

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

THIRD SESSION

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

REPORT ON THE PETITION TO THE SENATE ON NON PAYMENT OF
COMPENSATION FOR LAND COMPULSORILY ACQUIRED TO
CONSTRUCT MWATATE-TAVETA-HOLILI ROAD

Clerk's Chambers,
Parliament Buildings,
P. O. Box 41842-00100,
NAIROBI.

OCTOBER, 2019

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List of Abbreviations/ Synonyms

1. CS - Cabinet Secretary
2. KENHA - Kenya National Highways Authority
3. MOLPP - Ministry of Land & Physical Planning
4. NLC - National Land Commission

PREFACE

Mr. Speaker sir,

The Standing Committee on Lands, Environment and Natural Resources is established pursuant to Standing Order No. 218(3). As set out in the Second Schedule, the Committee's assigned subject matter is to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

Committee Membership

- | | |
|---------------------------------------|--------------------|
| 1. Sen. Mwangi Paul Githiomi, M.P. | - Chairperson |
| 2. Sen. Prengei Victor, M.P. | - Vice Chairperson |
| 3. Sen. George Khaniri, MGH, M.P. | - Member |
| 4. Sen. Godana Hargura, M.P. | - Member |
| 5. Sen. Mwaruma Johnes, M.P. | - Member |
| 6. Sen. Sylvia Kasanga, M.P. | - Member |
| 7. Sen. Ndwiga Peter Njeru, EGH, M.P. | - Member |
| 8. Sen. Halake Abshiro, M.P. | - Member |
| 9. Sen. Boy Issa Juma, M.P. | - Member |

This report is on a Petition concerning the nonpayment of compensation for land compulsorily acquired to construct Mwatate- Taveta- Holili Road. The Petitioners submitted their prayers in line with Articles 37 and 119 of the Constitution and guided by the provisions of the *Petition to Parliament (Procedure) Act* and the *Senate Standing Orders*.

The Petitioners prayed that the Senate-

1. Deals with this petition immediately in view of the urgency and seriousness of the matters raised herein.

2. Investigates the circumstances that led to the nonpayment of compensation to the 28 members and any other member eligible for compensation from this project.
3. Recommend that the 28 members and any other person eligible for compensation along the Mwatate-Taveta -Holili road be promptly paid.
4. Takes any other appropriate action it deems fit.

The Petition

Pursuant to the standing order 226(1)(a) and 230(2)(b) of the Senate Standing Orders, the Speaker of the Senate reported to the House a Petition submitted through the Clerk of Senate by seven (7) residents of Mwatate Constituency, Taita Taveta County. Pursuant to standing order 232(1), the petition stood committed to the Land, Environment and Natural Resources Committee.

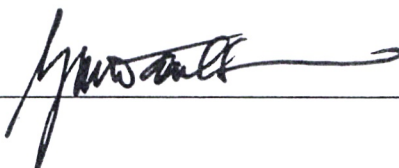
The Committee undertook to investigate and determine the prayers of the petitioners pursuant to standing order 220 of the Senate Standing Orders. It also received submissions from the Petitioners and various key stakeholders including the National Land Commission .

ACKNOWLEDGEMENT

The Committee acknowledges the time and considerable effort made by all parties who volunteered information before it. I also express my gratitude to my colleagues for their thoughtful and considerate contributions to the matter. Further the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating the work of the Committee in undertaking its constitutional mandate. We also recognize the commitment and dedication of the Committee Secretariat that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

It is now my pleasant duty to table the report of the Senate Standing Committee on Land, Environment and Natural resources in relation to the Petition concerning nonpayment of compensation for land compulsorily acquired to construct Mwatate-Taveta- Holili Road.

Signed:  Date: 23-10-2019

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

CHAPTER I

INTRODUCTION

1.0 The right to petition

The right of Kenyan citizens to petition public authorities and Parliament is a right conferred by the Constitution under Articles 37 and 119 and by the *Petition to Parliament (Procedure) Act* as well as the *Standing Orders* of Senate. The right to petition is an essential citizen participatory tool, as it provides an avenue for Members of Parliament and citizens to interact with the issues that concern citizens, and also demonstrates that Parliament is prepared to directly intervene on the issues of concern in order to promote and protect the rights of the citizens.

1.1 Background to the Petition

Pursuant to standing order 226 (1) of the Senate Standing Order, the petition was submitted, through the Clerk, by residents Chawia ward of Taita Taveta County, being representatives of about 28 persons whose land was compulsorily acquired to construct Mwatate -Taveta-Holili road but were yet to be compensated.

The salient issues raised in the said Petition are:

1. THAT their parcels of land which lie in Chawia-Wumari Sechu land registration section were compulsorily acquired by the National Land Commission to construct Mwatate-Taveta-Holili road via Gazette Notice No. 7709 of 23rd September, 2016.
2. THAT despite being given compensation award letters in 2016, the following were yet to be paid their dues.

| Plot owner | Registration section |
|--|--------------------------|
| Johnson Mjomba | Chawia/Wumari/Sechu/A52b |
| Griffin Crispus Sikukuu Msagha | Chawia/Wumari/Sechu/A53 |
| Denaise Samba Kafuse | Chawia/Wumari/Sechu/A54a |
| Penina Machecho Mwandoe | Chawia/Wumari/Sechu/A55c |
| Penina Mailengo Kitonga | Chawia/Wumari/Sechu/A55d |
| George Mongo and Florence Manga Kambucha | Chawia/Wumari/Sechu/A55e |
| Samwel Kuwona Cherugha | Chawia/Wumari/Sechu/A55f |

| | |
|--|----------------------------|
| Livingstone Mwawasi Mwangwai | Chawia/Wumari/Sechu/A55g |
| Stanley Kirubai and Gabriel Mcharo Ligha | Chawia/Wumari/Sechu/A55h |
| Florence Mkira Mbokomu | Chawia/Wumari/Sechu u/A55j |
| Ngerere Mwakitau and Rejoice Marura Kezia. | Chawia/Wumari/Sechu/A55k |
| Mgharo Benja | Chawia/Wumari/Sechu/ASSI |
| Mombo Ngala and Timothy Mwakio Mwazo | Chawia/Wumari/Sechu/A55m |
| Fidelis Ngondo Kichimbi | Chawia/Wumari/Sechu/A55n |
| Peter Shake Msagha | Chawia/Wumari/Sechu/A5p |
| Mathias Mghanga Mcharo | Chawia/Wumari/Sechu/A55Q |
| Mwawasi Mwazo Mwangombe | Chawia/Wumari/Sechu/A55R |
| Grazelda Mrunde Mchawia | Chawia/Wumari/Sechu/A55S |
| Caroline Chao Mwdime | Chawia/Wumari/Sechu/A55T |
| James Shake Nvange | Chawia/Wumari/Sechu/A84a |
| Jackan Mwaiyu Mombo | Chawia/Wumari/Sechu/A84b |
| Phenescus Mshimba Koti Kaya | Chawia/Wumari/Sechu/A84c |
| MhifLMehanga Mcharo | Chawia/Wumari/Sechu/A84d |
| Kaya Cultural Shrine | Chawia/Wumari/Sechu/A84e |
| Ronald Lela Mwagharo. | Chawia/Wumari/Sechu/A84f |
| Anderson John Isaka Kishere | Chawia/Wumari/Sechu/A84g |
| Peter Muya and James Shake | Chawia/Wumari/Sechu/A84h |
| Fredrick Mwamburi | Chawia/Wumari/Sechu/A52 |
| | |

3. THAT the members have on diverse dates spent huge sums of money and time in following up their payment with the Kenya National Highways Authority (KENHA) without success.
4. THAT the members are concerned that the more the payment delays, the more the money loses value.
5. THAT the delay in payment contravenes section 111 of the Land Act of 2012 which states that “if land is acquired compulsorily under this act, just compensation shall be paid promptly in full to all persons whose interest in the land has been determined”.
6. THAT the members have made every effort to resolve the matters raised in the Petition with the Kenya National Highways Authority (KENHA) to no avail.
7. THAT there is no case pending in a court of law, constitutional or any other legal body on the matters raised in the Petition.

The Petitioners prayed that the Senate -

- a) Deals with the Petition immediately in view of the urgency and seriousness of the matters raised therein.
- b) Investigates the circumstances that led to the nonpayment of compensation to the 28 members and any other member eligible for compensation from the project.
- c) Recommends the 28 members and any other person eligible for compensation along the Mwatate-Taveta -Holili Road be paid immediately.
- d) Takes any other appropriate action it deems fit.

CHAPTER 2

APPROACH OF THE COMMITTEE

The Committee examined and analyzed the issues raised by the petitioners and embarked on a process to identify the necessary action to take on the prayers submitted by the petitioners. The Committee invited the National Land Commission and thereafter conducted a site visit.

The Committee site visit was conducted on 10th May, 2019.

The sole objective of the Committee was to obtain as much information and facts on the subject matter so as to reply to the prayers of the petitioners conclusively and make recommendations on all issues pertaining to the Petition.

2.1 Committee Proceedings

i. Deliberative sessions

In the exercise of its mandate the Committee held deliberative sessions with the following:

- (a) The Petitioners
- (b) The National Land Commission

ii. Documents review

The Committee reviewed documents presented to it by the petitioners and they are annexed in this report (Annex II). Among the annexes presented were;

- i). Petitioner's presentation,
- ii). Presentation by the National Land Commission

iii. Site Visit to Mwatate-Taveta-Holili Road, Taita Taveta County

The committee also met with the Petitioners at Holili- Mwatate Road to respond to the Petition to the Senate on land used for construction of the Holili – Taveta - Mwatate Road and the Petitioners presented the following issues to the Committee;

- a) That during the construction of the road a survey was done and the affected persons' land was estimated for compensation but since then many people have yet to be compensated.
- b) The process of compensation for those people who were compensated was unfair because some people were paid more for small piece of land while others being paid less for large piece of land hence the valuation was contradicting and not clear to them.
- c) Compensation took so long that the road was completed without them being compensated, with some of the Petitioners being old men and women who seem hopeless and fear that they may die before receiving compensation.
- d) There was land grabbed on Mwatate and used to build a Police station without the consent of the owners or even compensation.



Figure 1: Petitioners and local leaders together with other stakeholders from Holili in Taita Taveta County on 10.5.2019. (Taita Taveta County)

CHAPTER 3

SUBMISSIONS TO THE COMMITTEE

This section contains the summaries of the submissions made to the Committee during the sessions and as contained in documents submitted to it.

3.1 Submissions by the Petitioners

The petitioner submitted as follows-

1. THAT their parcels of land which lie in Chawia-Wumari Sechu land registration section were compulsorily acquired by the National Land Commission to construct Mwatate-Taveta-Holili road via gazette notice 7709 of 23rd September, 2016.
2. THAT despite being given compensation award letters in 2016, various persons were yet to receive their compensation.
3. THAT the members have on diverse dates spent a lot of money and time in following up their payment with the Kenya National Highways Authority (KENHA) without success.
4. THAT the members are concerned that the more the payment delays, the more the money loses value.
5. THAT the delay in payment contravenes section 111 of the Land Act of 2012 which states that *“if land is acquired compulsorily under this act, just compensation shall be paid promptly in full to all persons whose interest in the land has been determined”*.
6. THAT the members have made every effort to resolve the matters raised in this petition with the Kenya National Highways Authority (KENHA) but their efforts have proven futile.
7. THAT there is no case pending in a court of law, constitutional or any other legal body on the matters raised in the Petition.

3.2 Submissions by the National Land Commission

The National Land Commission responded as follows to the issues raised in the Petition:

| ITEM | DETAILS |
|---|---|
| Request for Compulsory Acquisition | From Kenya National Highways Authority (KeNHA) (General Manager - design & construction) Ref. KeNHA/D&C/A23/Vol.3 (67) dated 24 st August 2013. |
| Notice of intention to acquire | Published in the Kenya Gazette notice No. 13942 of 18 th October 2013. |
| Field Inspections for purposes of valuation | Done by Rtd. Valuer Elias G. Rwigi and later handled by Ag. Director Valuation & Taxation Fidelis K. Mburu and Chief Valuation Officer Mariko K. Kaliamoi. |
| Inquiry | Published in Kenya Gazette notice No. 13943 of 18 th October 2013, further sittings gazetted in notice number 1174 of 26 th February, 2016. Inquiry for the subject parcels were gazetted in notice number 7709 of 23 rd September 2016 and held at the Mwatate DCC's office (Chiefs office) as scheduled on 1 st October 2016. |
| Issuance of Awards | Awards issued on 12 th April, 2017 |
| Receipt of compensation funds | From KeNHA vide letter ref. KeNHA/F/NLC/6/VOL. 1/3 110 dated 20 th December 2018 |

That it is a fact that compensation for the entire road project progressed on very well and was almost complete. *However, the petitioners' compensation delayed as a result of a late road corridor re-alignment necessitated by suitability considerations - which is the jurisdiction of KeNHA and the contractors.*

That the initial list had therefore to be de-gazetted (Gazette notice number 1174 of 26th February, 2016) and the new alignment added. Both the NLC and KeNHA have been keen to settle the matter as evidenced by the follow up to gazette the new alignment and remission of compensation funds.

That from the funds remitted, the NLC paid out in March, 2019 the following *two Project Affected Persons who had complete documentation;*

- i). Johnson Mjomba Mwamburi - Chawia/Wumari/Sechu/A52b
- ii). Florence Manga Machila - Chawia/Wumari/Sechu/A55e

That in addition, the NLC in liaison with the office of the Hon. Member of Parliament for Mwatate and the affected persons has prepared compensation payments for *14 project affected persons indicated below.*

- 1. Griphin Crispus Sikukuu Msaga - Chawia/Wumari/Sechu/A53
- 2. Solomon Mwakazo Daudi - Chawia/Wumari/Sechu/A54a
- 3. Penina Machocho Mwandoe - Chawia/Wumari/Sechu/A55c
- 4. Samuel Kuwona Cherezugha - Chawia/Wumari/Sechu/A55f
- 5. Livingstone Mwawasi Mwangwai - Chawia/Wumari/Sechu/A55g
- 6. Stanley Kirubai Mwakwenda - Chawia/Wumari/Sechu/A55h
- 7. Florence Mkiwa Mbokomo - Chawia/Wumari/Sechu/A55j
- 8. Rejoice Marura Kizela - Chawia/Wumari/Sechu/A55k
- 9. Timothy Mwakio Mwazo - Chawia/Wumari/Sechu/A55m
- 10. Fidelis Ngondo Kighimbi - Chawia/Wumari/Sechu/A55n
- 11. Peter Shake Msagha - Chawia/Wumari/Sechu/A55p
- 12. Oliver Mwakughu - Chawia/Wumari/Sechu/A84b
- 13. Phenescus Mshimba Koti - Chawia/Wumari/Sechu/A84d
- 14. Anderson John Isaka Kishere - Chawia/Wumari/Sechu/A84g

That payments for the above project affected persons are on-going. Payment approvals have been granted. The affected persons should expect money in their accounts by Monday 9th September, 2019.

That the following ten land owners are yet to avail complete documentation to enable processing of payment:

1. Penina Nailengo Kitonga - Chawia/Wumari/Sechu/A55d
2. Mgharo Benjamin - Chawia/Wumari/Sechu/A55l
3. Mathias Mghanga Mcharo - Chawia/Wumari/Sechu/A55q
4. Mwawasi Mwazo Mwangombe - Chawia/Wumari/Sechu/A55r
5. Grazelda Mrunde Mchawia - Chawia/Wumari/Sechu/A55s
6. Caroline Chao Mwadime - Chawia/Wumari/Sechu/A55t
7. James Shake Nyange - Chawia/Wumari/Sechu/A84a
8. Jackan Mwaivu Mombo - Chawia/Wumari/Sechu/A84c
9. Ronald Lela Mwagharo - Chawia/Wumari/Sechu/A84f
10. Peter Muya & James Shake - Chawia/Wumari/Sechu/A84h

The NLC reiterated its commitment to fulfill the Constitutional and statutory requirement of full and prompt payment to all projected affected persons along the Mwatate-Taveta/Holili (A23) road project. It has already commenced a compensation audit to flag out cases of non-payment for all road projects - 45 projects across the country and expect to complete the exercise by 13th September 2019. Payments shall be made thereafter.

CHAPTER 4

COMMITTEE OBSERVATIONS

The committee made the following observations in line with the prayers of the Petitioner -

1. On the prayer that the Senate deals with the Petition immediately in view of the urgency and seriousness of the matters raised herein;

The Committee observed that the Senate had proceeded with speed to refer the Petition to the Committee and that the Committee, with the same speed, proceeded to intercede for the Petitioners and ensure that their compensation was undertaken even before reporting back to the Senate.

2. On the prayer that the Senate investigates the circumstances that led to the nonpayment of compensation to the 28 members and any other member eligible for compensation from the project;

The Committee observed that it was able to hold discussions with the National Land Commission and facilitate their prioritization of the matter. The National Land Commission speedily began finalizing compensations of persons affected along the entire project.

3. On the prayer that the Senate recommends that the 28 members and any other person eligible for compensation along the Mwatate-Taveta-Holili Road be paid immediately;

The Committee observes that the persons affected have since been paid and the matter has been adequately addressed. Attached to this report is the list of persons compensated.

CHAPTER 5

COMMITTEE RECOMMENDATIONS

From the foregoing, the Committee now makes the following recommendations-

The Committee recommends that the National Land Commission should liaise with the Kenya Highways Authority (KENHA) to ensure that any other person along the same road Mwatate -Taveta-Holili road is, without any further delay, adequately compensated.



NATIONAL LAND COMMISSION

Telegrams: "MINILANDS", Nairobi
Telephone: Nairobi 2718050
When replying please quote

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

REF: NLC/FIN.1

The Managing Director
National Bank of Kenya Limited
P.O. Box 30121-00100
NAIROBI

Date: 9th September, 2019.

**COMPENSATION PART PAYMENT FOR MWATATE -TAVETA/HOLILI (A23)
ROAD PROJECT KSHS.9,137,273.00**

The above mentioned subject matter refers.

We kindly request you to transfer the above amount from our Account No. 01001032980000 to the Individual Accounts as per the attached schedule. Cheque No.001896 totaling to **Kshs.9,137,273.00**(Shillings Nine Million, One Hundred Thirty Seven Thousand, Two Hundred Seventy Three only) Payable to yourselves is attached.

Kindly return to us the attached copy of this letter stamped received.

.....
Kabale Arero Tache
AUTHORIZED SIGNATORY

.....
Bernard Kibet Cherutich
AUTHORIZED SIGNATORY

*3 months back Part
Please process payment as per
approval at 2) Kshs 9,382,015/-
10/9/2019*

@ Ag. Director Valuation & Tax



*Kshs 9,382,015/- is
approved based on your
confirmation and confirmation
that due diligence has
been done by you
and that no award
with court order has
been paid*

INTERNAL MEMO

| | |
|--|--|
| <p>To: Ag. Secretary/CEO</p> <p>Ref: VAL. 1478/III/2</p> | <p>From: Ag. Director, Valuation & Taxation</p> <p>Date: 3rd September, 2019</p> <p><i>for app dmp 9/9/19</i></p> |
|--|--|

CONSTRUCTION OF MWATAIE – TAVETA/HOLILI (A23) ROAD

We refer to the above land acquisition that was initiated through KeNHA's letter Ref. KeNHA/DEC/A23/Vol.3(67) dated 24th August 2013 and gazette notice numbers 13942 & 13943 of 2013.

The Kenya National Highways Authority deposited into the Commission's Account compensation

We hereby attach a schedule of twenty four (24) PAPs amounting to Kshs. 9,382,015.00 (Read: Nine Million, Three Hundred and Eighty Two Thousand, Fifteen only.) Kindly approve for disbursement of funds as per the Land Acquisition Committee Meeting on 20th November 2018, under 3/20/11/2018 (copy attached)

The Ag. Director has undertaken due diligence and further adhered to the Land Act 2012 on compulsory acquisition in furtherance of advice of the Commission to release compensation.

Kindly approve for the Director, Finance & Administration to process the compensation.

[Signature]

MPURU E. K.
AG. DIRECTOR, VALUATION & TAXATION

*Compensation
 1283
 9/9/19
 9,382,015 (Nine Million Three
 Hundred and Eighty Two
 Thousand and
 Fifteen only)*



DATE : 9/9/2019

CHQ NO 1890

COMPENSATION PART PAYMENT FOR CONSTRUCTION OF MWATATE -TAVETA /HOLILI (A23)ROAD

| S/NO. | PARCEL NO | ACQ.AREAD | PAYEE | ID NO. | KRA | BANK | Branch | ACCOUNT | CODE | AMOUNT |
|--------------|-----------------------------|-----------|--------------------------|---------|-------------|-------|--------|----------------|-------|-------------------|
| 1 | Chawia/Wumari Sechu/A55t | 0.4075 | Caroline Chao Mwadime | 5348480 | A009794871Q | CO-OP | VOI | 01109222459500 | 11059 | 578,986.00 |
| 2 | Chawia/Wumari Sechu/A55t | 0.1325 | Grazeldah Mrunde Mchawia | 5348403 | A008221808E | KCB | VOI | 1208830031 | 01186 | 188,259.00 |
| TOTAL | | | | | | | | | | 767,245.00 |

.....
Kabale Tache Arero
AUTHORIZED SIGNATORY

.....
Bernard Kibet Cherutich
AUTHORIZED SIGNATORY

MINUTES OF THE 27TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 23RD OCTOBER, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Godana Hargura, M.P.
4. Sen. Ndwiga Peter Njeru, EGH, M.P.
5. Sen. George Khaniri, MGH, M.P.
6. Sen. Boy Issa Juma, M.P.
7. Sen. Halake Abshiro, M.P.

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Mwaruma Johnes, M.P. - Member
2. Sen. Sylvia Kasanga, M.P. - Member

IN ATTENDANCE

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Caroline Cheruiyot - Legal Counsel
3. Mr. Abdalla Mbore - Sergeant at arms
4. Mr. Eugene Luteshi - Audio Recording

MINUTE SEN/SCLN/157/2019: PRELIMINARIES

The meeting was called to order at 11.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLN/158/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Halake Abshiro, M.P. and seconded by Sen. Godana Hargura, M.P as follows.

1. Preliminaries;
 - *Prayer*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. **Adoption of Committee Reports;**
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLNDR/159/2019: CONFIRMATION OF MINUTES

The Minutes of the 24th sitting held on 25th September, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Godana Hargura, M.P. respectively.

The Minutes of the 20th sitting held on 12th August, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Boy Issa Juma, M.P. respectively.

The Minutes of the 11th sitting held on 4th April, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Boy Issa Juma, M.P. respectively.

The Minutes of the 5th sitting held on 20th February, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Prengei Victor, M.P. and seconded by Sen. Halake Abshiro, M.P. respectively.

MINUTE SEN/SCLNDR/160/2019: MATTERS ARISING

There were no matters arising.

MINUTE SEN/SCLNDR/161/2019: ADOPTION OF COMMITTEE REPORTS

The following reports were adopted by the Committee:

- (a) Report on the Petition regarding Adverse environmental and social effects arising from the construction of Phase 2A of the Standard Gauge Railway (Nairobi – Naivasha Section);

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (b) Report on the Petition regarding Budgetary support to Wildlife Conservancies for sustainable conservation and community development;

The report was adopted after having been proposed and seconded by Sen. Prengei Victor, M.P. and Sen. Boy Issa Juma, M.P. respectively.

- (c) Report on the Petition regarding Alleged unlawful deprivation of a parcel of land situated in Kaputiei North, Kajiado County;

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Ndwiga Peter Njeru, M.P. respectively.

- (d) Report on the Petition regarding Ownership of Mgeno Land Reserve;

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Prengei Victor, M.P. respectively.

- (e) Report on the Petition regarding Non-payment of compensation for land compulsorily acquired to construct Mwatate-Taveta-Holili Road;

The report was adopted after having been proposed and seconded by Sen. Boy Issa Juma, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (f) Report on the Petition regarding the Alleged grabbing of the part of the land allocated for settlement of the Petitioners at Kiang'ombe Squatters Settlement Scheme in Thika sub-County, Kiambu County

The report was adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (g) Report on the Petition regarding the effects of iron ore mining at Kishushe in Taita Taveta County.

The report was adopted after having been proposed and seconded by Sen. Prengei Victor, M.P. and Sen. Ndwiga Peter Njeru, M.P. respectively.

- (h) Report regarding the Committee's participation in the 8th World Water Conference held in Brasília, Brazil from 18th – 23rd March, 2018;

The report was adopted after having been proposed and seconded by Sen. George Khaniri, M.P. and Sen. Boy Issa Juma, M.P. respectively.

- (i) Report regarding the Committee's participation in the 14th Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) on Modern Mining Law and Policy 16th – 18th October, 2018.

The report was adopted after having been proposed and seconded by Sen. George Khaniri, M.P. and Sen. Prengei Victor, M.P. respectively.

- (j) Report regarding the Committee's participation in the 18th meeting of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Conference of the Parties (CoP 18) that was held in Geneva, Switzerland from 17th – 28th August, 2019.

The report was adopted after having been proposed and seconded by Sen. Boy Issa Juma, M.P. and Sen. Prengei Victor, M.P. respectively.

MINUTE SEN/SCLNDR/162/2019: ANY OTHER BUSINESS;

There were no other matters discussed during the meeting.

MINUTE SEN/SCLNLR/163/2019: DATE OF NEXT MEETING;

The meeting was adjourned at 10.29 am and the next meeting was to follow thereafter.

SIGNATURE  DATE 23-10-2019

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

B. PETITION BY RESIDENTS OF MWATATE CONSTITUENCY, TAITA TAVETA COUNTY ON THE OWNERSHIP OF MGENO LAND RESERVE;

The CS informed the Committee that they have embarked on a Rapid Response Initiative (RRI) to ensure titles are issued for the remaining 6000 acres in Land Reference Number 3880/3. They are currently working on 30,100 titles at the moment.

The Committee was informed that part of the land is being set aside for public utilities and a land bank for future use.

The CS assured the Committee that they are following the Community Land Act and that the County Government is holding the land in trust until the Community is registered for them to get a block title.

C. PETITION ON NON-PAYMENT OF COMPENSATION FOR LAND COMPULSORILY ACQUIRED TO CONSTRUCT MWATATE-TAVETA-HOLILI ROAD;

The CS informed the Committee that NLC is fully responsible and that the information they have, is that they have since submitted the list of beneficiaries.

D. STATEMENT REQUESTED BY SEN. JOHNES MWARUMA ON 21ST FEBRUARY, 2019 ON THE STATUS OF VOI SISAL ESTATE;

The Committee was further informed by the Senator, Taita Taveta that the parcel of land in question has remained private through fraudulent means and that the Ministry of Lands and Physical Planning needs to establish and investigate the procedure that was followed in acquiring the parcel of land.

The CS responded by informing the Committee that the Senator Taita Taveta can seek supplementary questions for answers from the Ministry of Lands and Physical Planning citing clearly the allegations raised.

E. CONCERN OF THE NAYNDARUA VILLAGES

The CS informed the Committee that plans were underway and that the resettlement will be completed by July, 2020 as what was set as the target date to have completed the exercise.

F. STATEMENT REQUESTED BY SEN. ANUAR LOITIPTIP ON 19TH MARCH, 2019 REGARDING THE LAND CRISIS IN LAMU COUNTY;

The Committee was informed that an advisory has been sought from the Attorney General on the matter since they cannot be able to revoke the Title deeds without an opinion for the Attorney General.

The National Land Commission informed the Committee that the section was repealed in 2017 and therefore revocation has now to be done through a court of law and are therefore working with the Attorney General to provide amendments in the law to return these powers back to the Commission.

G. STATEMENT REQUESTED BY SEN. JOHNSON SAKAJA ON 21ST MARCH, 2019 REGARDING THE COMPENSATION OF NAIROBI RESIDENTS IN MIHANG'O WARD, EMBAKASI EAST CONSTITUENCY BY KENYA POWER AND LIGHTING COMPANY FOR THE ILLEGAL DEMOLITION OF THEIR HOUSES;

The CS informed the Committee that this is a matter of Public Land being restored and that the Kenya Power and Lighting Company would be best placed to give a response.

H. PETITION ON THE ALLEGED GRABBING OF THE PART OF THE LAND ALLOCATED FOR SETTLEMENT OF THE PETITIONERS AT KIANG'OMBE SQUATTERS SETTLEMENT SCHEME IN THIKA SUB-COUNTY, KIAMBU COUNTY;

The Committee was informed that the matter has so far been settled and that the remaining part would be for NLC to give a comprehensive response on the matter.

The Committee is therefore waiting for a comprehensive response from the National Land Commission.

I. PETITION BY RESIDENTS OF GILGIL TOWNSHIP CONCERNING THE ALLEGED GRABBING OF PUBLIC UTILITY AND PRIVATE LAND AT LELESHWA, GILGIL TOWNSHIP, NAKURU COUNTY;

The Committee is waiting for a comprehensive response from the National Land Commission.

J. PETITION ON THE COMPENSATION AND RESETTLEMENT OF EVICTEES FROM MARMANET FOREST IN LAIKIPIA COUNTY;

The Committee was informed that the Ministry is trying to seek alternate land for the people of Marmanet. The Ministry currently does not have the money for that purpose.

The Committee was further informed that the Ministry has embarked on setting up a Committee to resettle the people of Marmanet together with NLC and that hopefully by

November, 2019 the Committee will have been in place.

K. PETITION ON IRON ORE MINING IN KISHUSHE AREA OF TAITA TAVETA COUNTY, THAT THEY ALLEGEDLY OBTAINED A TITLE (TITLE DEED NO. CR65748) FRAUDULENTLY THROUGH THE MANAGEMENT OF KISHUSHE COOPERATIVE RANCH

The CS informed the Committee that the matter of the Title deed for this parcel of Land is a matter that is currently active in court and wouldn't want to comment about it.

MINUTE/ SEN/SCLNR/139/2019: ANY OTHER BUSINESS

There was no other business discussed.

MINUTES/SEN/SCLNR/140/2019: ADJOURNMENT

The meeting was adjourned at 12.02 pm. The date of the next meeting was to be called on notice.

SIGNATURE..... DATE.....

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

MINUTES OF THE 21ST MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 4TH SEPTEMBER, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 10.00AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Ndwiga Peter Njeru, EGH. M.P.
4. Sen. George Khaniri, MGH, M.P.
5. Sen. Mwaruma Johnes, M.P.

PRESENT

- Chairperson
- Vice Chairperson
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Godana Hargura, M.P. - Member
2. Sen. Sylvia Kasanga, M.P. - Member
3. Sen. Boy Issa Juma, M.P. - Member
4. Sen. Halake Abshiro, M.P. - Member

IN ATTENDANCE

NATIONAL LAND COMMISSION

1. Ms. Kabale Tache - Ag. CEO/ Sec. NLC
2. Mr. Francis Bor - DCS NLC
3. Fidelis Mburu - Ag. Dir. Valuation
4. Dennis Mutungi - NLC Coordinator, Taita Taveta

NATIONAL ASSEMBLY

- Hon. Kabinga Wachira - MP Mwea Constituency

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Joyce Chelangat - Audio Recording
3. Ms. Hawa Abdi - SAA

MINUTE SEN/SCLN/123/2019: PRELIMINARIES

The meeting was called to order at 10.30 am by the Chairperson followed by a word of Prayer.

Thereafter the Chairperson called for a round of introductions.

MINUTE SEN/SCLNDR/124/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. George Khaniri, MP as follows;

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. **Meeting with the Cabinet Secretary Ministry of Lands and Physical Planning, and the CEO National Land Commission on Statements and Petitions before the Committee;**
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE/ SEN/SCLNDR/125/2019: MEETING WITH THE CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING, AND THE CEO NATIONAL LAND COMMISSION ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE

The Committee discussed the letter received from the Ministry of Lands and Physical Planning indicating that they were unable to attend owing to the fact that they were yet to receive official communication inviting them to the meeting.

The Committee was able to ascertain that indeed there was a letter sent to them and that the matter be discussed further during their appearance before the Committee on Thursday, 12th September, 2019.

Hon. Kabinga Wachira informed the meeting that he is representing the Senator Kirinyaga, Sen. Charles Kiburu who was held up elsewhere and was expected to attend the meeting owing to his statement on the Status of issuance of Title Deeds to the people of Mwea.

The Chairperson then invited the CEO NLC to take the Committee through responses that fall within their mandate and wouldn't require much input from the Ministry of Lands and Physical Planning.

A. STATEMENT REQUEST BY SENATOR KIBIRU CHARLES REUBENSON, SENATOR FOR KIRINYAGA

The NLC began by informing the Committee that the Statement request by Senator Kibiru Charles Reubenson, Senator for Kirinyaga would be better responded to by the Ministry of Lands and Physical Planning considering that matters of settlement schemes, surveying and issuance of title deeds are the domain of the Ministry of Lands and Physical Planning.

The Committee then resolved to revisit the matter when the Ministry of Lands and Physical Planning will be appearing before the Committee.

B. PETITION BY RESIDENTS OF MWATATE CONSTITUENCY ON THE OWNERSHIP OF MGENO LAND RESERVE LR 3880/3

They responded as follows:

The land that is the subject of the petition is public land in Mgeno area measuring approximately 6,404 acres. Within the boundaries of this parcel, there are some public amenities such as Mgeno primary school, churches and a public water pan. There are scattered human settlements inside it. The existing NYS Camp of approximately 20 acres is partly within this parcel of land and partly on the adjacent community land and needs to be protected as it is.

They informed the Committee that;

1. The land is the only available un alienated public land bank within this area.
2. It may be allocated to deserving residents with the approval of the County Government and NLC provided that enough public utilities are set aside.
3. The land has numerous interests and care should be taken so that it doesn't become a source of conflict amongst the interested parties.
4. After independence it was automatic that the land in question is converted to public land, thereafter after the 2010 Constitution of Kenya what was Government Land was converted to Public Land. The relevant records are at the survey of Kenya dominant at the Ministry of Lands and Physical Planning.

Mgeno Community Land 7,280 acres

Next to Mgeno reserve is the Mgeno Community Land that lies in between LR. 3880/3, Ndara "B" group ranch and Teri "B" group ranch. The parcel of land (community land) is approximately 7,280 acres.

This parcel of land has been requested for allocation by Mgeno reserve group ranch and Ndara 'B' group ranch. The request has not been approved since it is community land and it must be subjected to the relevant laws.

In responding to the Prayers they informed the Committee that;

- The process of conversion of community land to private land is provided for in the Community Land Act. They recommend that due process should be followed in the conversion and subsequent issuance of titles.
- The powers of the Commission to recommend revocation of titles lapsed in May 2017. They would appreciate support of the Senate in the extension of Commission mandate under section 14 of the NLC to include another five years. This will enable the Commission to recommend revocation of irregularly or illegally issued titles.

The Committee then resolved to revisit the matter when the Ministry of Lands and Physical Planning will be appearing before the Committee.

C. PETITION ON NON PAYMENT OF COMPENSATION FOR LAND COMPULSORILY ACQUIRED TO CONSTRUCT MWATATE - TAVETA - HOLILI ROAD

They responded as follows:

| ITEM | DETAILS |
|---|--|
| Request for Compulsory Acquisition | From Kenya National Highways Authority (KeNHA) (General Manager -design & construction) Ref. KeNHA/D&C/A23/Vol.3 (67) dated 24 st August 2013. |
| Notice of intention to acquire | Published in the Kenya Gazette notice No. 13942 of 18 th October 2013. |
| Field Inspections for purposes of valuation | Done by Rtd. Valuer Elias G. Rwigi and later handled by Ag. Director Valuation & Taxation Fidelis K. Mburu and Chief Valuation Officer Mariko K. Kaliamoi. |
| Inquiry | Published in Kenya Gazette notice No. 13943 of 18 th October 2013, further sittings gazetted in notice number 1 174 of 26 th February 2016. Inquiry for the subject parcels were gazetted in notice number 7709 of 23 rd September 2016 and held at the Mwatate DCC's office (Chiefs office) as scheduled on 1 st October 20 16. |
| Issuance of Awards | Awards issued on 12 th April 2017 |

| | |
|-------------------------------|---|
| Receipt of compensation funds | From KeNHA vide letter ref. KeNHA/F/NLC/6/VOL. 1/3 1 1 0 dated 20 th December 20 1 8 |
|-------------------------------|---|

It is a fact that compensation for the entire road project progressed on very well and is almost complete. *However, the petitioner's compensation delayed as a result of a late road corridor re-alignment necessitated by suitability considerations - which is the jurisdiction of KeNHA and the contractors.*

The initial list had therefore to be de-gazetted (Gazette notice number 1174 of 26th February 2016) and the new alignment added. Both the Commission and KeNHA have been keen to settle the matter as evidenced by the follow up to gazette the new alignment and remission of compensation funds.

From the funds remitted, the Commission paid out in March 2019 the following *two Project Affected Persons who had complete documentation;*

- i). Johnson Mjomba Mwamburi - Chawia/Wumari/Sechu/A52b
- ii). Florence Manga Machila - Chawia/Wumari/Sechu/A55e

In addition, the Commission in liaison with the Office of the Hon. Member of Parliament for Mwatate and the affected persons has prepared compensation payments for *14 project affected persons indicated below.*

- 1. Griphin Crispus Sikukuu Msaga - Chawia/Wumari/Sechu/A53
- 2. Solomon Mwakazo Daudi - Chawia/Wumari/Sechu/A54a
- 3. Penina Machocho Mwandoe - Chawia/Wumari/Sechu/A55c
- 4. Samuel Kuwona Cherezugha - Chawia/Wumari/Sechu/A55f
- 5. Livingstone Mwawasi Mwangwai - Chawia/Wumari/Sechu/A55g
- 6. Stanley Kirubai Mwakwenda - Chawia/Wumari/Sechu/A55h
- 7. Florence Mkiwa Mbokomo - Chawia/Wumari/Sechu/A55j
- 8. Rejoice Marura Kizela - Chawia/Wumari/Sechu/A55k
- 9. Timothy Mwakio Mwazo - Chawia/Wumari/Sechu/A55m
- 10. Fidelis Ngondo Kighimbi - Chawia/Wumari/Sechu/A55n
- 11. Peter Shake Msagha - Chawia/Wumari/Sechu/A55p
- 12. Oliver Mwakughu - Chawia/Wumari/Sechu/A84b
- 13. Phenescus Mshimba Koti - Chawia/Wumari/Sechu/A84d
- 14. Anderson John Isaka Kishere - Chawia/Wumari/Sechu/A84g

Payments for the above project affected persons are on-going. Payment approvals have

been granted. The affected persons should expect money in their accounts by Monday 9th September, 2019.

Finally the following ten land/owners are yet to avail complete documentation to enable processing of payment.

1. Penina Nailengo Kitonga - Chawia/Wumari/Sechu/A55d
2. Mgharo Benjamin - Chawia/Wumari/Sechu/A55l
3. Mathias Mghanga Mcharo - Chawia/Wumari/Sechu/A55q
4. Mwawasi Mwazo Mwangombe - Chawia/Wumari/Sechu/A55r
5. Grazelda Mrunde Mchawia - Chawia/Wumari/Sechu/A55s
6. Caroline Chao Mwadime - Chawia/Wumari/Sechu/A55t
7. James Shake Nyange - Chawia/Wumari/Sechu/A84a
8. Jackan Mwaivu Mombo - Chawia/Wumari/Sechu/A84c
9. Ronald Lela Mwagharo - Chawia/Wumari/Sechu/A84f
10. Peter Muya & James Shake - Chawia/Wumari/Sechu/A84h

The Commission reiterated its commitment to fulfill the Constitutional and statutory requirement of full and prompt payment to all projected affected persons along the Mwatate-Taveta/Holili (A23) road project. They have already commenced a compensation audit to flag out cases of non-payment for all road projects - 45 projects across the country and expect to complete the exercise by 13th September 2019. Payments shall be made thereafter.

The Committee was contended with the response.

D. STATEMENT REQUEST BY SEN. JONES MWARUMA ON THE STATUS OF LAND OWNED BY VOI SISAL ESTATE

They informed the Committee that the matter would well be responded to by the Ministry of Lands and Physical Planning but provided the following information;

Voi Sisal Estate sits on private land which is beyond the scope of NLC mandate. They however informed the Committee that;

1. This is private land.
2. CR No is. 51725
3. Approximate area-1,953ha
4. LR.NO-28683
5. Term 99 years W.e.f 1/1/1993
6. Annual rent payable-353,795/-

7. User- agricultural (owner grows sisal).
8. The parcel was transferred to Voi Plantations Ltd and later to Voi Point Ltd.
9. It was charged to Diamond Trust Bank for Kshs. 4 Billion on 31/1/2019 and further charged to the same bank for Kshs.800Million on 13/2/2019.
10. Some members of public (Mkamenyi residents) have developments on a section of the parcel.

The Committee then resolved to revisit the matter when the Ministry of Lands and Physical Planning will be appearing before the Committee and the glaring matter is why was the lease renewed yet the lease began in 1993.

E. STATEMENT REQUEST ON LAND CRISIS IN LAMU COUNTY BY SEN.ANUAR LOITIPTIP

They informed the Committee;

The National Land Commission reviewed land titles in Lamu upon a directive from his Excellency the President of the republic of Kenya on 31/7/2014. Pursuant to the directive, the Commission summoned parties affected to appear before it through a print media on Monday the 4th August, 2014 to make presentations on how they acquired the said parcels of land in Lamu. After hearings held in public hearings the Commission made recommendation on the various parcels as follows;

| S/No. | Parcel Number | Registered Proprietor | Commission 's recommendation |
|-------|---------------|--------------------------|---|
| 1. | LR No. 29113 | Brick Investment Ltd | Revoke the title and revert to the County Government of Lamu |
| 2. | LR No. 29111 | Rusken Investment Ltd | Revoke the title and revert to the County Government of Lamu |
| 3. | LR No. 29115 | Lamu & Tana Sugar Co Ltd | Revoke the title and revert to the County Government of Lamu |
| 4. | LR No. 29247 | Shanghai Investment Ltd | Revoke the title and revert to the County Government of Lamu |
| 5. | LR No. 29246 | Fincorp Investment Ltd | Revoke the title and revert to the County Government of Lamu |
| 6. | LR No. 29254 | Sheila Ranch Ltd | Revoke the title and revert to the County Government of Lamu |
| 7. | LR No. 29066 | Dynamic Trading CO ltd | Regularize to Dynamic Trading Co Ltd, The County Government of Lamu to consider part of this as an industrial zone. |

| | | | | | |
|-----|-------------|-----|--------------------------------------|----------|--|
| 8 | LR 29067 | No. | Savannah Fruits Ltd | Fresh | Regularize to Savannah Fresh Fruits Ltd, The County Government of Lamu to consider part of this as a conservation zone. |
| 9 | LR 29255 | No. | Khairallah Ranch | | Revoke the title and revert to the County Government of Lamu |
| 10. | LR 29323 | No. | Cyberdom Investment | | Revoke the title and revert to the County Government of Lamu |
| 11 | LR 29322 | No. | Kaab Investment Ltd | | Revoke the title and revert to the County Government of Lamu |
| 12 | LR 29260 | No. | Lamu Investment Ltd | | Revoke the title and revert to the County Government of Lamu |
| 13. | LR 13061 | No. | Engonani Ranch | | Differed for further investigations |
| 14. | LR 29110 | No. | Brick Investment Ltd | | Expunge from the register |
| 15. | LR 29274 | No. | Witu Nyongoro Cooperative Society | | Regularize but NLC and County to consider the interest of farmers, pastoralists and the squatters therein. |
| 16. | LR 29256 | No. | Mokowe Kiboroni | | Regularize and consider settling the squatters |
| 17. | LR 29252 | No. | Baragoni Community | Boni | Regularize the title |
| 18. | LR 29275 | No. | Pandanguo Community | Boni | Regularize the title |
| 19. | LR 26867 | No. | Amu Cooperative Society | Ranch | Regularize the Title |
| 20. | LR 23153 | No. | Maalim Company Ltd | Ranching | Uphold the title |

On 11th June 2019 we wrote to the Chief Land Registrar, Ministry of Lands & Physical Planning to confirm any action taken on the titles recommended for revocation. To date we have not received any response.

To protect innocent land owners from land grabbers the commission committed not to process any ownership documents derived from land grabbing. They encourage other stake holders to also play their role in protecting poor land owners as it is a shared responsibility

The Committee then resolved to revisit the matter when the Ministry of Lands and Physical Planning will be appearing before the Committee to ascertain whether the title deeds were revoked.

F. STATEMENT REQUEST BY SENATOR JONES MWARUMA ON STATUS OF THE LAND OCCUPIED BY IKANGA AIRSTRIP IN VOI

They informed the Committee that;

Ikanga airstrip in Voi is under the management of KAA and it is entirely fenced.

The plot is surveyed and has an FR No. 32/228. LRNo. 6866. The runway has encroached 12 privately owned parcels of land. The affected parcels are within Mbololo/Mraru section.

| SNo. | Parcel number | Area encroached (ha) |
|------|---------------|----------------------|
| 1. | 3588 | 026 |
| 2. | 3071 | 019 |
| 3. | 3584 | 004 |
| 4. | 3070 | 043 |
| 5. | 3582 | 031 |
| 6. | 3313 | 033 |
| 7. | 3352 | 049 |
| 8. | 3976 | 004 |
| 9. | 3975 | 016 |
| 10. | 4014 | 005 |
| 11. | 4015 | 002 |
| 12. | 4028 | 006 |
| 13. | Road reserve | 120 |

The Commission valuers visited the land in question from 27th to 30th August, 2019 and are compiling a valuation report to facilitate direct purchase of the affected land by KAA. Preliminary findings have confirmed that the 12 indicated parcels were affected by the airstrip. Over and above compensation of the land, there is need for KAA to provide an alternative access road. There might also be need to compensate land owners for the entire parcel when the remainder is rendered uneconomical. As agreed during their last appearance before the committee (3rd July, 2019) the compulsory acquisition option would be unnecessarily too long hence the need for direct purchase by the acquiring body.

The Committee requested that a copy of the valuation report that is being sent to KAA is shared with the Committee.

G. STATUS OF THE LAND OCCUPIED BY THE PRISONS DEPARTMENT (ORE AREA) IN VOI

They informed the Committee that;

The parcel of land was initially government land and reservation was made by the former commissioner of lands in 1990.

A part Development plan was drawn in favor of the prisons department in 1990 and approved by the commissioner of lands on 6/12/1991 as approved DP No. 83.

The size of land is approximately 40.50ha.

The section that is developed -approx. 20 acres is the section that was leased by the prisons department to the SGR team. It has site offices, some residential houses and a go downs that were used by the construction team. The rest of it is bushy.

During the construction of the standard gauge railway line, approximately 3.93ha was acquired by the government leaving the department with approx. 36.57ha.

Then, the SGR project manager-China Road and Bridge Cooperation (Kenya) requested the government to set up a temporary camp on this land a request which was granted.

After the project was complete and the construction team having left, a local resident claiming to be the caretaker of the SGR facilities decided to lease out the structures to some local tenants who are now engaged in hotel/kiosk businesses, running a private school and residential tenancy.

The matter was reported to the provincial administration by the Officer in charge (Voi-Prisons) but every time the tenants are being evicted the matter takes a political dimension.

The tenants claim that the land is their ancestral land.

The Committee resolved that:

- The PDP is shared with the Committee;
- Copy of the agreement that was signed for compensation during construction of the SGR;
- Who was paid the SGR compensation and how much was the amount;
- Copy of the request to government for use of the land that was granted; and

- An explanation of how the land was left to a caretaker to manage.

The Committee further instructed that no further development should be done on the land until the Committee has finished its inquiry into the matter.

H. REQUEST FOR STATEMENT BY SENATOR JOHNSON SAKAJA ON THE COMPENSATION OF NAIROBI RESIDENTS BY KENYA POWER AND LIGHTING COMPANY FOR DEMOLITION OF HOUSES IN MIHANGO WARD EMBAKASI

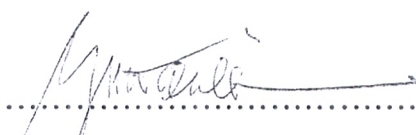
They informed the Committee that they indeed sympathize with the residents of Mihango ward following demolition of their houses by Kenya Power and Lighting Company that encroached KPLC way leave. They informed the Committee that this question would be best handled by KPLC since it has internal processes and personnel for acquisition of way leaves. The matter has also not been brought to the Commission by the relevant Cabinet Secretary as a compulsory acquisition concern.

MINUTE/ SEN/SCLNENR/126/2019: ANY OTHER BUSINESS

There was no other business discussed.

MINUTES/SEN/SCLNENR/127/2019: ADJOURNMENT

The meeting was adjourned at 12.48 pm. The date of the next meeting was scheduled for Thursday, 12th September, 2019.

SIGNATURE.......... DATE 12-09-2019

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

MINUTES OF THE 17TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY 3RD JULY, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 11.00AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Mwaruma Johnes, M.P.
4. Sen. Halake Abshiro, M.P.
5. Sen. Godana Hargura, M.P.
6. Sen. Boy Issa Juma, M.P.

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Sylvia Kasanga, M.P. - Member
2. Sen. George Khaniri, MGH, M.P. - Member
3. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member

IN ATTENDANCE

A. SENATORS

1. Sen. Charles Kibiru, MP - Senator, Kirinyaga County
2. Sen. Anuar Loitiptip, MP - Senator, Lamu County

B. MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Hon. Gideon M. Mungaro - CAS
2. Mr. Daniel Kithuuka - D/DLAO
3. Dr. Eustace N. Kithumbi - SADLAS
4. Mr. Owino Jacob Cattwright - SLRO
5. Mr. Charles Githenya - D/Director Land Administration
6. Ms. Juliana Mutua - D/Director Physical Planning
7. Ms Gertrude K. Rapong'o - Asst. Director Physical Planning
8. Mr. A. A. Ombima - Liaison Officer
9. Mr. Geoffrey Kibowen - Snr. Land Surveyor
10. Mr. Paul Ndung'u - Snr. Land Surveyor

C. NATIONAL LAND COMMISSION

1. Ms. Kabale Tache - Ag. CEO/ Sec. NLC
2. Mr. Francis Bor - DCS NLC
3. Mr. Dennis Mutungi - Co-ordinator NLC
4. Mr. Benard Cherutich - D/D Finance and Accounting
5. Ms. Judy Kirior - PA Ag. CEO

D. SENATE SECRETARIAT

- | | |
|-------------------------|-------------------|
| 1. Mr. Yussuf Shimoy | - Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Ms. Joyce Chelang'at | - Audio Recording |

MINUTE SEN/SCLNDR/097/2019: PRELIMINARIES

The meeting was called to order at 11.06 am by the Chairperson followed by a word of Prayer.

MINUTE SEN/SCLNDR/098/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Prengei Victor, MP and seconded by Sen. Godana Hargura, MP as follows;

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Meeting with the Cabinet Secretary Ministry of Lands and Physical Planning and CEO National Land Commission on Statements and Petitions before the Committee;
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNDR/099/2019: CONFIRMATION OF MINUTES

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

MINUTE SEN/SCLNDR/100/2019:

MEETING WITH THE CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING AND CEO NATIONAL LAND COMMISSION ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE;

The Committee was informed that the Cabinet Secretary for the Ministry was not available and that the Chief Administrative Secretary, Hon. Gideon Mungáro, was to represent her during the deliberations.

The Committee noted that most of the matters under consideration required policy directions hence the presence of the Cabinet Secretary in person and resolved to schedule another meeting to give the Cabinet Secretary an opportunity to attend.

The Committee directed the Ministry to submit comprehensive responses on all the matters (petitions and statements) it sought through its earlier communications within three (3) weeks.

Further, the Committee requested the following additional information within the same duration-

1. The Ministry's position and policy, if any, on demolitions and way leaves;
2. Update on the whether the Ministry has identified parcel of land to resettle the persons evicted from Marmanet Forest in 1988 in Laikipia;
3. The process, status and progress of titling of colonial villages in the Country particularly the 30 villages in Nyandarua County; and
4. Information on actions the Ministry has taken on all the titles recommended for revocation by the National Land Commission in regard to Lamu County.

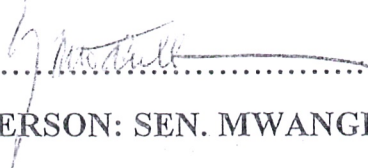
Consequently, the meeting was adjourned without any further discussions.

MINUTE/ SEN/SCLNR/101/2019: ANY OTHER BUSINESS

Sen. Johnson Sakaja was requested to write a letter to the Committee indicating all issues he has on matters land to enable the Committee to deal with them conclusively.

MINUTES/SEN/SCLNR/102/2019: ADJOURNMENT

The meeting was adjourned at 12.02 pm. The date of the next meeting was to be called on notice.

SIGNATURE.....  DATE 25-07-2019

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

MINUTES OF THE 3RD MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 13TH FEBRUARY, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Mwaruma Johnes, M.P.
3. Sen. Halake Abshiro, M.P.
4. Sen. Godana Hargura, M.P.

PRESENT

- Chairperson
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Prengei Victor, M.P. - Vice Chairperson
2. Sen. George Khaniri, MGH, M.P. - Member
3. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member
4. Sen. Slyvia Kasanga, M.P. - Member
5. Sen. Boy Issa Juma, M.P. - Member

IN ATTENDANCE

SENATOR

1. Sen. Charles Kibiru - Senator, Kirinyaga County

NATIONAL ASSEMBLY MEMBERS

1. Hon. Kabinga Wachira - MP (Mwea Constituency)

MINISTRY OF LANDS

1. Hon. Gideon M. Mungaro - CAS
2. Mr. Michael Nyamai - Snr. Ass. Dir. Land Adj.
3. Mr. Peter K. Waitthaka - Ag. Dep. Adj
4. Mr. Charles Muemi - D/Director Valuation
5. Mr. Edward Kosgei - Dir. Land Admin.
6. Mr. Charles Githenya - D/Director Land Administration
7. Mr. Owino Jacob Cattwright - SLRO
8. Mr. Paul Ndung'u - Ag. Ass. Director
9. Mr. Kamau J.H.M - CLAO
10. Mr. A. A. Ombima - Liaison Officer
11. Ms. Juliana Mutua - D/Director Physical Planning

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Mr. Ahmed Odhwa - Principal Researcher
3. Mr. Mitchell Otoro - Legal Counsel
4. Ms. Hawa Abdi - Seargent at Arms
5. Mr. Nimrod Ochieng' - Audio Recording
6. Ms. Sharon Eleman - Intern

MINUTE SEN/SCLNENR/012/2019: PRELIMINARIES

The meeting was called to order at 9.30am by the Chairperson followed by a word of prayer. Thereafter introductions followed.

MINUTE SEN/SCLNENR/013/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Godana Hargura, M.P. and seconded by Sen. Mwaruma Johnes, M.P as follows.

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Meeting with the CS Lands & Physical Planning and the NLC on Statements and Petitions before the Committee;
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNENR/014/2019:

MEETING WITH THE CS LANDS & PHYSICAL PLANNING AND THE NLC ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE

Ministry of Lands and Physical Planning

The Chief Administrative Secretary made his presentation as follows:

A. Response to Statement as requested in the Senate by Sen. Kibiru Charles, MP

STATUS OF ISSUANCE OF TITLE DEEDS FOR MWEA RICE FARMERS IN KIRINYAGA COUNTY

- **The actual acreage of Mwea Irrigation Scheme land in Kirinyaga County.**

The Committee was informed that Mwea Irrigation Scheme was set apart vide *Gazette Notice* Nos 3097 and 3099 dated 5th July 1960. The *Gazette Notice* No. 3097 set apart acreage of 8,480 acres while the *Gazette Notice* No. 3099 set apart 7,120 acres for irrigation scheme.

Other *Gazette Notices* relating to the Irrigation Scheme are as tabulated below:

| Gazette Notice | Date | Size (Acres approx.) | Purpose |
|----------------|------------|----------------------|--------------------------------------|
| 3098 | 05.07.1960 | 22 | Mwea/Tebere Scheme Canal |
| 3100 | 05.07.1960 | 27 | Draining of Nguka swamp |
| 3102 | 05.07.1960 | 9.6 | Dam to protect Nguka Irrigation Beds |

| | | | |
|------|------------|-----|---|
| 3101 | 05.07.1960 | 25 | Kiruara Drainage way |
| 3103 | 05.07.1960 | 0.8 | Drainage furrows protecting Nguka Dam |
| 3090 | 26.07.1960 | 60 | Main Thiba Water <i>Canal</i> Serving Mwea/Tebere Scheme |
| 3096 | 26.07.1960 | 125 | Mwea Tebere Scheme Village and Agricultural officer's house and staff lines |
| 3093 | 26.07.1960 | 10 | Protection of Head works |
| 3095 | 26.07.1960 | 54 | Mwea/Tebere scheme village and tree plantation |

The total area of Mwea Irrigation scheme is therefore **15,933 Acres** approximately.

- **Status of surveying, beaconing and mapping of the Mwea Irrigation Scheme.**
The Committee was informed that the area in question is covered by Topographical Map Sheet SK 135/2-Embu (see Annex 2). Besides this, the Ministry has no records to indicate that the land has ever been surveyed.

- **Status of preparation of title deeds for the parcels of land owned by Mwea rice farmers.**

The Committee was informed that by virtue of Gazette Notices Nos. 3090, 3093, 3095, 3096, 3097, 3098, 3100, 3101, 3102, 3103 of 1960; the area known as Mwea/Tebere Irrigation Area in the Kirinyanga District of the Central Province was designated as a national irrigation scheme. Pursuant to Section 14 (2) of the Irrigation Act, Cap 347, the title or interest in such land is vested in the National Irrigation Board.

The Committee is not in agreement with most of the issues as presented by the Ministry, terming them as inaccurate and that a visit to the ground would possibly shed more light. A view that was also shared by the Senator, Kirinyaga County and the MP Mwea whose constituency Mwea Irrigation Scheme is in.

The Committee therefore made the following resolutions:

- i.) **Invite the Ministry of Agriculture, National Irrigation Board and Ministry of Lands and Planning.**
- ii.) **Visit the Mwea Irrigation Scheme**

B. Response to Petitions

1. PETITION BY THE RESIDENTS OF GILGIL TOWNSHIP CONCERNING ALLEGED GRABBING OF PUBLIC UTILITY AND PRIVATE LAND AT LELESHWA, GILGIL TOWNSHIP, IN NAKURU COUNTY.

The Committee was informed that the claim by the petitioners that the Anti-Stock Theft Unit (ASTU) officers invaded and occupied approximately 40 acres of land, part

of which included residential plots that had already been allocated to individuals is not true and that 118 acres were zoned off for the ASTU from the land set aside for public purpose. It is therefore proper for the ASTU to occupy the land.

Further the CAS informed the Committee that the Petitioners in their Petition want the original Approved Development Plan to be upheld, including safeguarding of the public utility land as well as the allotted residential plots in which the CAS responded by informing the Committee that Gilgil Development Plan No. 91 (the Plan) zoned the land into 8 broad approved development uses as follows:

| USE | APPROXIMATE ACRES |
|------------------|-------------------|
| Residential | 379892.2 |
| Industrial | 123.5 |
| Educational | 6707.4 |
| Recreational | 28.6 |
| Public purpose | 4029.5 |
| Commercial | 152.9 |
| Public utilities | 17 |
| Transportation | 299 |
| Total Acreage | 391,250.1 |

The Committee therefore made the following resolutions:

- i.) To conduct a site visit with the Ministry of Lands and Planning and the County Government of Nakuru to the meeting at a date to be communicated.
- 2. PETITION ON THE RESETTLEMENT OF THE MINORITY NGEREK COMMUNITY FOLLOWING THEIR PROPOSED EVICTION FROM SOUTH NANDI FOREST, IN NANDI COUNTY.**

The Committee was informed by the CAS that the resettlement exercise was undertaken by the Office of the President and involved Ngerek and Koiben communities who settled in Ngerek and Koiben villages in South Nandi.

Since the settled area was rocky, hilly and served as a water catchment, the Government decided to resettle the two communities in Kapkangani and New Koiben areas, respectively. The Koiben community would be resettled on 266.8 Ha and the Ngerek Community on 455.4 Ha. This was in exchange of land previously held by the two communities in South Nandi Forest.

The resettlement programme was to be carried out in two phases:

- a.) Phase one involved resettlement of the Koiben Community at New Koiben/Chepkuma area and this was successfully completed.

- b.) Phase two would involve resettlement of the Ngerek Community but was accompanied by the following challenges:
- i). political interference;
 - ii). some original allottees sold their plots;
 - iii). The Ngerek community attempted to forcefully occupy the parcels allocated to them but this led to clashes in 2002;
 - iv). The Ngerek are still occupying their original land (Ngerek Hill) as they did not surrender their title deeds to the Kenya Forest Services as earlier agreed.

The Ministry therefore informed the Committee that; in these circumstances, there is need for engagement between the local leadership and relevant government agencies to resolve the issue.

The Committee therefore made the following resolutions:

The Ministry of Lands and Physical Planning should organise a team, visit the area and spearhead the engagement between the Local Leadership and the relevant Government agencies and report back to the Committee within 3 months.

3. PETITION BY RESIDENTS OF KIANG'OMBE SQUATTERS SETTLEMENT SCHEME IN THIKA SUB-LOCATION, KIAMBU COUNTY, CONCERNING ALLEGED GRABBING OF LAND ALLOCATED FOR THEIR SETTLEMENT.

The Committee was informed that the Ministry has a part development plan (PDP) for Kiang'ombe village departmental reference No.TKA/4/03/2A prepared on 30/10/2009, certified by the Director of Physical Planning on 4/12/2013 and approved on 4/12/2013 as approved Development Plan No. 365.

There are 585 plots allocated in total in the PDP out of which 13 are set aside for public utilities as shown in the table below:-

| USE | NO. OF PLOTS | AREA IN HA |
|----------------------------|--------------|------------|
| Residential and Commercial | 574 | 17.277 |
| Transport | 1 | 6.226 |
| Churches | 2 | 0.189 |
| Conservation area | 1 | 1.775 |
| Garbage collection plant | 1 | 0.028 |
| Dispensary | 1 | 0.179 |
| Nursery schools | 3 | 0.399 |
| Police post | 1 | 0.105 |
| Proposed primary school | 1 | 1.176 |
| | 585 | 27.304 |

The approved part Development Plan was prepared and published as per the requirements of the Physical Planning Act Cap 286 and superseded PDF NO. KBU/93/22 of 19.10.1993 and TKA/4/03/2 of 21.11.2003.

However the CAS seeked leave for two weeks to furnish the committee with a ground report as to who is in occupation of the parcels set aside for public utilities.

The Committee therefore made the following resolutions:

- i.) To invite the Petitioners
- ii.) The Ministry of Lands and Physical Planning to forward the actual map indicating the allocations;
- iii.) The Ministry of Lands and Physical Planning to visit the area together with the Committee to ascertain facts on the Parcels of Land.

4. PETITION FROM EVICTEES OF MARMANET FOREST IN LAIKIPIA COUNTY CONCERNING THEIR COMPENSATION AND RESETTLEMENT.

The Committee was informed that the matter is currently before the National Land Commission for resolution. They committed to follow up with the National Land Commission and were seeking more time to also consult with other relevant government agencies.

The Committee however had the following concerns:

- How comes that the forest has not been degazetted but titles are there?
- Who exactly was allocated the parcels of land?
- What was the basis of issuing out the titles?

The Committee therefore made the following resolutions:

- i.) To invite the Petitioners
- ii.) The Ministry of Lands and Physical Planning to follow up with NLC and report back to the Committee on the Status;
- iii.) The Committee would also engage the National Land Commission & the Kenya Forest Service.
- iv.) The Committee to visit the area to ascertain facts in the alleged forest.

5. PETITION TO THE SENATE CONCERNING UNLAWFUL DEPRIVATION OF A PARCEL OF LAND IN KAPUTEI NORTH KAJIADO (KJD/KAJIADO/KAPUTIEI NORTH/28126).

Mr. DAVID MUNGAI NG'ANG'A, the petitioner claims the parcel belongs to his wife JECINTA NJERI NGANGA, while his neighbor claims to be the owner of the property. The petitioner wants the ownership of the land to be reinstated.

The Committee was informed that according to the records, the above parcel is registered to JECINTA NJERI NGANGA of ID 3243898 and title deed issued. (Annex 1)

There is no ownership dispute as the land in question belongs to JECINTA NJERI NGANGA. It is therefore clear that the petition touches on a boundary dispute. In terms of section 18 (2) of the Land Registration Act, a proprietor of registered land with a boundary dispute is obliged to first seek redress or resolution from the land registrar.

The petitioner should thus lodge a formal boundary dispute at the Kajiado lands office for the same to be resolved.

The Committee therefore made the following resolutions:

In view of the Petition being at the Senate, that Committee directs that the Registrar goes to the site and assist the Petitioner.

6. PETITION TO THE SENATE CONCERNING MGENO RESERVE LAND REGISTRATION NUMBER 3880/3

The Petitioner is a resident of Mwatate Constituency, in Taita Taveta County. The Petitioner's prayers are:

- To have members of Mgeno committee gazetted;
- The Government to survey and register Mgeno community land and issue title deeds and
- Revoke titles illegally issued.

The Committee was informed that all parcels subdivided from LR. No. 3880 including LR. No. 3880/3 was surrendered to the Government for Community Settlement. LR. No. 3880/3 was allocated except some 6000 acres (south of the Railway line). Titles were issued to the community or beneficiaries under the MODAMBOGHO ADJUDICATION SECTION.

The un-alienated part of LR. No. 3880/3 (approx. 6000 acres), was sparsely inhabited until recently when people started moving in. The National Youth Service (NYS) is currently occupying approximately 300 acres of the un-alienated land. LR. No. 3880/3 borders Community Land measuring approximately 7300 acres-popularly known as "Mgeno Grazers". It also borders Mugeno Ranch LR. No. 12178 measuring 20,920 Ha.

Further, the Committee was informed that the Ministry has embarked on a Rapid Response Initiative (RRI) to ensure titles are issued for the remaining 6000 acres in LR 3880/3. (Attached is a sketch showing the referenced parcels).

The Committee therefore made the following resolutions:

- i.) To invite the Petitioners;**
- ii.) The Ministry of Lands and Physical Planning to visit the area together with the Committee to ascertain facts on the disputed Parcels of Land.**

National Land Commission

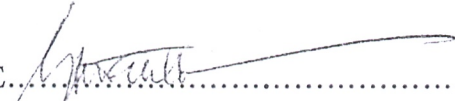
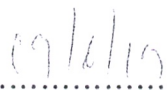
The Committee did not receive any apologies from the NLC and resolved to re-invite them again once new commissioners are sworn to office.

MINUTE SEN/SCLNR/015/2019: ANY OTHER BUSINESS;

There was no other business discussed.

MINUTE SEN/SCLNR/016/2019: DATE OF NEXT MEETING;

The meeting was adjourned at 11.35 am and the next meeting was to be held thereafter.

SIGNATURE  DATE 

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

