in the EIA as well as conditions of the EIA license.
61. On whether the requirement for public participation was met during the EIA process, it was observed that Nzoia Quarry involved several people during the public participation phase. There is a record indicating 87 attendees to a baraza at Shikulu area on 19th April 2017. In the absence of a Public Participation Act in Kenya, the actual threshold of minimum number of people to be involved during public participation is uncertain. However, the fact that the Lugari Deputy County Commissioner, Mr. William Lenaremo stated that his office had not been consulted during the public participation phase and the complaints from parts of the residents, there is a likelihood that the exercise did not adequately involve all sectors of the population.
62. On whether operations of Nzoia Quarry affected learning environment and structural integrity of buildings at Manyoni Primary School, it was observed that:
- a. Noise pollution from the blasting has an impact on the learning environment. However, ground vibration was said to extend not more than 300 m from the blast site. Given that the school is approximately a kilometer away, it is unlikely to be affected by ground vibration if the permissible blasting materials and quantities are applied.
 - b. Dust pollution, on the other hand, is a common phenomenon during stone crushing and transporting of the quarry materials by trucks on the unpaved roads. This will have an impact on the learning activities, although it would be difficult to establish the extent of this impact. Attempts by Nzoia Quarry to plant trees to trap dust at the quarry were not adequate in abating the pollution.
63. On whether the facility had undertaken Corporate Social Responsibility and to what extent, it was observed that the area residents claimed that Nzoia Quarry had agreed to provide the following as part of their CSR policy: employment opportunities to the local community, supply water to the Manyoni School and the community, school bursaries, allow residents to tap electricity from the main line leading to the quarry. Out of these, Nzoia Quarry claimed to have a workforce of about 703 with 20 people coming from the local community. Additionally, they maintained the access roads in the area. There is no proof of provision of water, school bursaries and electricity connection to the residents as promised.

64. On whether the facility was contributing to deterioration of public transport infrastructure in the area, it was observed that the nature of a stone quarry demands the use of heavy machinery and trucks accessing the area. With regular use, there is bound to be a deterioration of the unpaved road network in the area, since these roads are not designed for such use. It is also noteworthy that there are other quarries in the vicinity. According to Nzoia Quarry, they ensured that the roads were maintained as part of their Corporate Social Responsibility. The community was of the view that the road network should be tarmacked to reduce dust pollution. However, this is a responsibility of the County Government.
65. On whether there was a prevalence of respiratory infections as a result of the quarry emissions, it was observed that this allegation can only be determined by comprehensive medical research into ailments reported within the Manyoni area to establish the connection to the quarrying activities, in comparison to other areas in Kenya.
66. The Nzoia Quarries Limited was mining stones without acquisition of the requisite licences in accordance with Section 33(1) of the Mining Act, 2016.

5.0 COMMITTEE RECOMMENDATIONS

67. The Committee recommends as follows:

68. The Nzoia Quarries Ltd to apply for the requisite mining licences within three (3) months of tabling of this Report.

69. The Department of Mines and Geology in conjunction with the National Environmental Management Authority and Kakamega County Government Public Works Department should conduct a comprehensive study to determine the impacts of quarrying activities on the structural integrity of the buildings in Manyonyi area and take appropriate actions within six months of tabling of this Report.

70. The National Environmental Management Authority (NEMA) and Department of Mines and Geology should conduct regular inspections of all quarries to ensure that their operations comply with the legal provisions pursuant to Section 69 (1) of EMCA, 1999 together with sections 196 (2) and 197 (c) (i) of the Mining Act, 2016.

71. NEMA should:

- a) ensure that quarries are located in designated areas that are not less than two kilometers away from human settlements pursuant to Regulation 14(2) of The Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009
- b) ensure that the respondent fully implements the mitigation measures as proposed in the environmental management plan and puts up a perimeter wall round the quarry to secure the site within six months of tabling of this Report.

72. NEMA, in conjunction with the County Government of Kakamega should ensure that the burrow pits are rehabilitated during the decommissioning of the quarry site.

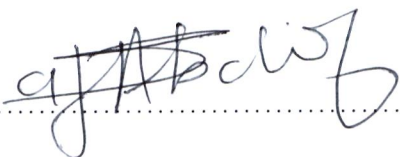
73. The Kakamega County Development Implementation Coordination Committee (CDICC) should address the issues raised by the community regarding the operations of the quarries and any other cross-cutting issues in the County within six months of tabling of this Report.

74. The Nzoia Quarry Company Limited should:

- a) control dust emitted from the activities of the quarry through reasonable means that prevent air pollution such as wet crushing and planting trees in accordance with relevant legal requirements.
- b) Within three months of tabling of this Report, develop a structured community liaison mechanism for grievance management mechanism and to address public concerns and other engagements that are mutually beneficial to the community and the company.
- c) adhere to all the legal requirements especially as pertains to blasting control, public safety and environmental concerns proactively manage dust through implementation of dust control measures including extensive dust control, watering of the rocks before crushing as well as during movement of the same
- d) Within six months of tabling of this report, institute own monitoring mechanisms such as ambient noise measurements particularly at sensitive receptors

- e) Within three months of tabling of this Report, pay all required fees and acquire all permits to ensure compliance with relevant laws.
- f) Within three months of tabling of this report, develop and implement a phased rehabilitation plan to restore the land to acceptable standard even as the quarrying activities are ongoing;
- g) Within three months of tabling of this report, review their Corporate Social Responsibility (CSR) Policy to encompass the needs of the community thereby improving their welfare as well as ensure they practice environmental conservation.
- h) continue issuance of warnings prior to blasting activities
- i) ensure that the blasting process is set up ensuring that vibrations are minimized and should not result into destructive damage.
- j) Within three months of tabling of this report, ensure that measurement is done of the vibrations produced during the blast to determine whether the vibrations are within the permissible level. This will require the company to source for this service since the Lead Agencies concerned do not have operational Vibrometers.

75. Lead Agencies (including but not limited to the Mines and Geology Department, NEMA, Physical Planning, County Governments) should within six months of tabling of this Report, develop guidelines on measurement of noise and excessive vibrations. Further the lead agencies should engage in continuous monitoring of quarries. The area has 5 other quarries, as such it would be difficult to determine with certainty that a particular quarry is responsible for some impacts which are widespread such as vibrations and road use by trucks.

Signed: 

HON. SOPHIA ABDI NOOR, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND
NATURAL RESOURCES

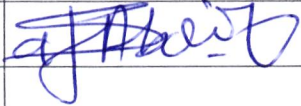

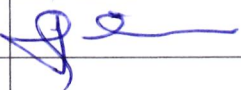
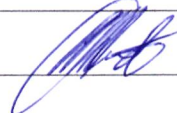
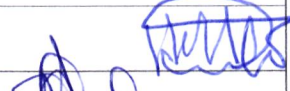
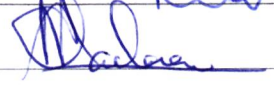

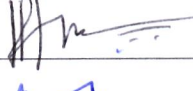
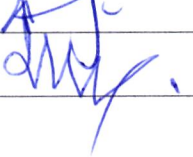
Date: 13/04/2022

ANNEX 1
ADOPTION LIST

DC-ENR: DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL
RESOURCES

REPORT ADOPTION LIST

REPORT ON A PETITION REGARDING THE ACTIVITIES OF NZOIA QUARRY
LIMITED IN KAKAMEGA COUNTY

	NAME	SIGNATURE
1.	The Hon. Sophia Abdi Noor , M.P., Chairperson	
2.	The Hon. Eng. Paul Musyimi Nzengu, M.P. Vice Chairperson	
3.	The Hon. Francis Chachu Ganya, M.P.	
4.	The Hon. Bernard Shinali, M.P.	
5.	The David Kangogo Bowen, M.P.	
6.	The Hon. David Gikaria, M.P.	
7.	The Hon. Simon King'ara, M.P.	
8.	The Hon. Janet Ong'era, MP.	
9.	The Hon. Charity Kathambi Chepkwony, M.P	
10.	The Hon. Charles Ong'ondo Were, M.P.	
11.	The Hon. Amin Deddy Mohamed Ali, M.P.	
12.	The Hon. Hassan Oda Hulufo, M.P.	
13.	The Hon. George Kariuki, M.P.	
14.	The Hon. Ali Wario Guyo, M.P.	
15.	The Hon. Nasri Sahal Ibrahim, M.P.	
16.	The Hon. Peter Kimari Kihara, M.P	
17.	The Hon. Rehema Hassan, M.P.	
18.	The Hon. Rozaah Buyu. M.P.	
19.	The Hon. Said Hiribae, M.P.	

ANNEX 2
COMMITTEE MINUTES

MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD AT THE ELMER RESORT AND SPA, NAIVASHA ON FRIDAY 8TH APRIL, 2022 AT 10.00 AM.

PRESENT

- | | |
|--|--------------------|
| 1. The Hon. Sophia Abdi Noor, M.P., | Chairperson |
| 2. The Hon. Janet Ong'era, M.P. | |
| 3. The Hon. Nasri Sahal Ibrahim, M.P. | |
| 4. The Hon. Simon King'ara, M.P. | |
| 5. The Hon. George Kariuki, M.P. | |

APOLOGIES

- | | |
|---|-------------------------|
| 1. The Hon. Eng. Paul Musyimi Nzengu, M.P. | Vice Chairperson |
| 2. The Hon. Bernard Shinali, M.P. | |
| 3. The Hon. Hassan Oda Hulufu, M.P. | |
| 4. The Hon. Charles Ong'ondo Were, M.P. | |
| 5. The Hon. Charity Kathambi Chepkwony, M.P. | |
| 6. The Hon. Francis Chachu Ganya, M.P. | |
| 7. The Hon. David Gikaria, M.P. | |
| 8. The Hon. Rozaah Buyu, M.P. | |
| 9. The Hon. Peter Kimari Kihara, M.P. | |
| 10. The Hon. Ali Wario Guyo, M.P. | |
| 11. The Hon. David Kangogo Bowen, M.P. | |
| 12. The Hon. Rehema Hassan, M.P. | |
| 13. The Hon. Said Hiribae, M.P. | |
| 14. The Hon. Amin Deddy Mohamed Ali, M.P. | |

IN ATTENDANCE

THE NATIONAL ASSEMBLY

- | | | |
|-----------------------|---|---------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Dennis Mogare | - | Clerk Assistant II |
| 3. Ms. Lynette Otieno | - | Legal Counsel I |
| 4. Mr. Eugene Apaa | - | Research Officer II |
| 5. Mr. Stanley Lagat | - | Sergeant-At-Arms |

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Consideration and adoption of a Report on a Petition Regarding the Activities of Nzoia Quarry Limited in Kakamega County**
- v) Date of the next Sitting

MIN.NO. DC/ENR/087/2022:

- PRELIMINARIES

The Meeting was called to order at 10.24 am after which prayers were said. The Chairperson stated that the main agenda of the day was consideration and adoption of a Report on a Petition Regarding the Activities of Nzoia Quarry Limited in Kakamega County

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/088/2022:

- CONFIRMATION OF MINUTES

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

MIN.NO. DC/ENR/089/2022:

**- CONSIDERATION AND ADOPTION
OF A REPORT ON A PETITION REGARDING THE ACTIVITIES OF NZOIA QUARRY
LIMITED IN KAKAMEGA COUNTY**

The Report on a Petition Regarding the Activities of Nzoia Quarry Limited in Kakamega County was considered and adopted after being proposed by the Hon. Janet Ong'era, M.P. and seconded by the Hon. Simon King'ara, M.P.

It was adopted with the following recommendations:

1. The Nzoia Quarries Ltd to apply for the requisite mining licenses within three (3) months of tabling of this Report.
2. The Department of Mines and Geology in conjunction with the National Environmental Management Authority and Kakamega County Government Public Works Department should conduct a comprehensive study to determine the impacts of quarrying activities on the structural integrity of the buildings in Manyonyi area and take appropriate actions within six months of tabling of this Report.
3. The National Environmental Management Authority (NEMA) and Department of Mines and Geology should conduct regular inspections of all quarries to ensure that their operations comply with the legal provisions pursuant to Section 69 (1) of EMCA,1999 together with sections 196 (2) and 197 (c) (i) of the Mining Act, 2016.
4. NEMA should:
 - a) ensure that quarries are located in designated areas that are not less than two kilometers away from human settlements pursuant to Regulation 14(2) of The Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009
 - b) ensure that the respondent fully implements the mitigation measures as proposed in the environmental management plan and puts up a perimeter wall round the quarry to secure the site within six months of tabling of this Report.
5. NEMA, in conjunction with the County Government of Kakamega should ensure that the burrow pits are rehabilitated during the decommissioning of the quarry site.

MIN.NO. DC/ENR/090/2022:

-

ADJOURNMENT

There being no other business the meeting was adjourned at 12.02 pm.

SIGNED:

THE HON. HON. SOPHIA ABDI NOOR, M.P.

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE:

6. The Kakamega County Development Implementation Coordination Committee (CDICC) should address the issues raised by the community regarding the operations of the quarries and any other cross-cutting issues in the County within six months of tabling of this Report.
7. The Nzoia Quarry Company Limited should:
 - a) control dust emitted from the activities of the quarry through reasonable means that prevent air pollution such as wet crushing and planting trees in accordance with relevant legal requirements.
 - b) Within three months of tabling of this Report, develop a structured community liaison mechanism for grievance management mechanism and to address public concerns and other engagements that are mutually beneficial to the community and the company.
 - c) adhere to all the legal requirements especially as pertains to blasting control, public safety and environmental concerns proactively manage dust through implementation of dust control measures including extensive dust control, watering of the rocks before crushing as well as during movement of the same
 - d) Within six months of tabling of this report, institute own monitoring mechanisms such ambient noise measurements particularly at sensitive receptors
 - e) Within three months of tabling of this Report, pay all required fees and acquire all permits to ensure compliance with relevant laws.
 - f) Within three months of tabling of this report, develop and implement a phased rehabilitation plan to restore the land to acceptable standard even as the quarrying activities are ongoing;
 - g) Within three months of tabling of this report, review their Corporate Social Responsibility (CSR) Policy to encompass the needs of the community thereby improving their welfare as well as ensure they practice environmental conservation.
 - h) continue issuance of warnings prior to blasting activities
 - i) ensure that the blasting process is set up ensuring that vibrations are minimized and should not result into destructive damage.
 - j) Within three months of tabling of this report, ensure that measurement is done of the vibrations produced during the blast to determine whether the vibrations are within the permissible level. This will require the company to source for this service since the Lead Agencies concerned do not have operational Vibrometers.
8. Lead Agencies (including but not limited to the Mines and Geology Department, NEMA, Physical Planning, County Governments) should within six months of tabling of this Report, develop guidelines on measurement of noise and excessive vibrations. Further the lead agencies should engage in continuous monitoring of quarries. The area has 5 other quarries, as such it would be difficult to determine with certainty that a particular quarry is responsible for some impacts which are widespread such as vibrations and road use by trucks.

MINUTES OF THE 31ST SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD VIRTUALLY ON WEDNESDAY 23RD JUNE, 2021 AT 10.00 AM.

PRESENT

- | | |
|--|-----------------|
| 1. The Hon. Peter Kimari Kihara, M. P | Chairing |
| 2. The Hon. Amin Deddy Mohamed Ali, M.P. | |
| 3. The Hon. Hassan Oda Hulufu, M.P. | |
| 4. The Hon. Ali Wario Guyo, M.P. | |
| 5. The Hon. Charles Ong'ondo Were, M.P. | |
| 6. The Hon. Rozaah Buyu. M.P. | |

APOLOGIES

- | | |
|--|-------------------------|
| 1. The Hon. Japhet Kareke Mbiuki, CBS, M.P. | Chairperson |
| 2. The Hon. Sophia Abdi Noor, M.P., | Vice Chairperson |
| 3. The Hon. Francis Chachu Ganya, M.P. | |
| 4. The Hon. Janet Ong'era, MP. | |
| 5. The Hon. Bernard Shinali, M.P. | |
| 6. The Hon. David Kangogo Bowen, M.P. | |
| 7. The Hon. Charity Kathambi Chepkwony, M.P | |
| 8. The Hon. Said Hiribae, M.P. | |
| 9. The Hon. Simon King'ara, M.P. | |
| 10. The Hon. Eng. Paul Musyimi Nzengu, M.P. | |
| 11. The Hon. George Kariuki, M.P. | |
| 12. The Hon. Nasri Sahal Ibrahim, M.P. | |
| 13. The Hon. Rehema Hassan, M.P. | |

IN ATTENDANCE

MINISTRY OF ENVIRONMENT AND FORESTRY

- | | | |
|----------------------|---|-------------------------------------|
| 1. Hon. Mohamed Elmi | - | Chief Administrative Secretary |
| 2. Mr. Zephania Ouma | - | Representing Director General, NEMA |
| 3. Mr. Julius Kamau | - | Chief Conservator of Forests |
| 4. Dr. John Chumo | - | Environmental Complaints Tribunal |
| 5. Mr. Rodney Omari | - | Parliamentary Liaison Officer |

THE NATIONAL ASSEMBLY

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant II |
| 2. Mr. Dennis M. Ogechi | - | Clerk Assistant II |
| 3. Mr. Mark Mbuthia | - | Audio Recording Officer |

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Meeting with the Cabinet Secretary for Environment and Forestry to respond to the following: (i) Petition regarding the activities of Nzoia Quarry Ltd (ii) Petition regarding safeguarding public interest in the climate action awareness campaign to increase forest cover and fight deforestation**
- v) AOB
- vi) Date of the next Sitting

MIN.NO. DC/ENR/130/2021: - **PRELIMINARIES**

The Meeting was called to order at 10.25 a.m. after which prayers were said. The Acting Chairperson then stated that the main agenda of the meeting was meeting with the Cabinet Secretary for Environment and Forestry to respond to the following: (i) Petition regarding the activities of Nzoia Quarry Ltd (ii) Petition regarding safeguarding public interest in the climate action awareness campaign to increase forest cover and fight deforestation

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/131/2021: - **CONFIRMATION OF MINUTES**

Confirmation of Minutes of the previous Sitting was deferred to the next meeting.

MIN.NO. DC/ENR/132/2021: - **MEETING WITH THE CABINET SECRETARY FOR ENVIRONMENT AND FORESTRY TO RESPOND TO A PETITION REGARDING THE ACTIVITIES OF NZOIA QUARRY LTD.**

Hon. Mohamed Elmi, Chief Administrative Secretary Ministry of Environment and Forestry appeared before the Committee on behalf of the Cabinet Secretary and briefed it that on receipt of the petition, the CS directed investigative teams from National Environment Management Authority (NEMA) and National Environment Complaints Committee (NECC) to establish the veracity of the claims made in the petition. The findings of the two teams are as follows:

Findings by NEMA

1. The Company is privately owned and engages in stone mining and crushing under Mr. Ekambaran Rajamohan as the Chief Geologist, and has existed in the area since 2017.
2. The land is hilly and consists of molten rocks. The area is partly fenced off and there is security in the unfenced hilly area to ensure safety by avoiding strangers from trespassing into the quarry site.

3. The quarry is located within a rural area, characterized by agricultural land- use and is sparsely populated. There is a permanent building on the project site. There is one toilet which is built using iron sheets. It also has a borehole which provides water for the quarrying activity. The quarry also has a crushing plant in it where the processing takes place. The surrounding is fenced off with barbed wire and a wall fence at the gate area.
4. The site labour requirement ranges from 15 to 20 persons a day. The labour is locally sourced except on areas requiring specialized skills such as blasting, plant operators and other management know-how.
5. The Company has its pre- phase located at the center of the land to ensure protection of their boundaries.
6. The pre-stripping was done at the center of the land due to its nature of an open-pit quarry. This is to act as a buffer to the mining area and to ensure that when blasting, the stones would only fall inside the open pit and not out of the buffer zone. Blasting in the mines is done 3 to 4 times a year where the activities produce about 100,000 tonnes of ballast and building dust annually.
7. Before the blasting is done, a notice to inform the community is circulated through:
 - a) The local Assistant Chief;
 - b) The nearby Police Station;
 - c) Use of public address system to alert the locals; and
 - d) Deploy 20 locals who walk door to door in all directions to issue warnings and alerts to the community members.
8. The project site has a borehole which is registered with Water Resource Authority within the quarry that has been serving the quarry for the past three years to sprinkle the area in order to minimize dust. The quarry is also surrounded by a green belt consisting majorly of trees that help reduce disturbance by blocking noise and also trapping excess dust.
9. The company has two trucks for transportation and a weigh bridge that ensures the trucks are not overloaded.
10. At Manyonyi Primary School:
 - a) there were no cracks on buildings and toilets as alleged by the petitioners. However, noise and vibrations, it was reported that the blasting vibrations are felt in very low intensities and in some instances very low levels of noise.
 - b) The noise decibels do not affect learning activities. While the plant was operating, it was assessed that the noise reaching the school during crushing was within the permissible levels.
 - c) The school had old abandoned classrooms that did not have any kind of crack.
 - d) The school has an underground water tank that was intact.
 - e) The toilet alleged to be cracked was also intact.
 - f) The nearby road is a public road used by trucks from another nearby quarry, Simba Quarry. Dust emission and nuisance is eminent and evident.
11. The Physical Planning Act CAP 286 provides that an application for local planning development is submitted together with an Environmental Impact Assessment (EIA) license. As a requirement, a public participation forum was held on 19th April 2017 (attendance sheets and meeting notes provided).
12. The application for development approval was recommended from the following offices:
 - a) Sub-county works officer Lugari Sub- County

- b) County Land Administration Officer, Kakamega County
 - c) County Physical Planning Officer, Kakamega County vide Plan No. PPD/KK/Plan 69 1/167 for proposed Change of Use from Agricultural Use to Industrial (ballast quarry) use.
13. Environmental Impact Assessment and Audit Regulations, 2003 apply to all policies, plans, programmes, projects and activities specified in the Second Schedule of the Act which requires that (a) no proponent shall implement a project likely to have a negative environmental impact; or (b) for which an environmental impact assessment is required under the Act or these Regulations; unless an Environmental Impact Assessment (EIA) has been concluded and approved in accordance with these Regulations.
 14. Environmental Impact Assessment was done for the then proposed Nzoia Quarry Limited, Reference PR/0603 and an EIA license issued on 28th February 2017 of Registration No. 0041 104. The Environmental Management Plan (EMP) included the following management measures for dust and blasting control:
 - a) Controlled blasting and employ certified blasting personnel
 - b) Issue public notices before any blasting
 - c) Establish an acoustic fence around the site as noise buffers while also ensuring that necessary noise control measures are implemented
 - d) Use electrostatic dust arrestors and cover the conveyor belt
 15. The Mines and Geology Department Eldoret Office carried out an inspection of the proposed project site and issued the Authority to Blast on 7th June 2017 with the following conditions:
 - a) Engage a qualified and licensed firm/blaster
 - b) Controlled blasting to be employed in order to minimize/eliminate adverse effects of blasting
 - c) Provide visible and audible warning signs during the blasting process
 - d) Evacuation of the people living and working in the area before the blasting process begins
 - e) Be responsible for any accidents/incidents caused by acts of negligence or omission during blasting which must be immediately reported to the nearest police station or the Mines and Geology Department
 - f) Comply with all rules and provisions under the Explosives Act, Cap 1 15
 16. There had been no complaints to the NEMA office in the Kakamega County prior to this petition regarding the operations of the quarry. However, a letter of complaint was made to the NEMA Kakamega office on 23rd December 2020.
 17. A group known as “Nzoia Quarry Neighbors” sent a letter to the company on 20th November, 2020 with the following issues that needed to be addressed by the company: change of blasting system, dust spraying, no more blasted stones on farms, announcement of the alarm minutes before blasting, purchase of stones from adjacent farms, channeling of any compensation through the group.
 18. On 6th September 2020, a letter was sent by a group named “Nzoia Quarry Nearby Residents” to Nzoia Quarry Chief Geologist expressing gratitude for taking care of their community with respect to: enabled connectivity to the power grid, upgraded marram roads, employment to the community youths, improved living standards, improved blasting processes, water sprinkling and company’s participation in community welfare activities.

19. The investigative team did not get any evidence of: respiratory diseases infection to the community, Neighboring farms that have been affected by the quarry and roads and bridges in the neighborhood that had been affected by the quarry materials transportation

Recommendations by NEMA

The Company to:

- a) develop a structured community liaison mechanism for grievance management mechanism and to address public concerns and other engagements that are mutually beneficial to the community and the company.
- b) adhere to all the legal requirements especially as pertains to blasting control, public safety and environmental concerns
- c) proactively manage dust through implementation of dust control measures including extensive dust control, watering of the rocks before crushing as well as during movement of the same
- d) institute own monitoring mechanisms such ambient noise measurements particularly at sensitive receptors
- e) pay all required fees and acquire all permits to ensure compliance
- f) develop and implement a phased rehabilitation plan to restore the land to acceptable standard even as the quarrying activities are ongoing;
- g) incorporate a Corporate Social Responsibility approach to and engagement with the local community. It was noted that CSR is different from philanthropy and therefore attention to be focused on how the company can assume its responsibility in enhancing socially responsible practices and addressing environmental issues through development of environmental management systems.
- h) continue issuance of warnings prior to blasting activities
- i) ensure that the blasting process is set up to ensure that vibrations are minimized and should not result into destructive damage.
- j) ensure that measurement is done of the vibrations produced during the blast to determine whether the vibrations are within the permissible level. This will require the company to source for this service since the Lead Agencies concerned do not have operational Vibrometers.

Lead Agencies

- a) Lead Agencies (including but not limited to the Mines and Geology Department, NEMA, Physical Planning, County Governments) to develop guidelines on measurement of noise and excessive vibrations. It was noted with concern that there are no guidelines for measurement of excessive vibrations and the mandates for the same are also not clear.
- b) Continuous monitoring of quarries. The area has 5 other quarries, as such it would be difficult to determine with certainty that a particular quarry is responsible for some impacts which are widespread such as vibrations and road use by trucks.

Findings by NECC

1. Nzoia quarry operates a quarry and stone crushing site at Manyonyi area, Lugari Sub County in Kakamega County. The quarry sits on 13.65Ha of private land on Title Deed No. Kakamega/Lugari/4440, Manyonyi area.
2. The quarry had acquired an EIA license Ref No. 0041104 and had also undertaken EA for the year 2020.
3. The Respondent had acquired a change of user permit from agricultural use to industrial (Ballast Quarry) use.
4. Blasting operations at the quarry were undertaken by Mr. Joab Levin Wafula, a qualified and licensed blaster through Permit No. 0056456.
5. According to the report from Mines and Geology department requested by NECC:
 - a) The proponent had been issued with a permit to use blasting explosives on 7th June 2017 and they have subsequently carried out blasting activities four (4) times
 - b) On 8th February 2020, the company blasted a total of 115 holes contrary to the requirement of a maximum of not more than 100 holes
 - c) There was need for a technical study by professionals from the County Structural Engineers from Public Works Department on the alleged cracks on the walls of some houses
6. They alerted the community before they undertook blasting activities by notifying the immediate neighbors through phone calls, letters to the local administration and sirens.
7. Investigations could not conclusively determine if the activities of Nzoia Quarry could have caused the cracks in the school and homesteads.
8. The activities of the quarry caused air pollution to the nearby neighbors

Issues for determination:

1. Whether Nzoia Quarry obtained a change of user before establishment
NECC established that a change of user was obtained by Nzoia Quarry before it was established.
2. Whether proper Environmental Impact Assessment was done in accordance with the law (Section 58 of EMCA, 1999 provides for the Application for an Environmental Impact Assessment License.
 - a) Nzoia Quarry conducted an Environmental Impact Assessment which was submitted to NEMA and referenced PR/0603. NEMA issued Nzoia Quarry with an EIA license registration No. 0041 104 on 28th February 2017. Thereafter, Nzoia quarry have conducted and submitted to NEMA Annual Environmental Audits in 2019 and 2020.
 - b) Due to the nature of its activities, the quarry is likely to cause noise pollution during blasting and stone crushing as well as dust pollution. Mitigation measures for these impacts have been provided for in the Environmental Management Plan in the EIA as well as conditions of the EIA license. Strict implementation of these provisions will therefore reduce negative impacts to the area residents.
3. Whether the requirement for public participation was met During the EIA process
 - a) Nzoia Quarry involved several people during the public participation phase. There is a record indicating 87 attendees to a baraza at Shikulu area on 19th April 2017.

- b) In the absence of a Public Participation Act in Kenya, the actual threshold of minimum number of people to be involved during public participation is uncertain.
 - c) However, the fact that the Lugari Deputy County Commissioner, Mr. William Lenaremo stated that his office had not been consulted during the public participation phase and the complaints from parts of the residents, there is a likelihood that the exercise did not adequately involve all sectors of the population.
4. Whether operations of Nzoia Quarry affected learning environment and structural integrity in Manyoni Primary School
- a) According to the inspection report from the State Department of Mining, noise pollution from the blasting has an impact on the learning environment as stated by the school principal. Ground vibration was said to extend not more than 300 m from the blast site. Given that the school is approximately a kilometer away, it is unlikely to be affected by ground vibration if the permissible blasting materials and quantities are applied.
 - b) Dust pollution, on the other hand, is a continuous activity during stone crushing and transporting of the quarry materials by trucks on the unpaved roads. This will have an impact on the learning activities, although it would be difficult to establish the extent of this impact. Attempts by Nzoia Quarry to plant trees to trap dust at the quarry were not adequate in abating the pollution. However, this can be mitigated against through wet crushing and regular watering of the unpaved roads.
 - c) The investigation could not determine the impact of the quarry on the structural integrity of the school and other buildings within the vicinity of the quarry. It is therefore necessary to consider a technical study by professional geologists and engineers on the matter.
5. Whether the facility had undertaken Corporate Social Responsibility and to what extent
- a) The area residents claimed that Nzoia Quarry had agreed to provide the following as part of their CSR policy: employment opportunities to the local community, supply water to the Manyoni School and the community, school bursaries, allow residents to tap electricity from the main line leading to the quarry.
 - b) Out of these, Nzoia Quarry claimed to have a workforce of about 703 with 20 people coming from the local community. Additionally, they maintained the access roads in the area.
 - c) There is no proof of provision of water, school bursaries and electricity connection to the residents as promised.
 - d) The proponent committed to engage the community on possible ways of improving their CSR.
6. Whether the facility was contributing to deterioration of public transport infrastructure in the area
- a) The nature of a stone quarry demands the use of heavy machinery and trucks accessing the area. With regular use, there is bound to be a deterioration of the unpaved road network in the area, since these roads are not designed for such use. It is also noteworthy that there are other quarries in the vicinity.

- b) According to Nzoia Quarry, they ensured that the roads were maintained as part of their Corporate Social Responsibility. The community was of the view that the road network should be tarmacked to reduce dust pollution. However, this is a responsibility of the County Government.
7. Whether there was a prevalence of respiratory infections as a result of the quarry emissions NECC did not obtain any records of prevalent respiratory infections in the area. This allegation can only be determined by a comprehensive medical research into ailments reported within the Manyoyi area to establish the connection to the quarrying activities, in comparison to other areas in Kenya.
8. Whether agricultural activities had been affected by the operations of the quarry
A proper study should be conducted by agricultural specialists to determine this query.

Recommendations by NECC


1. The Department of Mines and Geology in conjunction with NEMA and Kakamega County Government Structural Engineers from Public Works Department should conduct a comprehensive study to determine the impacts of quarrying activities on the structural integrity of the buildings in Manyoyi area
2. NEMA and Department of Mines and Geology should conduct regular inspections of all quarries to ensure that their operations comply with the legal provisions pursuant to Section 69 (1) of EMCA,1999 together with sections 196 (2) and 197 (c) (i) of the Mining Act,2016
3. NEMA should ensure that quarries are located in designated areas that are not less than two kilometers away from human settlements pursuant to Regulation 14(2) of The Environmental Management and Coordination (Noise and Excessive Vibration Pollution) (Control) Regulations, 2009
4. NEMA should ensure that the respondent fully implements the mitigation measures as proposed in the environmental management plan and puts up a perimeter wall round the quarry to secure the site
5. Nzoia Quarry should control dust emitted from the activities of the quarry through reasonable means that prevent air pollution such as wet crushing and planting trees
6. NEMA in conjunction with the County Government of Kakamega should ensure that the burrow pits are rehabilitated during the decommissioning of the quarry site
7. The Kakamega County Development Implementation Coordination Committee (CDICC) should address the issues raised by the community regarding the operations of the quarries and any other cross-cutting issues in the County
8. There is need for Nzoia quarry to review their Corporate Social Responsibility (CSR) Policy to encompass the needs of the community thereby improving their welfare as well as ensure they practice environmental conservation.

MIN.NO. DC/ENR/133/2021: - MEETING WITH THE CABINET SECRETARY FOR ENVIRONMENT AND FORESTRY TO RESPOND TO A PETITION REGARDING SAFEGUARDING PUBLIC INTEREST IN THE CLIMATE ACTION AWARENESS CAMPAIGN TO INCREASE FOREST COVER AND FIGHT DEFORESTATION

The Ministry officials indicated that they didn't have a comprehensive response to the petition and asked for more time to prepare. Their request was granted and directed to respond within 2 weeks from the date of the meeting.

MIN.NO. DC/ENR/134/2021: - ADJOURNMENT

There being no other business the meeting was adjourned at 11.12 am.

SIGNED: 

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

DATE: 25/09/2021

MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 17TH MARCH, 2021 IN THE COMMITTEE ROOM ON 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 12 NOON.

PRESENT

- | | |
|---|--------------------|
| 1. The Hon. Kareke Mbiuki, CBS, M.P. | Chairperson |
| 2. The Hon. Peter Kimari Kihara, M. P. | |
| 3. The Hon. Ali Wario Guyo, M.P. | |
| 4. The Hon. Hassan Oda Hulufu, M.P | |
| 5. The Hon. Charles Ong'ondo Were, M.P. | |

APOLOGIES

- | | |
|--|-------------------------|
| 1. The Hon. Sophia Abdi Noor, M.P. | Vice Chairperson |
| 2. The Hon. David Kangogo Bowen, M.P | |
| 3. The Hon. Francis Chachu Ganya, M.P. | |
| 4. The Hon. Rozaah Buyu. M.P. | |
| 5. The Hon. Nasri Sahal Ibrahim, M.P. | |
| 6. The Hon. Bernard Shinali, M.P. | |
| 7. The Hon. Benjamin Dalu Tayari, M.P | |
| 8. The Hon. George Kariuki, M. P. | |
| 9. The Hon. (Eng.) Paul Musyimi Nzengu, M.P. | |
| 10. The Hon. Rehema Hassan, M.P | |
| 11. The Hon. Charity Kathambi Chepkwony, M.P | |
| 12. The Hon. Said Hiribae, M.P. | |
| 13. The Hon. Amin Deddy Mohamed Ali, M.P | |
| 14. The Hon. Simon Nganga King'ara, M.P. | |

IN ATTENDANCE

PETITIONERS

- | | | |
|-------------------------|---|----------------------------------|
| 1. Rev. J.M. Kadima | - | Chairperson, Manyoni Community |
| 2. Mr. Elijah Mabati | - | Vice Chairman, Manyoni Community |
| 3. Mr. Shadrack Amasaka | - | Secretary, Manyoni Community |

THE NATIONAL ASSEMBLY

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant II |
| 2. Mr. Dennis M. Ogechi | - | Clerk Assistant II |
| 3. Ms. Zainabu Wario | - | Serjeant-at-Arms |
| 4. Ms. Rahab Chepkilim | - | Audio Recording Officer |

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Meeting with petitioners on a petition regarding the activities of Nzoia Quarry Limited.**
- v) AOB
- vi) Date of the next Sitting

MIN.NO. DC/ENR/57/2021: - **PRELIMINARIES**

The meeting was called to order at 12.28 p.m. after which prayers were said. The Chairperson then stated that the main agenda of the meeting was meeting with petitioners on a petition regarding the activities of Nzoia Quarry Limited.

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/058/2021: - **CONFIRMATION OF MINUTES**

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

MIN.NO. DC/ENR/59/2021: - **MEETING WITH PETITIONERS ON A PETITION REGARDING THE ACTIVITIES OF NZOIA QUARRY LTD.**

Rev. J.M. Kadima, Chairperson, Manyoni Community appeared before the committee and briefed it as follows:

1. The petitioners were petitioning on behalf of the Manyoni Community that resides in Lugari Sub-County, Kakamega County.
2. They were drawing the attention of the house to the following:
 - a) Nzoia quarry limited acquired land with the intention of extracting resources through mining activities.
 - b) The quarry the company set up on the site had negatively impacted the environment.
 - c) There was land degradation which had led to destruction of buildings and latrines for individual homes and institutions.
 - d) Dust from the activities and contaminated water meant for domestic use and crops.
 - e) The mining process had violent eruptions leading to adverse effects on the pregnant, the sick and the elderly.
 - f) School buildings affected were unsafe for use by pupils when schools reopen due to cracks on walls and collapsed latrines.
 - g) Infrastructure like roads and bridges have been compromised due to heavy loading of the company's trucks.
 - h) When carrying out blasting, the company never informs the local community contravening UN sustainable development goal number 3 on ensuring healthy lives and wellbeing for all.

- i) The quarry was not beneficial to the local community since the company wasn't engaged in any CSR programs.
3. The petitioners prayed that the National Assembly through the Committee:
- a) To enquire into the validity of the activities of the company and their adherence to the UN sustainable development goal number 16 – promotion of peaceful and inclusive societies for sustainable development, provide justice for all and provide effective accountable institutions at all levels.
 - b) To make any recommendations it deems appropriate in the circumstances of the petition.

MIN.NO. DC/ENR/060/2021: - OBSERVATIONS AND RESOLUTIONS

Members observed that:



- a) There was no clarity on the intention of using the land for mining activities at the point it was purchased.
- b) There was no public participation during the process of acquisition and change of land use. However, the proponent employed trickery and underhand tactics to push through the change of land use from agricultural to mining.
- c) Learning in local educational institutions was disrupted by the activities of the company in question.
- d) There was need to visit the area to ascertain claims and appreciate the concerns of the local community.
- e) There was another quarrying company in the vicinity (Simba Quarry Limited). However, the community didn't seem to have a problem with its operations.
- f) The land in question belongs to a private entity, West Kenya Sugar.

It was resolved that:

- a) The Committee schedules meetings with NEMA, West Kenya Sugar, Nzoia Quarry Limited and Simba Quarry Limited
- b) The committee schedules a visit to the area to ascertain claims and appreciate the concerns of the local community.

MIN.NO. DC/ENR/061/2021: - ADJOURNMENT

There being no other business the meeting was adjourned at 1.14 pm.

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

DATE: 25/09/2021

MINUTES OF THE 11TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON MONDAY 1ST MARCH, 2021 IN THE COMMITTEE ROOM ON 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 2:30 PM.

PRESENT

- | | |
|---|-------------------------|
| 1. The Hon. Sophia Abdi Noor, M.P. | Vice Chairperson |
| 2. The Hon. Peter Kimari Kihara, M. P. | (Acting Chairperson) |
| 3. The Hon. Nasri Sahal Ibrahim, M.P. | |
| 4. The Hon. Simon Nganga King'ara, M.P. | |
| 5. The Hon. Ali Wario Guyo, M.P. | |
| 6. The Hon. Hassan Oda Hulufu, M.P | |

APOLOGIES

- | | |
|---|--------------------|
| 1. The Hon. Kareke Mbiuki, M.P. | Chairperson |
| 2. The Hon. Francis Chachu Ganya, M.P. | |
| 3. The Hon. David Kangogo Bowen, M.P | |
| 4. The Hon. Charles Ong'ondo Were, M.P. | |
| 5. The Hon. Rozaah Buyu. M.P. | |
| 6. The Hon. Bernard Shinali, M.P. | |
| 7. The Hon. Benjamin Dalu Tayari, M.P | |
| 8. The Hon. George Kariuki, M. P. | |
| 9. The Hon. Rehema Hassan, M.P | |
| 10. The Hon. Charity Kathambi Chepkwony, M.P | |
| 11. The Hon. Said Hiribae, M.P. | |
| 12. The Hon. (Eng.) Paul Musyimi Nzengu, M.P. | |
| 13. The Hon. Amin Deddy Mohamed Ali, M.P | |

IN ATTENDANCE

THE NATIONAL ASSEMBLY

- | | | |
|-------------------------|---|--------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant II |
| 2. Mr. Dennis M. Ogechi | - | Clerk Assistant II |
| 3. Ms. Lynette Otieno | - | Legal Counsel I |
| 4. Mr. James Kirangi | - | Audio Officer |

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Consideration of a petition regarding the activities of Nzoia Quarry Ltd**
- v) AOB
- vi) Date of the next Sitting

MIN.NO. DC/ENR/42/2021:

- PRELIMINARIES

The meeting was called to order at 2.55 p.m. after which prayers were said. The Acting Chairperson then stated that the main agenda of the meeting was consideration of a petition regarding the activities of Nzoia Quarry Ltd.

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/043/2021:

- CONFIRMATION OF MINUTES

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

MIN.NO. DC/ENR/044/2021:

**- CONSIDERATION OF A PETITION
REGARDING THE ACTIVITIES OF
NZOIA QUARRY LTD**

The Legal Counsel attached to the committee briefed the committee regarding a petition on the activities of Nzoia Quarry Ltd as follows:

1. A public petition was submitted by members of the Manyoni community in Lugari sub-county Kakamega County. The petition concerned mining activities by Nzoia Quarry Ltd that has resulted in environmental pollution in the area. The Petitioners aver that the presence of trucks carrying heavy loads of quarry materials have resulted into rapid deterioration of infrastructure by weakening of bridges and rendering roads impassable during rainy season. The Petitioners are concerned that Nzoia Quarry Limited have not made attempts to integrate with the local community through offering of opportunities nor through Corporate Social Responsibilities.
2. Article 69(1) (f), (g) and (h) of the Constitution provides that the state shall establish systems of environmental impact assessment, environmental audit and monitoring of the environment; eliminate processes and activities that are likely to endanger the environment; and utilize the environment and natural resources for the benefit of the people of Kenya.
3. Section 4 of the Mining Act, 2016 defines a mine as follows- (a) when used as a noun, includes an excavation or system of excavations made for the purpose of, or in connection with, the extraction of minerals or mineral products, and includes an open-cast pit, quarry and any area where a mineral is won by dredging brine pumping, evaporation or other means; and (b) when used as a verb, means the carrying out of a mining operation and includes tailing.
4. Section 101 of the Mining Act, 2016 provide for the procedure for application of a mining license- 101. A person or company may apply for a mining licence in the prescribed form and accompanied by the prescribed fee. (2) An application for a mining licence under subsection (1) shall be in the prescribed form and addressed to the Cabinet Secretary and shall provide the following information –... (i) proof of submission and approval of an environmental and social impact assessment report and environmental management plan for the term of the mining licence to the National Environment Management Authority; and (j) a plan giving particulars of the applicant's proposals with respect to social responsible investments for the local community.

5. As regards Land use section 179 of the Mining Act, 2016 provides as follows- 179. The holder of a permit or licence under this Act Land use shall use the land in accordance with the terms of the permit or licence and shall ensure- (a)the sustainable use of land through restoration of abandoned mines and quarries; (b)that the seepage of toxic waste into streams, rivers, lakes and wetlands is avoided and that disposal any toxic waste is done in the approved areas only; (c)that blasting and all works that cause massive vibration is properly carried out and muffled to keep such vibrations and blasts to reasonable and permissible levels in conformity with the Environmental Management and Coordination Act; and (d) that upon completion of prospecting or mining, the land in question shall be restored to its original status or to an acceptable and reasonable condition as close as possible to its original state.
6. Section 180 of the Mining Act, 2016 provides that requirement of site restoration and mine closure plans as follows- 180. (1) The Cabinet Secretary shall not grant a prospecting license, a retention license or a mining license to an applicant, unless the applicant has submitted a site mitigation and rehabilitation or mine-closure plans for approval. (2) The Cabinet Secretary may prescribe Regulations for site rehabilitation and mine-closure obligations.
7. Section 181 of the Mining Act, 2016 provides for environmental protection bonds as follows- 181. (1) An applicant for a prospecting license, a retention license or a mining license shall provide a bond or some other form of financial security in this section called an environmental protection bond sufficient to cover the costs associated with the implementation of the environmental and rehabilitation obligations of the holder under this Act. (2) An environmental protection bond required under subsection (1) shall be in a form and for an amount as may be determined by the Cabinet Secretary having regard to the particular characteristics of the project. (3) In determining the form and amount of the bond referred to in subsection (2), the Cabinet Secretary shall take into account the amount that the applicant is required to provide by way of bond or some other form of financial security under the provisions of relevant Environmental Management and Coordination Act. (4) The Cabinet Secretary may release in part an environmental protection bond upon the satisfactory completion of rehabilitation measures undertaken within the duration of a license and shall release the bond in full following the successful completion of all environmental and rehabilitation obligations mentioned in subsection (1).
8. In view of the above legal provisions the Committee may seek to inquire on-
 - a) Whether Nzoia Company Limited in making application under section 101 of the Mining Act submitted-
 - i. an environmental and social impact assessment report and environmental management plan for the term of the mining licence to the National Environment Management Authority; and
 - ii. a plan giving particulars of the applicant's proposals with respect to social responsible investments for the local community
 - b) The extent of compliance with regards to section 179 on land use particularly-
 - i. Whether the blasting and all works that cause massive vibration has been properly carried out and muffled to keep such vibrations and blasts to reasonable and permissible levels in conformity with the Environmental Management and Coordination Act; and

- ii. The plans to restore the land upon completion of mining activities to its original status or to an acceptable and reasonable condition. Including details site mitigation and rehabilitation or mine-closure plans submitted in compliance with section 180 of the Mining Act, 2016
- c) The nature of the environmental bond or other form of financial security submitted by the Company in compliance with section 181 of the Mining Act to cover the costs associated with the implementation of the environmental and rehabilitation obligations of the holder under the Act.

MIN.NO. DC/ENR/045/2021: - RESOLUTIONS

Members resolved that:

1. The petitioners be given an opportunity to make their case before the committee.
2. The Committee visits the site to have an in-depth appreciation of the matters at hand.
3. Thereafter the concerned company and NEMA be invited for deliberation on the issues canvassed in the petition with the committee.

MIN.NO. DC/ENR/046/2021: - ADJOURNMENT

There being no other business the meeting was adjourned at 3.33 pm.


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

DATE: 14 / 04 / 2021

ANNEX 3
COPY OF THE PETITION



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY (FOURTH SESSION)

CONVEYANCE OF PUBLIC PETITION

(No. 46 of 2020)

REGARDING THE ACTIVITIES OF NZOIA QUARRY LIMITED

Honorable Members, pursuant to Standing Order 225(2)(b) requiring the Speaker to report to the House any Petition, other than those presented by a Member, I wish to report to the House that I have received a Petition from members of the Manyoni community in Lugari sub- county, Kakamega County.

Honorable Members, the petitioners are farmers who predominantly rely on subsistence farming and also keep domestic animals. In the year 2017, Nzoia Quarry Ltd acquired land for purposes of mining of stones. As a result of poor environmental impact assessment of the quarry, environmental pollution occasioned by operations of the factory has been disastrous. Deafening noise caused by the blasting machines operations has affected the learning environment in neighbouring schools and is detrimental to the health of children, the sick, expectant women and the elderly. In addition, dust emitted from the mining activities has caused air pollution which has resulted in respiratory problems, caused redundancy in the growth of crops and limited availability of clean water for domestic use.

Honorable Members, the petitioners further aver that the presence of trucks carrying heavy loads of quarry materials have resulted into rapid deterioration of infrastructure by weakening of bridges and rendering roads impassable during rainy season.

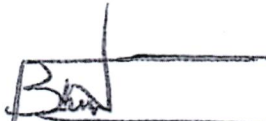
Honorable Members, the petitioners are concerned that Nzoia Quarry Limited has not made any attempts to integrate with the local

community through offering of opportunities nor through Corporate Social Responsibility activities.

Honourable Members, efforts by the petitioners to have the matter resolved by relevant stakeholders have been futile. The petitioners therefore pray that the National Assembly makes recommendations that it deems fit in addressing the circumstances raised in this Petition, including ensuring that Nzoia Quarry Limited compensates the affected persons and realigns its operations so as to exist harmoniously with the locals.

Honourable Members, pursuant to the provisions of Standing Order 227, this Petition stands committed to the Departmental Committee on Environment and Natural Resources for consideration. The Committee is required to consider the Petition and report its findings to the House and the Petitioners in accordance with Standing Order 227(2).

I thank you!



THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Date.....30/11/2020.....

PUBLIC PETITION

**PUBLIC PETITIONER: MANYONYI COMMUNITY LUGARI SUBCOUNTY,
KAKAMEGA COUNTY**

TO: THE NATIONAL ASSEMBLY,
P.O BOX 41842-00100,
NAIROBI.

PUBLIC PETITION

NEGATIVE SIDE EFFECTS OF NZOIA QUARRY TO THE COMMUNITY DATE:

We the undersigned on behalf of Manyoni community Lugari Sub-county, Kakamega county, we therefore the residents of the above wish to draw the attention of the House to the below grievances;

1. THAT, Nzoia Quarry acquired land for the purpose of extracting resources for the mining activities in 2017.
Since they started their Quarry services these has adversely affected the environment. Land degradation has rose to a high level covering a very large area with the following effects. Destruction of buildings for families and academic institutions which has demolished toilets.
2. THAT, Human settlement in this locality is not inclusive, safe, resilient and sustainable. Dust from their mining activities has affected the crops and water for human and domestic use is not safe.
3. THAT, during the mining process we have violent eruptions of the ground, affecting the sick, pregnant women and the elderly.
As a result some have to seek medical attention others pass away.
4. When schools re-open in January 2021 the buildings will not be safe for learning activities bearing in mind that walls have cracked and toilets have broken.
5. Infrastructure has been adversely affected due to their heavy loading, roads have become impassable and bridges have been weakened.
6. THAT, their heavy vehicles cause traffic jam as a result of the dust and during the rainy season other vehicles and motorcycle riders are incapacitated from using the roads.
7. THAT, During the eruptions they never notify the community and completely gets people unaware contravening united Nations sustainable development goal Number three; Ensure health lives and well being for all at all ages.
8. THAT, Quarry is of no benefit to the community for they do not have a social corporate responsibility that can assist the community yet they make a lot of money from the resources within the community and more so they have failed to offer employment to the majority especially the unemployed youth so to speak they they have failed to adhere to the united Nations sustainable development goal number eight which calls for promotion of sustainable inclusive and economic growth full and productive employment and decent work for all.

PUBLIC PETITION
REGARDING NEGATIVE SIDE EFFECTS OF NZOIA QUARRY TO
THE COMMUNITY OF MANYONYI IN LUGARI SUB COUNTY,
KAKAMEGA COUNTY.

S/No	NAME OF PETITIONER	ID NUMBER	CONTACT	SIGNATURE
1.	John M Kadima	0843492	0720617862	
2.	Manase Simwa	2341263	0722224147	
3.	Edward O. Hilibwa	6226121	0712829199	
4.	WALTER KUTWA	0925020	0999391364	
5.	DANIEL ONÇA	6514107	0707623372	
6.	ZARAYO MABATI	1438596	0711722510	
7.	HUDSON MUSIEGA	9510083	0717466211	
8.	ELIJAH MABATI	6336171	0720801989	
9.	KHAMUS MUSIKO	6310438	0715441166	
10.	ELIZABETH OKUSA	1175969	0720709768	
11.	Leonida Andeyo	4168042	0702023971	
12.	ERICK AMUKO	203675	072467946	
14.	JOYCE ABWALABA	21849737	0719801705	
15.	CLETIA JULIUS	25954468	0707822407	
16.	Alexander-S. HOOS	5675564	0722458009	



MANYONYI COMMUNITY

DEPUTY COUNTY COMMISSIONER-LUGARI
P.O. Box 367-30106,
TURBO

Received 31/7/2020

QUARRY DAMAGES TABLE ONE

Date 28.08.2020

STATEMENT OF COMPLAIN

We the undersigned, being persons known as the community of Manyonyi in Lugari Sub Location and full members of Lugari Farmers Association, wish to register our greatest complain and or petition against the damages caused by quarry activities in the rocky area surrounded by homesteads being Manyonyi Village, Marakusi Village, Mautuma Village, Miimani Village, Marula Village and any other in the vicinity affected directly and indirectly by the strong waves immernating from the blasting radiations by this quarry operations.

We direct this petitions to the relevant authorities including office of The President in the Jurisdiction of Deputy County Commissioner, Lugari Sub County, Ministry of Environment and Natural Resources (NEMA) and Department of Geology to take immediate action and stop the quarry operations to avoid further destruction and recommend instant compensation to the houses and human life arising from the illegal operations.

No	Name	ID	Phone	Signature
1.	Alexander S. HOOPS	5675564	072268009	[Signature]
2.	JOHN M KADIMA	0843482	0720617862	[Signature]
3.	Sarah Amisi Otiemo	3430185	0795844353	SAMISI
4.	Jane charia mihono	3456991		JJM
5.	shadrack Amasaka Otieno	10516868	0797802209	[Signature]
6.	MOSES Abui Okwemba	32415472	0721626525	[Signature]
7.	SAMSON Atcibilwa	27973820	0728390676	[Signature]
8.	Elijah Mahari	6336171	0720801989	[Signature]
9.	BERSON JOSEPH	11580176	0742377681	[Signature]
10.	Wilson Olando	03331279	0711730151	[Signature]
11.	WALTER B. KUMA	0925020	0799291864	[Signature]
12.	CHRISTOPHER HUDSON	0720031501	23188863	[Signature]
13.	HUDSON MUSIEGA	9510083	0719466211	[Signature]
14.	Wycliff Omutoka	4842715	0720539872	[Signature]
15.	Baton Andaye	23774620	0703758634	[Signature]
16.	SILAS KEVA	23186176	070574310	[Signature]
17.	peter Asudi	5281997	0721980374	[Signature]
18.	Robert Olenja (Rev.)	6287932	0915159909	[Signature]
19.	JATHEN Nasibala	7962676	0719838346	[Signature]
20.	JACKSON Dienja	35435700	0707822703	[Signature]
21.	JANEI MMBOME	36906512	07021130002	[Signature]
22.	MORIS MCLAUSA	20897899	0713800486	[Signature]
23.	Shem Katsira	1790339	072894317	[Signature]
24.	VINCENT KANETHA	25909513	0729284608	VIN



I.D.

Phone.

Sign

25.	Kenneth Mukabwa	5793715	0729080687	W
26.	WENGEN Lukusa	21387494	0711624223	W
27.	JOSEPH LUNFER MBOYA	9730353	0722153916	W
28.	STEPHEN LITETE	5281094	0790027517	W
29.	ADAMS KWENDO	0927900	0711516619	W
30.	KENYOLA MUKHWANA	8075945	0729214811	W
31.	MARIONA KAWERA	6881168	07908761018	W
32.	ALVINA MUYERA	294979882	0701637204	W
33.	ELIZABETH OKWISA	1175969	0720709188	W
34.	Glady's Kikakasa M-	24566493	0702628295	W
35.	Alberst +amba	7351185	0728845314	W
36.	PATRICK MUSA (kha) thba	0926187	0710956700	W
37.	Tackton Okwemba	0717413698	6419827	W
38.	Japhlet Indulu	0106146	0735956277	W
39.	Erick Ameka		0722467946	W
40.	Julius Lijondo	32415617	072930494	W
41.	Mary James	51798535	0704625164	W
42.	Stephen Kutwa	0514083	07114735875	W
43.	Joseph Masira	10411647	0726660249	W
44.	Edwin Changala	23124579	0700280183	W
45.	Henry Obere		07028011758	W
46.	Jeridah Nyangueso	27869376	0717350242	W
47.	Zakayo Mabati	1438596	0711722510	W
48.	Edward Atsibitwa	6336181	0718809090	W
49.	Daniel ongai omulando	6514407	0707622372	W
50.	Jonstone mabati	1506562	0721784273	W
51.	Manase Simwa		0722224147	W
52.	Edith Afandi	10884416	070847286	W
53.	Francis I. SASIDA	29239586	0715747157	W
54.	Nialus Kutwa	2150107	0714698703	W
55.	Tiayna shimuli	7605045	0702150123	W
56.	Elizabeth mingaj	22053636	0715800452	W
57.	Dan Amwayi		0713639656	W
58.	Habil Anyango	14658253	0700313684	W
59.	Alfred Asiiche	2984824	0716211877	W
60.	NAOMI NEKEFA	26157912	0707264755	W
61.	NELSON MBOYA	082552721	0716243504	W
62.	NELSON Locho	31296326	0704077271	W
63.	John Shava	28119439	0710401648	W
64.	Mark Wandubwa	25830698	0708563992	W
65.	Zebbedy mabati	33161819	0729545042	W
66.	patrick mambili	32384027	0707151883	W
67.	Noah asudi	24034070	0712441108	W
68.	Ruse mabati	10918343	0718183793	W
69.	Rechia Lukase	9028931	0728390676	W
70.	Dkumbo Reuben	1950382	0727837604	W
71.	Gabriel Atenya	0926583		W

72.	Francis Nyongesa	0927616	0723081078	FR
73.	Leonard Wangila S.	0923975		Leonard
74.	James Rolo		0717095272	JR
75.	Rose Mambale	29092287	0715264917	Rose
76.	Kenneth Amiani	8231887	0723080415	Kenneth
77.	Kennedy A. Okwemba	9158602	0720890661	Kennedy
78.	Moses Lukosa Sagara		0791003858	MS
79.	Zablon Otieno Akela	23412611	0701101212	Zablon
80.	Marion Ojoroge	24050471	0727167377	Marion
81.	Mahemah Omukwero	144945169	0712045875	Mahemah
82.	Miriam Midenyo		0727284082	Miriam
83.	Imelda Adema		0705674567	Imelda
84.	Rudah Masinde	11040136	0721917633	Rudah
85.	Miriam Jelagat	13015388	0715873015	Miriam
86.	Khamisa Mushi	8310438	0715111155	Khamisa
87.	Rubai Omeri		0728590887	Rubai
88.	Samuel Wasa		070246366	Samuel
89.	Antony Kibo		0725187328	Antony
90.	Felixas Simwa	122 9229	0710527064	Felixas
91.	Vigillano Waksha	2234297	0715 352 47	Vigillano
92.	Ernest Shitaka		0793790733	Ernest
93.	Mony Lunani	12897634	0702299350	Mony
94.	Mwanga Njoga		0727284090	Mwanga
95.	Evelyn Mumbi	23535101	0727627384	Evelyn
96.	Margaret Imbenzi	7348 245	0712 656325	Margaret
97.	Tolaza Nyambura	23046497	07 25813218	Tolaza
98.	Pamela Muthonja		0799 87015	Pamela
99.	Melias Ngasa		0703114886	Melias
100.	Fred Sagala	7906977	0705 276171	Fred
101.	Jane Andole		0724 92590	Jane
102.	Paul Bogeno	5625 444		Paul
103.	Nicodemus Asodi	10 72 5660		Nicodemus
104.	Ronald Atanga		07101716840	Ronald
105.	Maria Muthonja		07158 0488	Maria
106.	Hudson M Kadima	6921482	0714380385	Hudson
107.				
108.				
109.				
110.				

Cc: County Commissioner Kakamega County
Sub County Environment Office Lugari
County Department of Geology Kakamega
County Environment Office Kakamega