

Rt. Hon. Speaker

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J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC

Date: 01/12/20 *[Signature]*



THE SENATE

TWELFTH PARLIAMENT

Approved
[Signature]
11/2/2020

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

ON

PETITION BY THE RESIDENTS OF LUMUMBA AND KIBUYE ESTATES,
KISUMU COUNTY REGARDING THE NATIONAL HOUSING POLICY

PAPERS LAID	
DATE	Dec 1 2020
TABLED BY	Sen. Khaniri
COMMITTEE	lands
CLERK AT THE TABLE	M. Agbodan

NOVEMBER, 2020

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PREFACE

Mr. Speaker sir,

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

A. Committee Membership

The Committee comprises of the following Members.

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

At the sitting of the Senate held on 21st May, 2019, the Honourable Speaker of the Senate reported to the Senate that a Petition had been submitted through the Office of the Clerk by Mr. John Odenyo representing the residents of Lumumba and Kibuye Estates in Kisumu County regarding the National Housing Policy.

The salient issues raised in the Petition are as follows—

1. THAT, there is lack of a comprehensive and substantive rights respecting and protecting, non-discriminatory national housing policy that is compliant with the Constitution;
2. THAT, the only policy document on housing is Sessional Paper No.3 on the National Housing Policy of 2004 which does not capture the envisioned spirit and the aspirations of the Constitution;
3. THAT, Kenya has also ratified international treaties and conventions including the Universal Declaration of Human Rights and International Covenant on Economics, Social

and Cultural Rights, among others that provide the right to housing;

4. THAT, when the comprehensive national housing policy is in place, the rights and obligations of both the tenants and landlords will be protected and upheld;
5. THAT, the residents of Lumumba and Kibuye Estates in Kisumu County are being rendered homeless by the arbitrary increase of rent payable to Kisumu County Government; and
6. THAT, the National Housing Policy will stipulate the nature of consultations with the people to be affected in both the case of slum upgrading program as well as the planned construction of affordable housing.

The petitioner prays that the Senate investigates the matter and intervenes with a view to -

- (i) exercise its constitutional obligation under Articles 94 and 96 of the Constitution to enact the National Housing Law that will give effect to all relevant articles in the Constitution with regards to right to housing in terms of availability, affordability, accessibility and adequacy; and
- (ii) causes public and private partnerships between the national and county governments on affordable housing to be put on hold pending the enactment of a National Housing Policy.

Pursuant to the above provisions of the Constitution, the Petition to Parliament (Procedure) Act (No. 22 of 2012) and the Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within the prescribed period.

To enable a judicious disposal of the Petition, the Committee resolved to conduct an inquiry on the issues raised in the Petition. In this regard, the Committee having received the Petition found it to be sufficiently detailed since the Petitioner had clearly outlined his concerns.

The Committee proceeded to write to the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the County Government of Kisumu and requested them to send their written responses on the Petition.

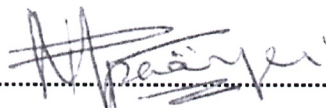
ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioner, Mr. John Odenyo representing the residents of Lumumba and Kibuye Estates in Kisumu County, the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, Mr. James Wainaina Macharia, EGH and the Governor, Kisumu County Government, Hon (Prof.) Peter Anyang' Nyong'o for their submissions and contribution to the resolution of this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Lands, Environment and Natural Resources on the Petition concerning residents of Lumumba and Kibuye Estates in Kisumu County regarding the National Housing Policy.

Signed:



Date:

14/11/2020

SEN. PHILIP MPAAYEI, M.P.
VICE CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND,
ENVIRONMENT AND NATURAL RESOURCES

CHAPTER I

INTRODUCTION

1. At the sitting of the Senate held on 21st May, 2019 the Honourable Speaker of the Senate, reported to the Senate that a Petition had been submitted through the Office of the Clerk by Mr. John Odenyo representing the residents of Lumumba and Kibuye Estates in Kisumu County.
2. The petitioner prayed that the Senate investigates the matter and intervenes with a view to -
 - (i) exercising its constitutional obligation under Articles 94 and 96 of the Constitution to enact the National Housing Law that will give effect to all relevant articles in the Constitution with regards to right to housing in terms of availability, affordability, accessibility and adequacy; and
 - (ii) causing public and private partnerships between the national and county governments on affordable housing to be put on hold pending the enactment of a National Housing Policy.
3. Pursuant to standing order 232(1) of the Standing Orders of the Senate, the Petition was committed to the Land, Environment and Natural Resources Committee.

B. LEGAL BASIS FOR PETITIONS

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

CHAPTER 2

CONSIDERATION OF THE PETITION

Approach taken by the Committee

1. In considering the Petition, the Committee observed that it would be important to verify the facts alleged by the Petitioner. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.
2. In this regard the Committee considered the Petition as tabled in the Senate and further sought for written responses from the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the County Government of Kisumu.

A. Responses by the Cabinet Secretary, Ministry of Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works

Pursuant to a letter Ref: **SEN/DCS/LENR/2/2020/(20)** dated 20th May, 2020, the Committee requested for responses and supporting documentation from the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works to respond to the Petition in entirety. Based on the concerns raised below the Ministry provided the responses indicated (**in bold**):

1. The Constitution of Kenya 2010 article 1 reposes all sovereign authority in the people of Kenya; the people of Kenya have delegated legislative authority to Parliament as the representatives of the people. **This is true.**
2. Article 95 of the Constitution provides that the role of Parliament, among other roles, is to deliberate on issues of concern to the people and enact legislation accordance with the constitution. **This is true.**

3. It is **not true** that there is lack of a comprehensive, substantive, rights respecting and protecting, non-discriminatory National Housing Policy compliant with the 2010 Constitution compliant.

The Cabinet Secretary indicated that the Ministry has a Sessional Paper No. 3 on the National Housing Policy of April 2016 which was adopted by Parliament in 2018 and a copy of the Policy was provided. The Policy has taken cognizance of all the provisions of the Constitution as indicated in Section 1.1.5 of the Policy. It also recognizes international principles and provisions such as the Universal Declaration of Human Rights of 1948, the Millennium Development Goals, the Sustainable Development Goals, the Habitat Agenda among others. It also reiterates the role of the County Governments and the National Government as spelt out in the Constitution. This is indicated in the policy statements on page 37.

The policy is anchored on four pillars as follows:

- i. The first pillar is on policy targets which highlights urban housing, rural housing and slum upgrading amongst others and proposes solutions which include poverty alleviation.**
- ii. The second pillar is on main housing inputs and addresses ways of accessing and managing the housing inputs namely land, infrastructure, building materials and technologies as well as finances.**
- iii. The third pillar covers estates management and maintenance necessary to ensure long lifespan for housing stock, disaster management, environmental impact assessment for housing projects, human resource development and monitoring and evaluation.**
- iv. The fourth pillar deals with legislative and institutional framework and assigns specific roles to various stakeholders. Under this pillar, the policy also proposes enactment of a comprehensive Housing Act to strengthen the role of the Ministry in-charge of housing in regulating housing**

development.

4. Articles 37 and 119 of the Constitution provides that every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. In this regard the petitioner is asking the Senate to legislate and adopt the National Housing Policy.

The Cabinet Secretary indicated that Parliament has already adopt the National Housing Policy. The current Sessional Paper No. 3 of 2016 on the National Housing Policy is compliant with the Constitution and recognizes the progressive right to housing.

The process of coming up with the policy was inclusive. There was a broad based process of consultations through the National Habitat Committee that involved various thematic groups focusing on Land Use Planning and Management, Disaster Management, Environmental Sustainability, Housing Infrastructure, Social Housing, Financial Resources, Appropriate Building Materials and Technologies, Research and Information, Estates Management and Maintenance, Monitoring and Evaluation as well as Institutional and Legislative Framework. The inputs from these thematic groups were consolidated and refined with further inputs being incorporated after the National Stakeholder's Forum.

5. Kenya's current key policy document on housing is domiciled in Sessional Paper No 3 on National Housing Policy of 2004, but which aside from not qualified to be a substantive National Housing Policy, does not as constituted in its current form, capture the envisioned spirit and aspirations of the Constitution in regards to adequate housing and housing rights including the full and legal protection of the rights of Kenyans housed in public or private houses or business premises necessitating the need to review, update and broaden the sessional paper to configure it to be a

legislative housing policy framework compliant with the constitution.

A policy is a statement of intent and gives guidance on what needs to be done. In this regard, the housing Policy has not deviated from the Constitution. The next step is to have a legislative framework that will help to implement the policy. The Ministry has a draft Housing Bill that is at the stage of discussion with stakeholders. Once enacted the Act will give legal backing to both Tenants and Landlords and to the statements that the policy pronounces in the four pillars in the policy. It should be noted that the Housing Policy restricts itself to residential premises. Business Premises are legislated through the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301.

On the petitioner's statements to senate, the Cabinet Secretary replied to each statement as follows:

- a) That, there is lack of a comprehensive, substantive, rights respecting and protecting, non-discriminatory National Housing Policy that is compliant with the Constitution;
The Cabinet Secretary stated that this statement is not true as there is a comprehensive Policy that is non-discriminatory as demonstrated in the four pillars that it addresses itself to. It is also aligned to the Constitution.
- b) That the only Policy document on housing is the Sessional Paper No. 3 on National Housing Policy of 2004, which does not capture the envisioned spirit and aspirations of the Constitution;
The Cabinet Secretary reiterated that there is a Housing Policy of 2016 which is aligned to the Constitution.
- c) That Kenya has also ratified international treaties and conventions including the Universal Declaration of Human rights and the International Covenant on Economic,

Social and Cultural rights among others that are provided in the right to Housing;

The Cabinet Secretary advised that this statement was true. All Housing Policies starting with the Housing Ordinance of 1943, the Housing Policy of 1966/67, followed by the one of 2004 and the current one of 2016 have always acknowledged the international treaties and conventions that Kenya is a signatory to and aligned the policies to those treaties and conventions.

For example, the current policy acknowledges these treaties in chapter one at the introduction. These include:

- ✓ **The Universal Declaration of Human Rights of 1948 which lays the foundation for the right to adequate housing;**
- ✓ **International Covenant on Economic, Social and Cultural Rights of 1966;**
- ✓ **Committee on the Elimination of Discrimination Against Women (CEDAW) which lays emphasis on enjoyment of women to adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication;**
- ✓ **Istanbul Declaration and Habitat Agenda of 1996 and the Declaration on Cities and Other Human Settlements in the New Millennium;**
- ✓ **The Millennium Development Goals. Goal 7, targets 10 and 11 aim to reduce by half the proportion of inhabitants without sustainable access to safe drinking water and basic sanitation services by the year 2015; and by 2020, achieve improved living conditions for at least 100 million people living in slums;**
- ✓ **The Sustainable Development Goal 11 which seeks to make cities and human settlements inclusive, safe, resilient and sustainable while target 11.1 specifically envisages to ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums by 2030.**
- ✓ **The Habitat Agenda which challenges governments to use shelter development as a tool to break the vicious cycle of poverty, homelessness**

and unemployment.

- ✓ **African Union Specialized Technical Sub-Committee No. 8 on Urban Development and Human Settlements (formerly AMCHUD). This is a commitment by African governments to address issues of urban development and human settlements, including housing.**
- ✓ **Agenda 2063: The Africa we want which emphasise on the need to provide opportunities for all Africans to have access to decent and affordable housing in clean, secure and well planned environments in sustainable human settlements.**

d) That when a comprehensive National Housing Policy is in place, the rights and obligations of both tenants and landlords will be protected and upheld;

The Cabinet Secretary noted that the Housing Policy recognizes the fact that for us to have a stable housing market, the rights of both landlords and tenants must be respected. It therefore acknowledges the role of the Rent Restriction Act which allows for dispute resolution between landlords and tenants through the Rent Tribunal and the Maintenance Policy which spells out the obligations of tenants and Landlords towards maintaining the current housing stock.

e) That the residents of Lumumba and Kibuye estates in Kisumu County are being rendered homeless by the arbitrary increase in rent payable to the Kisumu County Government;

The Cabinet Secretary stated that according to schedule 4 of the Constitution, housing is a shared function. He went on to state that while the National Government develops the National Housing Policies and related legislations, counties are also expected to develop their own policies and in this regard, Kisumu County has a Housing Policy which is aligned to the National Housing Policy. He therefore advised that the matter be directed to the County

Government of Kisumu who are the landlord for the said estates.

- f) That the National Housing Policy will stipulate the nature of consultations with the people to be affected both in the case of slum upgrading programmes as well as the planned construction of affordable housing.

The Cabinet Secretary stated that the National Housing Policy encourages integrated and participatory approaches to slum upgrading and improvement, including income generating activities that effectively combat poverty. The programme aims at strengthening the capacity of all relevant stakeholders from National to County governments, nongovernmental, civil society and community based organizations to the slum dwellers. Examples of where Government is using the participatory approach are in Kibera slums and also in Kenya Informal Settlements Improvement Programme (KISIP). In the case of affordable Housing programme, a lot of consultations are undertaken between National Government, County Governments and other key stakeholders in terms of priority areas, role of counties vis a vis the role of the National Government and even in defining what affordable housing is.

6. Implicitly Kenya does NOT and has never since independence had a constitutionally legislated statutory and definitive document that can be legally referred to as ‘National Housing’ although reference to a housing policy in official communication and media circles is prevalent.

The Cabinet Secretary reiterated that there is a Housing Policy of 2016. He also stated that there are various Policies that Kenya has had since pre-independence time and therefore the statement is not true.

7. The Constitution remains the only law in Kenya that explicitly safeguards the right to housing with Article 21(2) stating that “the State shall take legislative, policy and other

measures including the setting of standards, to achieve the progressive realization of the rights guaranteed under article 43(1)(b)”. **The Cabinet Secretary acknowledged that the Constitution is the overriding law but noted that there is the Housing Act, Cap. 117, the Rent Restriction Act, the Building Regulations, the proposed Housing Bill and the international treaties that Kenya is a signatory to which take cognisance of the right to housing.**

8. The right to housing as provided for in Article 21(2) as read together with Article 43(1)(b) of the Constitution is not a final product for direct dispensation, but is an inspirational right which the State is to endeavour to render progressively. Parliament should thus acknowledge that progressive realization of rights guaranteed under article 43 and reaffirmed in article 21(2) is an obligation that carries with it a measure of specificity undertaken through deliberate, concrete and targeted steps as should be seen in the legislation and bringing into law a compliant National Housing Policy to guide towards the achievement of the right to housing as an inspirational right. **While the Government acknowledges the progressive realization of the right to housing, it should not be lost that delivery of housing is a very expensive undertaking which requires concerted effort by all sector players who include National and County Governments as well as the private sector. The Government has nevertheless embarked on various programmes towards realizing this right. Some of these programmes include the Affordable Housing Programme which is part of the big Four Agenda, the slum Upgrading Programme, the Kenya Informal Improvement Programme (KISIP), PPPs, incentivising the private sector to participate in low cost, training on Appropriate Building Materials and Technologies especially for rural housing, maintaining the current stock of housing. All these programmes are spelt out in the National Housing Policy of 2016.**

9. Article 21(2) of the Constitution in this instance correspondingly refers to the law of Nations under housing rights as dictated in among others, the International Covenant of Economic, Social and Cultural rights(ICESCR) which Kenya ratified in 1972 and to which Article 11 of 1966 provides for the right of everyone to adequate food, clothing and housing and to the continuous improvement of the living conditions as envisaged in article 43(1)(b) of the Constitution with the statement ‘progressive realization’ captured as “continuous improvement of living conditions”. The connection between Article 21(2) of the Constitution and ICERCR is implicit that Kenya acknowledges the right to housing in international law as part of political and civil rights an international instrument in which she is a State party.

All Housing Policies starting with the Housing Ordinance of 1943, the Housing Policy of 1966/67, followed by the one of 2004 and the current one of 2016 have always acknowledged the international treaties and conventions that Kenya is a signatory to and aligned the policies to those treaties and conventions.

For example, the current policy acknowledges these treaties in chapter one at the introduction. These include:

- ✓ **The Universal Declaration of Human Rights of 1948 which lays the foundation for the right to adequate housing;**
- ✓ **International Covenant on Economic, Social and Cultural Rights of 1966;**
- ✓ **Committee on the Elimination of Discrimination Against Women (CEDAW) which lays emphasis on enjoiment of women to adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication;**
- ✓ **Istanbul Declaration and Habitat Agenda of 1996 and the Declaration on Cities and Other Human Settlements in the New Millennium;**
- ✓ **The Millennium Development Goals. Goal 7, targets 10 and 11 aim to reduce by half the proportion of inhabitants without sustainable access to safe drinking water and basic sanitation services by the year 2015; and by**

2020, achieve improved living conditions for at least 100 million people living in slums;

- ✓ **The Sustainable Development Goal 11 which seeks to make cities and human settlements inclusive, safe, resilient and sustainable while target 11.1 specifically envisages to ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums by 2030.**
- ✓ **The Habitat Agenda which challenges governments to use shelter development as a tool to break the vicious cycle of poverty, homelessness and unemployment.**
- ✓ **African Union Specialized Technical Sub-Committee No. 8 on Urban Development and Human Settlements (formerly AMCHUD). This is a commitment by African governments to address issues of urban development and human settlements, including housing.**
- ✓ **Agenda 2063: The Africa we want which emphasise on the need to provide opportunities for all Africans to have access to decent and affordable housing in clean, secure and well planned environments in sustainable human settlements.**

10. A compliant National Housing Policy shall in conformity with the law of nations as supported in Article 2(5) and (6) of the Constitution which provides the basis for the direct application and invocation of international treaties or conventions ratified by Kenya, takes cognizance that the same are applicable to the domestic sphere in so far as housing rights in concerned, among them being:

- a) The United Nations' (UN) Universal Declaration of Human Rights of 1948 that recognizes the right to adequate housing as an important component of the right to adequate standard of living, this further affirmed by-
 - i. the 1966 International Covenant on economic, social and cultural rights (ICESCR) which explicitly guarantees the right to adequate housing (Article

- 11.1);
- ii. the UN Committee on Economic, social and cultural Rights interpreted the content of human rights provisions in the covenant (General comment – the right to adequate housing);
 - iii. the United Nations’ recommended threshold that families should not be spending more than so per cent of their income on rent and housing utilities.
 - iv. the 1999 Istanbul Declaration and Habitat Agenda; and
 - v. the Declaration on cities and Other Human Settlement in the New Millennium of 2001.

b) Kenya is on the same score a State Party to the latest United Nations’ (UN) sustainable Development Goals (SDGs) whose Goal Number 11, Target 1 urges governments to “ensure for all adequate, safe and affordable housing and basic services and to upgrade slums.”

All Housing Policies starting with the Housing Ordinance of 1943, the Housing Policy of 1966/67, followed by the one of 2004 and the current one of 2016 have always acknowledged the international treaties and conventions that Kenya is a signatory to and aligned the policies to those treaties and conventions.

For example, the current policy acknowledges these treaties in chapter one at the introduction. These include:

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- ✓ **Istanbul Declaration and Habitat Agenda of 1996 and the Declaration on**

Cities and Other Human Settlements in the New Millennium;

- ✓ **The Millennium Development Goals. Goal 7, targets 10 and 11 aim to reduce by half the proportion of inhabitants without sustainable access to safe drinking water and basic sanitation services by the year 2015; and by 2020, achieve improved living conditions for at least 100 million people living in slums;**
- ✓ **The Sustainable Development Goal 11 which seeks to make cities and human settlements inclusive, safe, resilient and sustainable while target 11.1 specifically envisages to ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums by 2030.**
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- ✓ **Agenda 2063: The Africa we want which emphasise on the need to provide opportunities for all Africans to have access to decent and affordable housing in clean, secure and well planned environments in sustainable human settlements.**

11. Subsequently in the absence of a National Housing Policy, courts of law could make determinations protecting tenants premised on the resolutions of the above instruments and conventions, and on the Economic and Social Rights referred to in Article 45 because the rights expressed therein are not merely aspirational or guiding principles for state policy but are justiciable.

There is no vacuum in terms of Policy but the Ministry is working on an

all-inclusive Housing Act. The Ministry has also drafted a Landlord and Tenant Bill which is supposed to replace the Rent Restriction Act.

12. Parliament is accordingly petitioned going by paragraph 2,3 and 5 above, to rise up to the occasion as mandated in Article 156(4) of the Constitution, to enact legislative laws to give effect to Articles 2 (5) and (6), 19, 22 (2) and 45 that will either guide the courts of law in interpreting housing rights as Human rights or passing judgement on housing issues or directly protect tenants as per Article 259(1)(c) by either domesticating ratifying and/or legislating appropriate consequential legislation.

There is a law that protects both tenants and Landlords (Rent Restriction Act) and the Rent Tribunal that hears and determines rent disputes. There is also the Constitution that recognizes the progressive right to housing. The Housing Policy recognizes all International treaties that Kenya is a signatory to.

13. Pursuant to the provision of Article 184, the repeal of the Local Government Act (Cap. 265) paved way for the Urban Areas and Cities Act, No.15 of 2011. Specific articles repealed in Cap 265 were 55, 56 and 58 of the Local Government Act, which shielded and protected tenants of Local Government Social Housing units from arbitrary increase of rent unless consented to by the Minister of Local government, tenants of social housing units taking a cue from the experience of Lumumba and of Kibuye Estates respectively, and of the county Government of Kisumu specifically, have since been left at the mercy of the county government, who view provision of housing and rent collection as an investment and an avenue of raising easy revenue and did increase rent in 2013 as in the case of Lumumba Estate by 100% in blatant contravention of the rules of natural justice, and without citizen participation in violation of Article 174(c) of the Constitution and of the general spirit of the Constitution which embed citizen participation as an adjunct to governance.

In line with schedule 4 of the Constitution, housing is a shared function. The

National Government manages only those houses that are meant for National Government staff in the counties. It is true that houses belonging to the defunct local authorities are now under the management of the County Governments. The National Housing policy recognises the fact that management of Public houses (both National and County Government) has been a challenge. It is for this reason that the Ministry came up with a National Maintenance Policy which is a public document. The County Governments are expected to develop their own policies which are in line with National policies but specific to their situation.

We are aware that Kisumu County is one of the few Counties that have a County Housing Policy which was developed through public participation. Therefore the issues of Lumumba and Kibuye should be addressed by the County Government of Kisumu. If the Policy is lacking there is room for review. But it should be noted that a policy is a guide and gives general direction. It cannot address each and every Estate.

14. Further, following the repeal of the Local Government Act (Cap 265), and the lack of timely replacement of a relevant regulatory framework and the absence thereof of a statutory acknowledgement of the same by the National government under whose mandate the protection and enforcement of rights falls, has resulted in a lacuna that has given leeway to county governments to engage in real estate like businesses by charging market rates for social housing units, a stark violation of the delegated obligation of the National Government to county governments towards fulfilling the constitutional requirement of providing adequate and affordable housing for the citizenry.

There is no lacuna. The affordable housing programme, one of the Big 4 Government Agenda is not a National Government programme only. The Ministry has been collaborating with County Governments on the same. The National Housing Policy recognizes the need for Government to focus on social

housing, this being a segment that requires government intervention in order to make these houses affordable to the Low income segment of the population. It is expected that County Governments will also prioritise social and low cost housing.

15. In view the lack of a replacement of the Local government Act (Cap 265) Article 55, 56 and 58, the Constitution Sixth Schedule (Article 262), Part 2 – Existing Obligations, Laws and rights (rights, duties and obligations of the State) sub-section 6, which stipulated that “Except to the extent that this constitution expressly provides to the contrary, all rights and obligations, however arising, of Government or the Republic and subsisting immediately before the effective date shall continue as rights and obligation of the national government or the Republic under the Constitution; and further in sub-section 7 (1) (Existing laws) stipulating that “All law in force immediately before the effective date continues in force and shall be construed with alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the Constitution” meaning all regulations, decisions and any bill passed into law by any county regarding Housing units formerly run by the defunct local government are null and void in Law.

The National Housing Policy was reviewed and aligned to the Constitution.

16. Pursuant to the operationalization of the Urban Areas and Cities Act, No. 19 of 2011, following its Assent on 27th August, 2011 and upon the first elections held under the 2010 constitution, for those living in cities and urban areas where housing deficit is highest and rights abuses highly likely, only a National Housing Policy guiding the board members in executing their mandate under Article 184 (1) (c) of the constitution, and in Article 56(1)(c), and in emboldening residents under the Second and Third schedule of the Urban Areas and Cities Act, appropriately so in matters housing rights and participation, would cause to pre-empt the protection of, or protect altogether

tenants and residents of both private and public housing including businesses and other renting enterprises from all manner of abuse of rights including but not limited to failure to act – completely or in a timely manner to complaints of housing nature e.g. unilateral and unconscionable rent increases, harassments, threats and forced evictions from property owners or managers who may in cohort with county government officials conspire to force statutory rent increases.

The custodian of the National Housing Policy is the Ministry in charge of Housing and is not implemented by a board as alluded. The custodian of Urban Areas and cities Act is the Ministry in charge of Urban Development and the two departments happen to be in the same Ministry at the moment. However, implementation of the Housing Policy is at both levels of Government while the implementation of Urban Areas and Cities Act is at the County Government level. There seems to be a mix up here because the National Housing Policy is not implemented by a Board

17. Unless Parliament legislates a 2010 Constitution compliant Housing Policy, from the experience of Lumumba and Kibuye Estate Residents, there shall be calculated strategies to frustrate tenants of both public and private houses into rent distress, to subsequently evict them or force statutory rent increases, meaning without it, there shall be a formalized insecurity of tenure for Kenyan tenants.

It is not true that there will be formalized insecurity of tenure for Kenyan tenants due to lack of a National Housing Policy. Kenya has not had a vacuum in terms of Housing Policy since independence.

18. Without a comprehensive, substantive and inclusive National Housing Policy as a constitutionally compliant institutional framework to guide the housing sector operations and developments, there is likely to result a widespread national gentrification of monumental proportions, accompanied by a generalized absence of

security of tenure for all Kenyan tenants and the most likely to be affected would be middle and low-income communities.

It is not true that there will be formalized insecurity of tenure for Kenyan tenants due to lack of a National Housing Policy. Kenya has not had a vacuum in terms of Housing Policy since independence.

19. On the same note, the ongoing upgrading of informal settlement in select urban areas under the initiatives Kenya Slum Upgrading Programme (KENSUP) and, the Kenya Informal Settlement Improvement programme (KISIP), which will regularize tenure and install social and physical infrastructure in informal settlements, as well the contemplated construction of affordable housing under the government's Agenda 4, rents are likely to rise beyond manageable levels for those currently residing in the affected areas thereby rendering people and families homeless.

Rents rise because of demand that surpasses supply. In any programme where the Government has given a subsidy in terms of land, off-site infrastructure, tenure regularization among others, it is expected that the same benefit is passed on to the tenants. In such instances, it is possible to cap the rent payable while ensuring that there is a decent return on investment.

20. A comprehensive, substantive and inclusive National Housing Policy will stipulate the nature and level of consultations with the communities to be affected both in the slum upgrading programme as well as in the planned construction of affordable housing. It will give guidelines on the development of a framework for consultation and compromise, complete with legal avenues for relief in line with requirements of the new Constitution's dictates on participation and the international housing rights instruments.

The statement is appreciated and is already being implemented as the Ministry develops the various documents such as the Development Framework Guidelines

that are necessary for successful implementation of the Affordable housing projects.

21. A 2010 Constitution compliant Housing Policy will, while respecting the housing supply and demand curve and investments put in by investors in the housing sector, will also on the same vein protect tenants and Kenyans from the excesses of free market economy much the same way as the cap on interest rates on bank loans has operated.

This is noted and will be considered as the Housing Bill is developed.

22. The inherent gains made towards the progressive realization of the right of access to adequate housing that came into being by the bare promulgation of the 2010 Constitution in 45(1) (b) which provides that every person has the right to “accessible and adequate housing and a reasonable standard of sanitation”, stands the risk of being pulled back by the lack of an enactment of legislation of a compliant National Housing Policy which would itself put in place a coherent, well-coordinated and comprehensive strategy directed towards a consistent progressive realization of the right of access to adequate housing if the experience of Lumumba and Kibuye Estate tenants is taken as a sample. It is upon parliament to propel steps towards achieving the intended result of enacting a compliant National Housing Policy.

The Cabinet Secretary reiterated that there is a Housing Policy of 2016. He also stated that there are various Policies that Kenya has had since pre-independence time and therefore the statement is not true.

B. Responses by the County Government of Kisumu

Pursuant to a letter Ref: SEN/DCS/LENR/2/2020/(28) dated 23rd June, 2020, the Committee requested for written information regarding the Petition and received the information as follows:

Response to Petition No. 13 & 14

- The residents through George Otieno Bonyo, Grace Mairura Otieno, Harun Okoth and Joyce Nyangweso petitioned the high court of Kisumu (Application No. 5 of 2014) in 2014 seeking to stop the increase of rent to the said housing estates from Kenya Shillings 2000 to Kenya Shillings 4000 that had been effected in 2012 vide a gazette notice Vol. CIXIV No. 42 of May 2012.
- The only requirement that the then Municipal Council of Kisumu was supposed to do whenever it wanted to revise rents chargeable for her estates was just a gazette notice which was done through gazette notice no. 6910 of 2nd May 2012.
- That the tenants had started to pay the revised rents until 2014 when they put the petition at the high court of Kisumu on 11th February 2014 seeking prohibition of the then Municipal Council of Kisumu from collecting revised rents from a figure of Kshs. 2000. Furthermore, the tenancy agreement in force by 2012 provided for a Kshs. 500 tenancy renewal fees and the tenants had never raised any complaint about the same.
- That new rents came into force March of 2013 and that the tenants had been paying the new rents until the time of petitioning the court in February 2014.
- That the tenants succeeded obtaining a court order from the Kisumu High court restraining the then Municipal Council of Kisumu from collecting the gazetted increased rents and that status quo was to be maintained and therefore the County Government of Kisumu reverted to collecting the Kshs. 2000 rent.
- That on 31st October 2016, the Judicial Review case was dispensed and the judge ruled that the gazette notice of May 2012 that increased the rents of the two estates had not

been quashed and therefore the prohibition of rent increase could not be granted.

- That the application (prohibition of rent increase) was therefore dismissed with costs to the respondent. The interim orders issued on 31st January 2014 (restraining the County Government of Kisumu from collecting the revised rents) were vacated meaning that the County Government of Kisumu were within the law in demanding rent increase arrears from the time the order stopping them from collecting the same was issued.
- That, apart from the rent arrears, the tenants were supposed to pay the costs incurred by the County Government in the course of the court process.

In addition to the above submissions, it is noteworthy that;

- The process of coming up with a Finance Act is always participatory and the public is always invited to make contributions before the same proposals are presented to the county assembly (people's representatives) for adoption as per the spirit and letter of Constitution. The 2013 Finance Act was no exception.
- The CECM for Finance & Economic Planning, in exercise of powers granted in the Public Finance Management (PFM) Act 2012 in a letter **REF: KC/FIN/REV/IV/176**, waived half of the accrued rent arrears by the tenants of the two estates. In the letter, the tenants were asked to make commitments on how they were going to settle the half of the accrued rent arrears within a period of **six (6) months** from the month of September 2020.

In conclusion, the petition by the tenants could be interpreted as a delaying tactic not to comply with the court order even after a 50% waiver. The County Government of Kisumu therefore prays that the information provided will give your committee insight to dispense with the petition.

CHAPTER 5

COMMITTEE OBSERVATIONS

In accordance with the Prayers of the Petitioner the Committee observes as follows:

- (i) Exercise its constitutional obligation under Articles 94 and 96 of the Constitution to enact the National Housing Law that will give effect to all relevant articles in the Constitution with regards to right to housing in terms of availability, affordability, accessibility and adequacy

The Committee observes that the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works informed the Committee that the Ministry is at an advanced stage of developing a Housing Bill which will be introduced in Parliament and replace the Housing Act of 1953.

- (ii) Causes public and private partnerships between the National and County Governments on affordable housing to be put on hold pending the enactment of a National Housing Policy.

The Committee observes that the Petitioner seemed to be unaware that there was a National Housing Policy of April, 2016 which was thereafter adopted by Parliament.

The Committee notes that the Key prayer of the Petition was the formulation of a Housing Policy to replace the policy that was enacted before the current Constitution was promulgated. Proper research would have informed the Petitioners that indeed a National Housing Policy was enacted in 2016.

The Committee further notes with concern that the Petitioners tended to avoid paying rent to the Kisumu County Government. The Petitioners have had a tussle with the County Government since it increased rent for its houses from Kshs. 2000/- per month to Kshs. 4,000/-. The Petitioners referred this matter to Court and the same was dismissed with costs. The Petition is therefore frivolous and an abuse of the constitutional rights of people to Petition Parliament. The Committee notes that such Petitions should be discouraged.

CHAPTER 6

COMMITTEE RECOMMENDATIONS

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

In accordance with the Prayers of the Petitioner the Committee observes as follows:

The petitioner prays that the Senate investigates the matter and intervenes with a view to -

- (i) Exercise its constitutional obligation under Articles 94 and 96 of the Constitution to enact the National Housing Law that will give effect to all relevant articles in the Constitution with regards to right to housing in terms of availability, affordability, accessibility and adequacy

The Committee recommends that the Cabinet Secretary, Ministry of Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works finalizes the development of the Housing Bill and submits to the Committee the Bill or a status update on the development of the Bill within three months of the tabling of this Report, and in any case not later than 28th February, 2021

- (ii) Causes public and private partnerships between the national and county Governments on affordable housing to be put on hold pending the enactment of a National Housing Policy.

The Committee recommends that the County Executive Committee member responsible for housing in Kisumu County Government forthwith ensures that it collects rent from people residing in its properties and takes enforcement measures available to them to ensure that the County Government receives monies due to it to enable the County Government offer services to all the people of Kisumu County.

The Committee further recommends that the Senate Business Committee comes up with a criteria for consideration of Petitions before they are referred to Committees to ensure that the use of the time and resources of the Senate and its Committees are used prudently to protect public interests as opposed to protection of private interests.

APPENDICES

A. ANNEX I: MINUTES OF THE MEETINGS

MINUTES OF THE 54TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON SATURDAY, 14TH NOVEMBER, 2020 AT SAROVA WHITESANDS HOTEL, MOMBASA AT 2.00 PM.

MEMBERS

1. Sen. Philip Mpaayei, MP
2. Sen. Mwaruma Johnes, MP
3. Sen. Sylvia Kasanga, MP
4. Sen. Gideon Moi, CBS, MP
5. Sen. Ndwiga Peter Njeru, EGH, MP
6. Sen. Boy Issa Juma, MP

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. (Dr.) Lelegwe Ltumbesi, MP

- Chairperson
- Member
- Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Crispus Njogu
3. Ms. Clare Kidombo
4. Ms. Mitchell Otoro
5. Mr. Abdalla Mbore
6. Mr. John Nganga
7. Mr. Naftali Ondiba

SECRETARIAT

- Clerk Assistant II
- Clerk Assistant II
- Researcher
- Legal Counsel
- Sergeant-At-Arms
- Audio Recording
- Finance Officer

MINUTE SEN/SCLNR/297/2020: PRELIMINARIES

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

MINUTE SEN/SCLNR/298/2020: ADOPTION OF AGENDA

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

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Adoption of the following Petition Reports;**

1. Report of the Committee on the Petition regarding the Loading and Unloading of iron ore in Ganjoni, Mombasa County (Petitioners C/o Sen. Mwinyihaji Mohamed Faki, MP)
2. Report of the Committee on the Petition regarding the Environmental degradation and irregular dumping at landfill in Kajulu, Kisumu East (Hon. Shakeel Shabbir Ahmed)
3. Report of the Committee on the Petition regarding the National Housing Policy (Residents of Lumumba and Kibuye Estates in Kisumu County)
4. Report of the Committee on the Petition regarding the Siltation of Lake Magadi
5. Report of the Committee on the Petition regarding the Unlawful encroachment and forceful occupation of Barwaqo plots within Bulla Mpya Ward, Mandera East Constituency - Mandera County (Residents of Barwaqo Area)
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNENR/299/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

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

MINUTE SEN/SCLNENR/300/2020: ADOPTION OF THE FOLLOWING PETITION REPORTS;

- (a) Report of the Committee on the Petition regarding the Loading and Unloading of iron ore in Ganjoni, Mombasa County (Petitioners C/o Sen. Mwinyihaji Mohamed Faki, MP);**

The Committee adopted its report with the following recommendations;

1. The Committee recommends that the open field for South Africa Ports Terminals Limited at COMACO, near the Port of Mombasa remains closed.
2. Should the Company re-open, they should do after an Environmental Impact Assessment before opening, and that impact assessment should be submitted to NEMA and the Committee.

The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP

(b) Report of the Committee on the Petition regarding the Environmental degradation and irregular dumping at landfill in Kajulu, Kisumu East (Hon. Shakeel Shabbir Ahmed);

The Committee adopted its report with the following recommendations;

8. The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders finds as follows:
 - (a) On the allegation that no meaningful public participation was undertaken before issuance of the said licence as required under the law, the Committee was supplied with evidence that public participation took place and which evidence the Petitioner did not controvert. In addition, there is a Judgement of a superior court in *Rose Juma Nyanjom & 3 others v County Government of Kisumu & 2 others [2020] eKLR* where the Environment and Lands Court dismissed the allegation that no public participation took place. In the circumstances, the Committee is satisfied that public participation was undertaken prior to the commencement of rehabilitation of Kisumu Concrete Quarry using inert waste from Kachok Dumpsite.
 - (b) On the allegation that the dumping of waste in the quarry pits in Kajulu has breached the underground aquifers in the area, thus compromising the safety and quality of underground water, the Committee was supplied with evidence by the National Environment Management Authority (NEMA) that an Environmental Impact Assessment was undertaken in which it was found that the proposed landfill did not pose a threat to the water table in Kajulu area. Further, NEMA submitted that a hydrological assessment study had been undertaken and a water quality analysis of neighboring boreholes had been undertaken, all which did not show contamination of the underground water as a result of the land fill. NEMA further reported to the Committee that monitoring of the ground water was done periodically. The Committee thus finds that based on the evidence presented to it, and without any proof of the contrary, as at the time of writing this Report, the allegation of contamination of the underground water was not established. Nonetheless future monitoring of the landfill was still necessary.
 - (c) On the allegation that That the establishment of a landfill for waste in a private site has drastically dropped the value of property in the area, the Committee finds that there was no evidence of valuation of the property in the area to illustrate that that the value of the property had fallen since the filling of the open quarries. NEMA also reported to the Committee that the abandoned open

quarries in the Kajulu area posed a major security, health and environmental risks to the neighboring community and that continuous rehabilitation of quarry sites is the recommended environmental and social management practice. NEMA also reported to the Committee that use of inert materials to rehabilitate quarry pits has been documented as a best practice across the globe. The Committee therefore finds that the allegation of devaluation of the property was not established.

- (d) On the allegation that the landfill site was directly in the flight path leading to Kisumu Airport and therefore posed a threat to aircrafts flying over the area, a report was presented by the Kenya Civil Aviation Authority (KCAA), after visiting the landfill in Kajulu and the dumpsite in Kajok. The KCAA reported that the Kajulu landfill did not attract scavenger birds and there was no visible solid waste on the ground. The Committee therefore finds that, as at the time of writing this Report, there was no proof that the Kajulu landfill was a threat to aircrafts flying over the area. Regular monitoring of the site was however necessary to ensure that the Kajulu landfill to ensure that any future threats are promptly identified and addressed.
- (e) On the allegation that the County Government of Kisumu irregularly awarded the tender for transportation of the semi-inert waste from Kachok dumpsite to the Kajulu landfill and at an excessive price above market rates, the Committee was not presented with any evidence to support this allegation and could therefore not make any determination as to whether the procurement in respect of this matter complied with the relevant procurement laws. The Committee therefore recommends that this report be submitted the Ethics and Anti-Corruption Commission for investigation.

Recommendations

9. In view of the foregoing, the Committee recommends as follows-

Public participation

10. Waste management in any city is a legitimate concern of its residents as poor waste disposal practices pose a serious threat to the health and the overall wellbeing of the community. It is therefore important that county governments are intentional about creating public awareness on their waste management policies and are responsive to residents who may express concern of any aspect of waste disposal within the county.

11. Going forward therefore, the Committee recommends that the County Government of Kisumu creates awareness on its waste management policy and sensitizes the local leaders and the members of the public on the proposed Kisumu Integrated Solid Waste Management Plan so as to allay and fears or concerns over the manner in which waste is managed or proposed to be managed within Kisumu County.

Kajulu landfill site

12. In respect of this issue, while the Petitioner did not present any evidence to demonstrate that the Kajulu site poses a threat to the environment or to flights over the area, the Committee recommends regular monitoring of the site by the National Environment Management Authority and the Kenya Civil Aviation Authority and requests that any violations or threats to the environment that may be identified by the said Authorities be brought to the urgent attention of the Committee.
13. The Committee particularly notes the National Environment Management Authority's undertaking to continually supervise the Kajulu site in respect of its underground water and therefore recommends that the Petitioner and other local leaders be notified of any concern or breach that may be observed in the future.
14. Due to the COVID-19 situation, the Committee was not able to visit the Kajulu landfill and the Kachok Dumping Site during the inquiry, but the Committee undertakes to do so when the Committee next travels to Kisumu County.

The Kachok Dumping Site

15. The Committee also noted KCAA's recommendation that the closure of the Kachok Dumping Site and the relocation of the dumpsite from Kachok Dumping Site to the proposed Kases plant be accelerated to mitigate aviation risks as it falls within 13 km radius from Kisumu International Airport Aerodrome reference point. The Committee therefore recommends that the KCAA also monitors the Kachok Dumping Site regularly until it is fully decommissioned.

Allegations of impropriety in award of the Kajulu landfill tender

16. The Committee recommends that this Report be submitted the Ethics and Anti-Corruption Commission for investigation of the allegations and prosecution of any persons found culpable.

Waste Management in the Counties

17. The county governments, which are vested with the mandate of waste management, including the Kisumu County Government, should adhere to the National Solid Waste Management Strategy, 2015 and the Best Practice Guidelines on Rehabilitation of disused/abandoned Quarries using Semi-Inert Wastes have been published to guide County Governments towards sound waste management and disposal that were developed by the National Environment Management Authority.

The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP

(c) Report of the Committee on the Petition regarding the National Housing Policy (Residents of Lumumba and Kibuye Estates in Kisumu County)

The Committee adopted its report with the following recommendations;

- (iii) Exercise its constitutional obligation under Articles 94 and 96 of the Constitution to enact the National Housing Law that will give effect to all relevant articles in the Constitution with regards to right to housing in terms of availability, affordability, accessibility and adequacy

The Committee recommends that the Cabinet Secretary, Ministry of Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works finalizes the development of the Housing Bill and submits to the Committee the Bill or a status update on the development of the Bill within three months of the tabling of this Report, and in any case not later than 28th February, 2021.

- (iv) Causes public and private partnerships between the national and county Governments on affordable housing to be put on hold pending the enactment of a National Housing Policy.

The Committee recommends that the County Executive Committee member responsible for housing in Kisumu County Government forthwith ensures that it collects rent from people residing in its properties and takes enforcement measures available to them to ensure that the County Government receives monies due to it to enable the County Government offer services to all the people of Kisumu County.

The Committee further recommends that the Senate Business Committee comes up with criteria for consideration of Petitions before they referred to Committees to ensure that the use of the time and resources of the Senate and its Committees are used prudently to protect public interests as opposed to protection of private interests of honest and dishonest people alike.

The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP

(d) Report of the Committee on the Petition regarding the Siltation of Lake Magadi

The Committee adopted its report with the following recommendations;

- a) Ensuring that siltation to the lake is prevented;

The Committee recommends that the Cabinet Secretary for the National Treasury and Planning forthwith allocates the Ministry of Environment and Forestry funds for the prevention of siltation to Lake Magadi and submit to the Committee a status update on the allocation of the funds within six months of the tabling of this Report, and in any case not later than 31st May, 2021.

The Committee further recommends that the Cabinet Secretary, Ministry of Environment and Forestry, immediately funds are allocated, undertakes the prevention of siltation to Lake Magadi and submit to the Committee a status update on the prevention exercise within nine months of the tabling of this Report, and in any case not later than 31st August, 2021.

- b) Ensuring that appropriate interventions, regulations and guidelines are put in place to ensure and promote sustainable land use practices and prevent soil and water degradation upstream of Lake Magadi.

The Committee recommends that the Cabinet Secretary, Ministry of Environment and Forestry, in collaboration with NEMA, collate information on charcoal burning in the water catchment areas of Lake Magadi with a view to ensuring that the same is done sustainably and in compliance with environment law and submit to the Committee a status update on its progress within three months of the tabling of this Report, and in any case not later than 9th February, 2021.

The Committee further recommends that the Cabinet Secretary, Ministry of Environment and Forestry carries out a comprehensive tree planting exercise in the water catchment areas of Lake Magadi and submit to the Committee a status update on its progress within three months of the tabling of this Report, and in any case not later than 9th February, 2021.

The Committee also recommends that the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Co-operatives formulates and implements sustainable and environmentally efficient crop cultivation and livestock grazing practices in the water catchment areas of Lake Magadi and submit to the Committee a status update on its progress within nine months of the tabling of this Report, and in any case not later than 31st August, 2021.

The Committee recommends that the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works surveys

infrastructure projects undertaken by the National Executive and submit to the Committee a report on the measures it has taken to dispose of debris, excavated and other remains from the projects within six months of the tabling of this Report, and in any case not later than 30th June, 2021.

The Committee further recommends that the County Executive Committee member responsible for public works in Narok County surveys infrastructure projects undertaken by the County Government and submit to the Narok County Assembly a report on the measures it has taken to dispose of debris, excavated and other remains from the projects within six months of the tabling of this Report, and in any case not later than 30th June, 2021.

The Committee further recommends that the County Executive Committee member responsible for public works in Kajiado County surveys infrastructure projects undertaken by the County Government and submit to the Kajiado County Assembly a report on the measures it has taken to dispose of debris, excavated and other remains from the projects within six months of the tabling of this Report, and in any case not later than 30th June, 2021.

The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP

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

The Committee resolved to await the submissions from the Ministry of Interior and Coordination of National Government before it makes its final recommendation on the matter.

MINUTE SEN/SCLNDR/301/2020: ANY OTHER BUSINESS;

The Committee discussed the following invitations and resolved that a letter be done to the Speaker seeking for exemption from the ruling against physical sittings of committees.

- i). Request for a Breakfast Dialogue with the Kenya Land Alliance(KLA) on land matters under the Land Sector and registration of Communally held Lands on Wednesday, 18th November, 2020 7.00am – 10.00am;
- ii). Working Retreat on the Consideration of the Intended Nationally Determined Contribution (INDC) to the United Nations Framework Convention on Climate Change, UNFCCC hosted by the Ministry of Environment and Forestry in Naivasha, on 20th and 21st November, 2020; and

- iii). Stakeholder consultations on the Water Sector Regulations and National Water Policy hosted by the Ministry of Water, Sanitation and Irrigation on 27th and 28th November, 2020.

MINUTE SEN/SCLNR/302/2020: DATE OF NEXT MEETING;

The meeting was adjourned at 1.00 pm and the next meeting was scheduled for 18th November, 2020.

Signed:  Date: 19/11/2020

SEN. PHILIP MPAAYEI, MP
VICE CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES



B. ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS

(Attached separately)