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Environment  
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Monday 1/7/14

REPORT  
OF THE

DEPARTMENTAL COMMITTEE ON ENVIRONMENT  
AND NATURAL RESOURCES

IN RELATION TO PETITION

REGARDING ENVIRONMENTAL HARZARDS POSED  
BY THE ATHI RIVER MINING COMPANY LTD IN  
KALOLENI, KILIFI COUNTY BY THE HUMAN RIGHTS  
AGENDA (HURIA)

THE FIRST PETITION REPORT- SECOND SESSION, 2014



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## CHAIR'S FOREWORD

**Mr. Speaker sir,**

I am Pleased to present and table the report of the Departmental Committee on Environment and Natural Resources on the petition by the Human Rights Agenda (HURIA) an NGO, to the National Assembly regarding the environmental hazards posed by the Athi River Mining Company Ltd to the residents of Kaloleni in Kilifi County pursuant to Standing Order 227, which contains the determined prayers of the petitioners by the committee with respective recommendations.

The Departmental Committee Environment and Natural Resources Committee established under the National Assembly Standing Orders No. 216(1) and the mandate and the functions of the committee are encapsulated under Standing Orders, No. 216(5). Pursuant to the National Assembly Standing Order, No. 227 the Committee is mandated to consider and report on any petition committed to it by the House.

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 *National Assembly Standing Orders*. The prayers were based on violations of their rights to clean and healthy environment as stipulated in Articles 69 and 70 of the Constitution.

### **Committee Membership**

1. Hon. Amina Abdalla, M.P., **Chairperson**
2. Hon. A. K. Kosgey, M.P., **Vice Chairperson**
3. Hon. Alice Ng'ang'a, M.P.
4. Hon. Samuel Ndiritu, M.P.
5. Hon. Aisha Jumwa Karisa, M.P.
6. Hon. Ejidius Njogu Barua, M.P.
7. Hon. Jude Njomo, M.P.
8. Hon. Moitalel Ole Kenta, M.P.
9. Hon. Kathuri Murungi, M.P.
10. Hon. Sunjeev Birdi, M.P.
11. Hon. Jackson K. Rop, M.P.
12. Hon. Abdi Noor Ali, M.P.
13. Hon. Joyce Emanikor, M.P.
14. Hon. Abdulaziz Farah, M.P.

15. Hon. Ronald Tonui, M.P.
16. Hon. (Dr.) R. Wanyonyi, M.P.
17. Hon. Gideon Mwiti, M.P.
18. Hon. Hassan Dukicha, M.P.
19. Hon. Zainab Chidzuga, M.P.
20. Hon. Chachu Ganya, M.P.
21. Hon. OpiyoWandayi, M.P
22. Hon. Charles G Mongare, M.P.
23. Hon. (Dr.) Wilber K. Ottichilo, M.P.
24. Hon. Khatib Mwashetani, M.P.
25. Hon. George O.ogalo, M.P.
26. Hon. (Major) Muluvi Mutua, M.P.
27. Hon. Mohamed, Diriye M.P.
28. Hon, Peter Kinyua, MP.
29. Hon. Shukra Hussein Gure, M.P

### **The Petition**

On 1 August 2013, pursuant to the National Assembly Standing Order 225 (2) (b), the Speaker of the National Assembly reported to the House a petition presented through the Clerk of the National Assembly by the Human Rights Agenda (HURIA), an NGO, regarding the environmental hazards posed by the Athi River Mining Company Ltd to the residents of Rabai and Kaloleni constituencies in Kilifi County.


The committee undertook to investigate the prayers of the petitioners. The committee in the process received evidence, reviewed documents and carried out a fact-finding mission to the location of the cement plant in Kaloleni, Kilifi County. These facts informed the determination of the prayers of the petitioners by the Committee.

### **Acknowledgement**

The Committee wishes to to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues for their thoughtful and engaged contributions to the matter. Further the Committee is indebted to the Office of the Speaker and the Clerk of the National Assembly for facilitating this activity. We also wish to recognize the commitment and dedication of the staff of the committee 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 Departmental Committee on Environment and Natural Resources, in relation to the petition regarding the environmental hazards posed by the Athi River Mining Company Ltd pursuant to Standing Order 227(2).

Signed:  \_\_\_\_\_

**HON. AMINA ABDALLA, MP**

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND  
NATURAL RESOURCES**

Date: 26-06-2014 \_\_\_\_\_

## CHAPTER 1

## INTRODUCTION

The Departmental Committee on Environment and Natural Resources is mandated under the National Assembly Standing Orders Number. 227 to consider and report on any petition committed to it by the House. The Committee was mandated to consider the petition by the Human Rights Agenda (HURIA) regarding the environmental hazards posed by the Athi River Mining Company Ltd to the residents of Rabai and Kaloleni in Kilifi County.

### ***1.0 Background to the Petition***

On 1 August 2013, Pursuant to the National Assembly Standing Orders No. 220 (1) the Speaker of the National Assembly reported to the House a petition presented through the Clerk of the National Assembly by the Human Rights Agenda (HURIA), an NGO regarding the environmental hazards posed by the Athi River Mining Company Ltd to the residents of Rabai and Kaloleni Constituencies in Kilifi County.

The petitioners prayed that the Parliament:

- 1. Through its Committee on Environment and Natural Resources conducts an investigation on the operations of Athi River Mining Company over the communities' complaints.*
- 2. Sanction the National Environment Management Authority (NEMA) to conduct a control environmental audit of the activities of the Athi River Cement Ltd in Kilifi County as provided for under Regulation 33 (1) and 39 of the Environmental (Impact Assessment and Audit) Regulations, 2003, Legal Notice No. 101 of 2003.*
- 3. Order the Ministry of Environment, Water and Natural Resources through NEMA to compel Athi River Cement Ltd to undertake satisfactory measures to mitigate the adverse impacts of its operations on the environment and on the safety and health of the residents of Rabai and Kaloleni who are affected by the company's factory and quarry operations.*
- 4. Compel the Public Complaints Committee through the National Environment Council to expedite on investigations on the complaints made to the committee on the impacts of the Athi River Cement Ltd on the environment and on the local communities, and share the findings and recommendations of the investigations to the public, including the affected area residents.*
- 5. Compel NEMA to make public all previous environmental impact assessment and audit reports, including reports of any control audits conducted since inception of the company.*

6. *Compel the Athi River Cement Ltd to come up with a participatory mechanism of monitoring the implementation of its environmental management plan. The local community and other interested and affected parties must constitute part of the monitoring mechanism. Obligations in respect of the environment.*
7. *To provide compensation for any victim of a violation of the right to a clean and healthy environment*

### ***1.1 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 Article 119 of the Constitution and by the *petition to Parliament (Procedure) Act* as well as the *Standing Orders* of the National Assembly. The right to petition is an essential citizen participatory tool, as it provides an avenue for the Members of Parliament and citizens to interact on the issues that concern citizens, and also demonstrates that the Parliament is prepared to directly intervene on the issues of concern in order to promote and protect the rights of the citizens. The petition was further filed under the provisions Articles 69 and 70 of the Constitution, where the petitioners decried violation of their right to clean and healthy environment by the activities of the Athi River Mining Company Ltd.

### ***1.2 The right to environmental protection***

The Committee strongly believes that, it is the responsibility of every citizen to protect and guarantee the constitutional right to clean and healthy environment, more so the public institutions charged with that responsibility. It is imperative that all activities that are detrimental to the environment, specifically anthropogenic activities are minimised or eliminated all together. The Committee takes exceptional responsibility as mandated by the National Assembly Standing orders to ensure that biodiversity and the eco-systems are preserved and protected. Undeniably, the protection of the environment cannot be disassociated from the need for the country to develop and support industrialization. Internationally accepted environmental protection practices such as polluter pay principle, public participation, precautionary principles and good governance must be actualized to ensure that the desired development is sustainable. The residents of Rabai and Kaloleni on their petition are concerned about the quarrying activities and the pollution of the environment by the activities of the company and the dangerous health risks this poses to the residents. The Departmental Committee on Environment and Natural Resources takes the Constitutional right of Kenyans to clean and healthy environment very seriously, and expects the regulatory authorities to ensure all activities, projects and programmes under go impact assessments and subsequent environmental audits to minimise these risks.

## CHAPTER 2

## APPROACH OF THE COMMITTEE

The Members of the Committee analysed the issues to be determined from the prayers of the petitioners and embarked to identify the necessary action to take on every prayer submitted by the petitioner. The Committee invited the petitioners, the management of the Company and the NEMA officials to give the necessary information to reach a conclusion on the prayers. The Committee also undertook fact-finding visit to the factory and its surrounding environs. The sole objective of the Committee was to respond to the prayers of the petitioners conclusively.

### *2.0 Issues for determination from the prayers of the petitioners*

To respond to the petitioner's prayers the Committee analysed the petition and set to determine whether:

1. Claims made by the petitioners have been substantiated through evidence adduced from the investigations.
2. To recommend NEMA to conduct a control environmental audit of the activities of the company.
3. The Company has put in place satisfactory measures to mitigate the adverse impacts (If any) of its operations on the environment and on the safety and health of the residents of Rabai and Kaloleni.
4. To compel the Public Complaints Committee to carry out an investigation on the complaints made to the Committee on the impacts of the Athi River Cement Ltd on the environment and the local communities.
5. To compel NEMA to make public all previous environmental impact assessments and audit reports, including reports of any control audits conducted since the inception of the Company.
6. The Company needs to come up with participatory mechanism of monitoring the implementation of its environmental management plan.
7. There were any violations by the Company on the right to healthy and clean environment that warrant compensation of the victims.

## ***2.1 Committee Proceedings***

The committee held deliberative sessions, reviewed documents and undertook a fact-finding tour to determine the issues raised by the petitioners.

### **i. Deliberative sessions**

In the exercise of its mandate the Committee held deliberative sessions to closely examine and hear presentations from petitioners, the Athi River Mining Company management and the National Environment Management Authority officials. The Minutes of these sessions as well as the documents and evidences presented to the committee are annexed to the report

### **ii. Fact-finding tour**

The Committee further organized a fact-finding tour and visited the Athi River Mining Company Ltd Plant in Kilifi County. An inspection tour was undertaken in order to assess the operations and pollution mitigation mechanisms employed by the company. The Committee also had a meeting with the management where a detailed presentation was made by the Chief Executive Officer of the company. The Committee had an open session with some of the employees of the company and toured their residential areas. The Committee finally had a public hearing attended by the petitioners together with the community members living around the factory and the quarry areas and received oral evidence from them.

### **iii. Documents review**

The Committee reviewed documents and affidavits presented to it by the different parties, and the documents tabled by the parties can be accessed at the National Assembly Library.

## **CHAPTER 3**

## **SUBMISSIONS TO THE COMMITTEE**

This section contains the summaries of the submissions made to the Committee during the sessions in parliament and inspection tour in Kaloleni.

### ***3.1 Submissions by the Petitioners- Human Rights Agenda (HURIA)***

The Human rights Agenda (HURIA) submitted numerous documents in support of the prayers in their petition to parliament. They also gave oral submissions at a meeting with the Committee. They made the following submissions to the committee:

1. The Human Rights Agenda engaged on the matter in the interest of the public and for the protection of the right to clean and healthy environment for the people of Kaloleni and had no intention to have the company closed.
2. The report of HURIA titled “Polluted Justice” was based on facts and scientific collection of data to support the petition of the organization. The report showed that the activities of the Company have had significant adverse environmental, health and safety impacts and risks such as:
  - a) Air pollution: The dust from the Company was impacting adversely on human health as evidenced by medical examination and affected the quality of roofing materials and plant health. The medical examination reports and affidavits were from 21 residents who had undergone examination under the hands of Dr. Kowino John Otieno, from the Ministry of Labour, Directorate of Occupational Health and Safety services. The chest x-rays were taken at the Mariakani District Hospital. The medical report by Dr. Kowino implicated the Company for exposing the local community to silicon dust that causes silicosis-an irreversible medical condition. The Medic urged compensation for the victims of these exposures.**(The full medical examination reports are annexed to this report)**
  - b) Noise pollution: Noise from the blasting activities of the company has led to loss of hearing, sleep disturbances and disruption of learning in schools near quarry areas.
  - c) Vibrations: The Company’s blasting activities generated excessive vibrations to the order of 3.81mm/sec measured from at least 300 metres. The vibrations caused cracks on buildings, led to the destruction of properties and at times collapse of buildings. Blasting had also led to led to heart-related illnesses among children and the elderly
  - d) Landscape degradation and destruction of local roads: The degradation of the landscape was evident at Chauringo quarry. The company had not rehabilitated the degraded land and left stagnant water that harbor mosquitoes. In addition roads linking the quarries and the factory had been affected by heavy trucks that ferry the raw materials to the factory.
3. The National Environment management Authority officials have been irresponsible to the various complaints related to environmental malpractices raised by the community against the Athi River Mining Company Limited.
4. The environmental hazards posed by the company have been widely covered in both the print and electronic media over a long period of time. The coverage by the media pointed to the reality

of the environmental problems that the local residents faced as a result of the activities of the Company.

5. The Public Complaints Committee, Investment promotion centre, TJRC report have issued reports on the matter.
6. The company had not shown any commitment to address the issues raised by the community but had resorted to tactics of dividing the community by buying out loyalties of some members of the community especially the elderly.
7. The petitioners presented to the committee photos exhibits showing cracks on houses near the quarry areas allegedly caused by the excessive vibrations.

### ***3.2 Submissions by the residents of Kaloleni***

The local community in the Company's operations areas differed on the impact of the activities of the Company. A section of the community argued that the Company was responsibly meeting its social and environmental obligations. They added that many of the residents and their children have been employed by the Company and that the Company supports social projects such schools, health care facilities, water provision among others. They also averred that the Company offers scholarships to students as part of its social obligation and employs as many as 800 local residents. This section of the residents which the Committee met in the Company premises exonerated the company against the allegations in the petition and dismissed HURIA as an externally funded organization determined to cause disharmony among the people and ruin the good relationship between the community and the management of the Company. They requested the Committee to investigate the motivation, funding and the activities of HURIA.

The Committee also met a section of the residents outside the Company premises together with the petitioners. This group vindicated HURIA as a representative organization whose services they sought to fight for their rights. The group claimed that dust pollution, noise pollution, excessive vibrations and degradation of the landscape was rampant and unmitigated. They accused the NEMA officials of complicity and connivance with the Company management to clear them of any wrongdoing when the obvious was visible. They also accused the Company for giving back little to the community for the huge profits they make from their area. They added that the local residents are only considered for lower cadre jobs while the higher paying jobs in the Company are reserved for certain group of employees especially expatriates. They further submitted that the residents are at risk of health and respiratory problems due to the polluted environment as a result of the company's environmentally

unfriendly operations. They offered to show the Committee cracked houses occasioned by the excessive vibrations but that did not materialize and the committee was shown only houses whose roofs had been covered by dust.

### ***3.3 Submissions by the Management of Athi River Mining Company Limited (ARM)***

During the fact finding tour the Committee toured the plant at Kaloleni and held an open meeting with the management of the Company. The management presented to the Committee a detailed submission on the activities of the Company and rebuttal of the claims by the petitioners. The Committee was informed that:

1. The Company started in the 1970's as small family owned company to a giant multinational company with a market capitalization of over US\$ 500 million in the year 2013 with plants and operations in Kenya, Tanzania and Rwanda.
2. The Company had continued to grow and rebrand launching new products and innovative business models rising from a low of 60,000 tons per annum to 2.6 Million tons per annum in the year 2014.
3. ARM is the first cement Company in East Africa to become Environmental Management System ISO 14001:2004 and Quality Management Systems ISO 9001:2008 certified and has also won various awards for championing environmental conservation.
4. The Company has consistently carried out environmental self audits of its operations since 2004 to date and continued to comply with statutory requirements and environmental regulations such as the water EIA/EA regulations 2003, water quality regulation 2008, draft air quality regulation 2012, noise and excessive vibrations regulation 2006 and met all the international best practices in relation to the different aspects of the environmental regulations. The latest Audit was carried out in March 2013 by Prof Gachanja of Jomo Kenyatta University of Agriculture and Technology. In addition the Company has invested in other responsible environmental practices such as paving of roads to eliminate fugitive dust , tree planting done within and outside factory, water sprinkling of road from quarry to plant at least 8 times daily, raw material stored in gantries to eliminate dust pollution and modern explosives used at quarries to minimize dust and noise pollution.
5. The Company has remained compliant with the Health, safety and labour legislations and regulations. It had signed with the Kenya Quarries and Mines workers Union a collective bargain agreement and continues to fulfill its obligations in line with the agreement. The company has

current workforce of 1, 076 employees out of which 76% are from Kaloleni, 21% from other parts of the country and 3% expatriates.

6. There are many imposters determined to blackmail the Company for cash returns and these groups were sponsored by competitors in the cement industry to derail the Company business. They mentioned HURIA as one of the organizations being used by their competitors to raise false claims on environmental practices to dent the corporate image of the company. They urged the Committee to investigate the motivation of HURIA and their sponsors Mr Nickson Shaaban alias Kamlesh who acts as an intermediary between the sponsors and HURIA.
7. Their operations had been cleared by all regulatory institutions such NEMA, the Ministry of Mining and the County Government.

### ***3.4 Submissions by the National Environment Management Authority (NEMA)***

The National Environment Management Authority (NEMA) appeared before the committee and submitted documents in relation to the operations of Athi River Mining Company Limited. They submitted as follows:

1. The Athi River Mining Kaloleni Lime and cement plant is located in Kaloleni, Kilifi County, and is involved in the production of lime and cement. It is understood that cement making processes generates dust and the cement product itself is dusty in nature.
2. In the past activities of the Company elicited persisted complaints from the public in regard to environmental pollution from dust. The District Environment Committee meetings held on 22<sup>nd</sup> August 2011 discussed these issues with the management of Athi River Mining Company and recommended that the issue of dust has been persistent for a long time and it needed to be addressed conclusively.
3. Meetings of the District Environment Committee held on 8<sup>th</sup> & 29<sup>th</sup> February 2012 unanimously recommended having ARM Kaloleni closed down until the management addressed the environmental concerns raised by the public. NEMA therefore issued a Closure Order to the factory on 2<sup>nd</sup> March, 2012 so as to allow the Company to address issues of dust and excessive noise. The Company closed down on 3<sup>rd</sup> March, 2012 and embarked on mitigation and maintenance activities.
4. The closure of ARM raised protest from the Central Organization of Trade Unions (Kenya) citing the effect of the closure to the over 1000 workers. Protest to the closure was also registered by the Kenya Quarry & Mine Workers Union over the impact of the laid off workers. The protest, however, did not warrant lifting of the Closure Order until the Company complied

with the environmental directives and provision of a comprehensive environmental management plan (EMP).

5. On the 9<sup>th</sup> of March an appeal was made by the Company to the Authority highlighting the compliance status on the issues raised in the Closure Order. This prompted NEMA to send a team of inspectors on 17<sup>th</sup> March 2012 to conduct control audit to verify the compliance status. After this detailed control audit, environmental inspectors recommended that the Closure Order be lifted to allow the Company test the mitigation measures that it had put in place. In lifting the Closure Order on 20<sup>th</sup> March 2012, NEMA made several recommendations to mitigate dust pollution, but notably Athi River Mining was directed to revise the Environmental Management Plan (EMP) in the audit report with emphasis on dust pollution prevention.
6. On 16<sup>th</sup> May 2012 ARM sent to NEMA a revised EMP, in compliance with the order, the Company had put in place the following mitigation measures:

***Mitigation against dust emission***

- a) Dust along the road had been minimized through regular sprinkling of water;
- b) Use of vehicles with proper installed exhausters not to generate dust during acceleration;
- c) The loading bay was expanded to reduce track congestion at the loading bay.
- d) Areas that are frequently used by Lorries had been paved.
- e) Proper disposal of waste from cement manufacturing was instituted.
- f) Material handling areas had been roofed.
- g) Maintenance and replacement schedule of bag filters has been put in place.

***Mitigations against high levels of Noise***

In compliance with the order NEMA issued on the 20<sup>th</sup> March 2012, the Company improved on control of excessive vibration from blasting and continue to work during the day and to observe silent times (6.00 p.m. to 6.00 a.m.). NEMA has continued to monitor the activities of the Company to ensure that it complies with Environmental Management and Coordination (Noise and Excessive Vibrations Pollution Control) Regulations of 2009. A verification Audit was done by NEMA on March, 25<sup>th</sup> 2013. During this verification audit it was observed that the Company had done quite substantial mitigation measures to arrest dust pollution menace, however some projects were ongoing by the time of audit and therefore, improvement order was issued on 27<sup>th</sup> March, 2013 to instruct the Company to complete the ongoing dust mitigation projects within the scheduled time frame. The Company acknowledged the improvement order on 28<sup>th</sup> March 2013.

- 7 A joint inspection between NEMA and the Kilifi County Government representatives was done on 18<sup>th</sup> July, 2013 to ascertain the claim after an article in the daily papers highlighted some environmental concerns. The team recommended that the Company to fully implement the recommendations given in the improvement order issued on 27<sup>th</sup> March 2013.
8. NEMA uses various tools to monitor environmental performance of the Company which include; Environmental Impact Assessment (EIA) for new activities, Environmental Audits, inspections, licensing, incident reports received at the Authority's Database.
9. NEMA has always responded to the public concerns on the activities of ARM and will continue to monitor the activities of the Company using the various tools at its disposal to ensure the environment is protected.
10. NEMA has employed a process engineer who has continued to monitor the performance of cement manufacturing industries in Kenya. The Engineer offers compliance assistance to the industries including ARM to ensure that the industries comply with environmental requirement for sustainable development. The Company has submitted their annual environmental audit for the year 2013 which NEMA has reviewed outlined areas of improvement to which the Company has made responses.

### ***3.5 Report by the Public Complaints Committee (PCC)***

The Public Complaints Committee is a statutory organ created under section 31 of the Environment Management and Coordination Act (EMCA 1999) to investigate any allegations or complaints against any person or against NEMA in relation to the condition of the environment in Kenya among other functions. Pursuant to the fulfillment of its duties the PCC conducted an investigation into the issues raised by the petitioners and their report dated 3 October, 2013 stated that:-

1. PCC visited the plant when it was operational and there was relatively low noise emanating from the factory machinery during its operations and there were sprinklers in the premises for suppressing fugitive dust
2. The plant was dusty as a result of some fugitive dust escaping from the plant and dust from the trucks transporting raw materials into the premises.
3. The Company had a current environmental audit and a policy document on safety, health and environment.
4. Some residents supported the operations of the Company while others opposed it.

5. The Company has Corporate Social Responsibility program including sponsorship of students
6. The PCC in its report recommended that :-
  - i. NEMA, Ministry of Health and County Government of Kilifi to conduct further medical investigations to ascertain the truth in the allegations regarding adverse effects of ARM operations on the area residents.
  - ii. NEMA should ensure that the Company completes the improvement of the premises to comply with the previous stop order issued by the authority.
  - iii. NEMA and Ministry of Health and the County Government of Kilifi should conduct further medical investigations to ascertain the truth in the allegations regarding adverse effects of ARM operations on the area residents.

#### **CHAPTER 4 COMMITTEE OBSERVATIONS**

From the investigations conducted, evidence received and written submissions provided, the Committee observed that:-

1. The vegetation and houses near the ARM factory in Kambe, Kaloleni had a high level of concentration of dust comes a result of the activities of the plant. The immediate residents of the plant are highly exposed to dust.
2. The concerns of environmental pollution, specifically dust and health risks the company exposes to the residents have been a contentious issue that had been reported in the print media for many years. These concerns are still strong with some members of the local community despite the many changes the Company continues to embrace in its responsibility to ensure clean and healthy environment.
3. The National Environment Management Authority (NEMA) closed the operations of the Athi River Mining Company Limited on 2 March 2012 to address issues of dust and noise pollution. The Company reopened after complying with the mitigation measures as instructed by NEMA.
4. The Petitioners, HURIA made attempt to cogently substantiate their prayers in the petition by furnishing the Committee with numerous reports, literature and affidavits.

5. The Company has consistently carried out environmental audits of its operations since 2004 to date and continued to comply with statutory requirements and environmental regulations and has won awards for its contribution to environmental conservation.
6. The Company had made efforts to arrest the fugitive dust emanating from the factory activities and the vehicles transporting materials to the factory by installing water sprinkler, planting trees within the compound, building shades, caving the road within the plant and spraying water on the road between the quarry and the plant on daily basis.
7. There exist disagreement between the Bandora residents association (association of residents) and the Human Rights Agenda- Both groups claim to represent the genuine concerns of the community. While the Bandora Association supported the company's operations HURIA castigated the operations of the Company vilifying it for not being responsible in its obligation to protect the rights of citizens to clean and healthy environment.
8. The Committee did not ascertain the existence of cracks on the buildings and could not independently verify whether such cracks as claimed by the petitioners were as a result of excessive vibrations in spite of photo exhibit produced by the petitioners. The Committee, however, confirmed that the Company operates within the limits of the internationally accepted vibration regulations.
9. The Company met its social obligation to the community. It has over 800 local employees; sponsors students for studies; provides health care facility to the nearby residents; contribute to the construction of schools, hospitals and roads; support schools in the area and partakes in environmental conservation activities.
10. The Committee noted with a lot of concern affidavits on medical examinations carried out by Dr. Kowino John Oteino who is an employee of the Government of Kenya on behalf of the petitioners raised serious allegations and potential health risks to residents. He claimed to have examined 21 residents out of which 17 have shown signs of silicosis- an irreversible and untreatable disease associated with silica dust.
11. The NEMA officials were accused by a section of the local community and the petitioners of complacency, irresponsiveness, corruption and disregard of their statutory duties. These allegations could not however be verified by the Committee nor did the residents or petitioners present any proof to substantiate the claims.

12. The vibration and noise level limits were within the internationally accepted standards. There is need for independent and expert verification to determine whether there are pollutants in the water or hydrological basin as claimed by the petitioners.
13. The Company employees had the necessary protective gears while at work and the Company had put in place health and safety policy measures. The Company contributes to the economic development of the country, creating jobs and other corporate social responsibility related services for the community.
14. ARM alleged that a dominant cement manufacturing company through intermediaries was sponsoring HURIA to taint the corporate image of the Company so as to give undue advantage to its competitors.

## CHAPTER 5

## COMMITTEE DETERMINATIONS

From the Evidence adduced and the observations made the Committee makes the following determinations on the prayers of the petitioners:

**Prayer # 1:** *Through its Committee on Environment and Natural Resources conducts an investigation on the operations of Athi River Mining Company over the communities' complaints.*

**Committee response:** The Committee in respect of this prayer conducted the investigations into the environmental hazards posed by the Athi River Mining Company Limited.

**Prayer # 2:** *Sanction the National Environment Management Authority (NEMA) to conduct a control environmental audit of the activities of the Athi River Cement Ltd in Kilifi County as provided for under Regulation 33 (1) and 39 of the Environmental (Impact Assessment and Audit) Regulations, 2003, Legal Notice No. 101 of 2003*

**Committee response:** The Committee determined that the National Environment Management Authority (NEMA) was well versed with the issues raised by the petitioners and had taken steps to ensure that the company met its environmental conservation obligations. The Company has also since 2004 submitted environmental self audits to NEMA, and therefore the Committee found no need to order for NEMA to conduct a control environmental audit of the activities of the company.

**Prayer # 3:** *Order the Ministry of Environment, Water and Natural Resources through NEMA to compel Athi River Cement Ltd to undertake satisfactory measures to mitigate the adverse impacts of its operations on the environment and on the safety and health of the residents of Rabai and Kaloleni who are affected by the company's factory and quarry operations*

**Committee response:** In respect of this prayer, the committee determined that the Company has continued to invest in environmental conservation and management in its operations albeit gradually. The Committee agrees with this prayer of the petitioners and expect the company to invest more in ensuring its operations are environmentally friendly and mitigate any adverse impacts on the safety and health of the residents of Rabai and Kaloleni.

**Prayer # 4:** *Compel the Public Complaints Committee through the National Environment Council to expedite on investigations on the complaints made to the committee on the impacts of the Athi River Cement Ltd on the environment and on the local communities, and share the findings and recommendations of the investigations to the public, including the affected area residents*

**Committee response:** The Committee determined that the Public Complaints Committee conducted an investigation on the complaints made to the committee on the impact of the Athi River Mining Company Limited operations on the environment and the local communities. The PCC published its report on 3 October 2013 and the report is public and can be accessed from the offices of the Public Complaints Committee. The petitioners are advised accordingly.

**Prayer # 5:** *Compel NEMA to make public all previous environmental impact assessment and audit reports, including reports of any control audits conducted since inception of the company*

**Committee response:** The Committee determined that all previous quarterly environmental audits are accessible to the public at the NEMA offices in Kilifi County or the Authority's Headquarters in Nairobi. The petitioners can therefore access the documents from the NEMA offices in these two locations.

**Prayer # 6:** *Compel the Athi River Cement Ltd to come up with a participatory mechanism of monitoring the implementation of its environmental management plan. The local community and other interested and affected parties must constitute part of the monitoring mechanism. Obligations in respect of the environment*

**Committee response:** The Committee determined that the Company made attempts to have participatory mechanism of monitoring the implementation of its environmental management plan. The Committee further agrees with the petitioners on this prayers and urges the Company to take steps to ensure it involves the residents in environmental management plan as stipulated in Article 69(1)(d) of the Constitution.

**Prayer # 7:** *To provide compensation for any victim of a violation of the right to a clean and healthy environment*

**Committee response:** The Committee determined that any compensation under the right to clean and healthy environment has to be pursued through the courts as clearly stipulated in Article 70 (2) (c) of the Constitution. The Committee advises the petitioners accordingly.

**Committee response:** The Committee determined that any compensation under the right to clean and healthy environment has to be pursued through the courts as clearly stipulated in Article 70 (2) (c) of the Constitution. The Committee advises the petitioners accordingly.

#### **COMMITTEE RECOMMENDATIONS**

- 1) The Ministry of Water, Environment and Natural Resources expedites the process of reviewing the Environment Management and Coordination Act(EMCA) to be able to comprehensively address the new challenges and opportunities in environmental protection, management and conservation in the 21<sup>st</sup> Century
- 2) The National Land Commission initiates negotiation between the Company and the immediate neighbours of the Kaloleni plant in Kambe with a view to purchasing off parts of the land to establish a buffer zone to mitigate the associated health risk to the residents resulting from the long time accumulation of the fugitive dust
- 3) The Ministry of Labour and Health to investigate the role of Dr. Kowino John Otieno who is an employee of the government on his purported medical examination of 21 sampled residents out of which 17 have shown signs of silicosis- an irreversible and untreatable medical condition caused by silica dust. The Ministry of Health should further conduct follow up tests on the 17 residents to verify the results by Dr. Kowino due to the seriousness of the allegations made in the affidavits
- 4) NEMA and its parent Ministry should ensure that the Company continues to meet its obligations under the relevant statutes and regulations to ensure its operations do not affect the environment and the residents negatively
- 5) ARM should in the long term invest on conveyor belts from the quarry site to the plant. This is the best practice employed by mining companies to minimize environmental degradation and pollution
- 6) The Ministry of Mining should ensure that all mining companies submit mine closure plans which are regularly reviewed.
- 7) The Competition Authority of Kenya should investigate the allegations by the Athi River Mining Company Limited that HURIA was sponsored by dominant competitor to manifestly disadvantage its operation.

APPENDICE

MINUTES OF THE TENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, MARCH 4<sup>TH</sup> 2014 IN THE COMMITTEE ROOM 7<sup>TH</sup> FLOOR PROTECTION HOUSE AT 9.30 A.M.

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**PRESENT**

Hon. Amina Abdalla, M.P. – Chairperson  
Hon. Zainab Kalekye Chidzuga  
Hon. Chachu Ganya, M.P.  
Hon. Hassan Dukicha, M.P.  
Hon. Charles Geni Mongare, M.P.  
Hon. Moitalel Ole Kenta, M.P.  
Hon. Gideon Mwiti Irea, M.P.  
Hon. Jackson K. Rop, M.P.  
Hon. Ronald Tonui, M.P.  
Hon. (Dr) Reginalda N. Wanyonyi, M.P.  
Hon. Abdulaziz Ali Farah, M.P.  
Hon. Major Muluvi Mutua MP  
Hon. Richard K. Makenga, M.P.  
Hon. Samuel Mathenge Ndiritu, M.P.  
Hon. Dr. Wilber Ottichilo, M.P.  
Hon. Abdi Noor Ali, M.P.  
Hon. Aisha J. Katana, M.P.

**ABSENT WITH APOLOGY**

Hon. Alexander Kosgey, M.P. – Vice Chairperson  
Hon. Joyce Emanikor, M.P.  
Hon. Ejidius Njogu Barua, M.P.  
Hon. Alice Ng'ang'a, M.P.  
Hon. Jude Njomo, M.P.  
Hon. Shukra Hussein Gure, M.P.  
Hon. Diriye M. Abdullahi, MP  
Hon. Kathuri Murungi, M.P.  
Hon. George Oner Ogalo, M.P.  
Hon. Sunjeev Birdi, M.P.  
Hon. Peter Kinyua, M.P.  
Hon. Opiyo Wandayi, M.P.

**IN-ATTENDANCE – NATIONAL ASSEMBLY**

Ahmed Kadhi - First Clerk Assistant

**IN-ATTENDANCE – KENYA AFRICAN MINERS ASSOCIATION**

Fred Athuo - Advocate  
Francis Mungai - Member  
Francis Apanga - Member

Justine Gatiti	-	Member
Francis Kalinzoya	-	Member
Pius Lesalaon	-	Member
Musa Njagi	-	Member
Norman Nzibo	-	Member
Geoffrey Mutisya	-	Member
Jibril Noor	-	Lawyer
Ibrahim Sankoh	-	Lawyer

**MIN. NO. 34/2014 – PRELIMINARIES.**

The meeting was called to order; proceedings began with a word of prayer.

**MIN. NO. 35/2014 – ADOPTION OF THE REPORT OF THE PETITION BY HURIA.**

The report of the petition was circulated to members who recounted the fact finding visit to Athi River Mining Factory in Kaloleni, Kilifi County that took place on the 30<sup>th</sup> January 2014.

The petitioners, Human Rights Agency (HURIA) lodged a petition concerning the ongoing violation of environmental and health rights by the Athi River Mining Company limited in Kaloleni and Rabai districts of Kilifi County.

The Human Rights Agency prayed that the Committee on Environment and Natural Resources conducts an investigation on the operations of Athi River Mining Company over the communities' complaints.

The committee deliberated on the draft report and noted the following:

- The Ministry of Water, Environment and Natural Resources expedites the process of reforming the environment management and coordination Act(EMCA) to be able to comprehensively address the new challenges and opportunities in environmental protection, management and conservation in the 21<sup>st</sup> century
- The National Land Commission to initiate negotiation between the company and the immediate neighbor of the Kaloleni plant in Kambe with a view of purchasing off parts of the land to establish a buffer zone arrest dust and the associated health risk to the residents.
- The Ministries of Labor and Health to investigate the role of Dr. Kowino John Otieno who is an employee of the government on his purported medical examination of 21 sampled residents out of which 17 have shown signs of silicosis- an irreversible and untreatable medical condition caused by silica dust. The

Ministry of Health should further follow up tests on the 17 residents to verify the results due to the seriousness of the health matter at hand.

- The regulatory authorities should ensure that the Company continues to meet its obligations under the relevant statutes and regulations to ensure its operations do not affect the environment and the residents negatively.
- The Company should in the long term invest on conveyor belts from the Quarry Site to the plant. This is the best practice employed by mining companies to minimize environmental degradation and pollution.
- The Ministry of Mining should ensure that all mining companies submit mine closure plans for regular review.

Finally Members recommended that the allegations that the petitioners were funded by Athi River Mining's competitors be investigated. Members present unanimously adopted the report.

#### MIN. NO. 36/2014 – MEETING WITH THE KENYAN AFRICAN MINERS ASSOCIATION.

The Association through their advocates Ibrahim, Isaac and Company wrote to the Committee on 5th February, 2014 requesting a meeting for proposals to the Mining Bill. The Committee considered the request and resolved to honor the same.

They informed the Committee that the Association had been in existence for over 25 years and draws its membership mainly from indigenous Kenyan Communities who have long been marginalized from the mainstream mining sector.

They raised the following regarding the proposed legislation:

- Definition of Minerals – The definition was too broad encompassing even gravel used for building.
- Revenue Sharing – The Members of Association feared exclusion from the revenue generated especially at the point of extraction of minerals
- Protection of Discovery – They advocated for adequate compensation and protection for persons who discovered minerals.
- Review of the Licensing structure – They sought review of the entire licensing regime to ensure that the local communities are empowered and offered incentives to mine, further the mining rights/ license should be transferrable to their next of kin.
- Appointment Structure and Powers of the Commissioner of mines – Appointments to the office should be well vetted to ensure transparency and accountability. Review of the powers of the Commissioner in arbitrarily revoking licenses.

Members concurred that the rights of local communities over resources in their regions should be honored and respected.

In Conclusion the Committee noted their sentiments as stakeholders in the mining industry and welcomed them for future engagements on the Bill once it has been read the first time and is formally before the Committee.

**MIN. NO. 37/2014 - ADJOURNMENT**

The meeting was adjourned at thirty minutes past eleven o'clock to Thursday 6<sup>th</sup> March at 10.00 am.

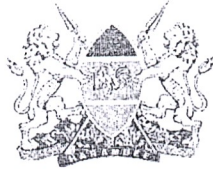
SIGNED.....

Hon. Amina A. Abdalla, MP

(Chairperson)

Committee on Environment and Natural Resources

DATE.....



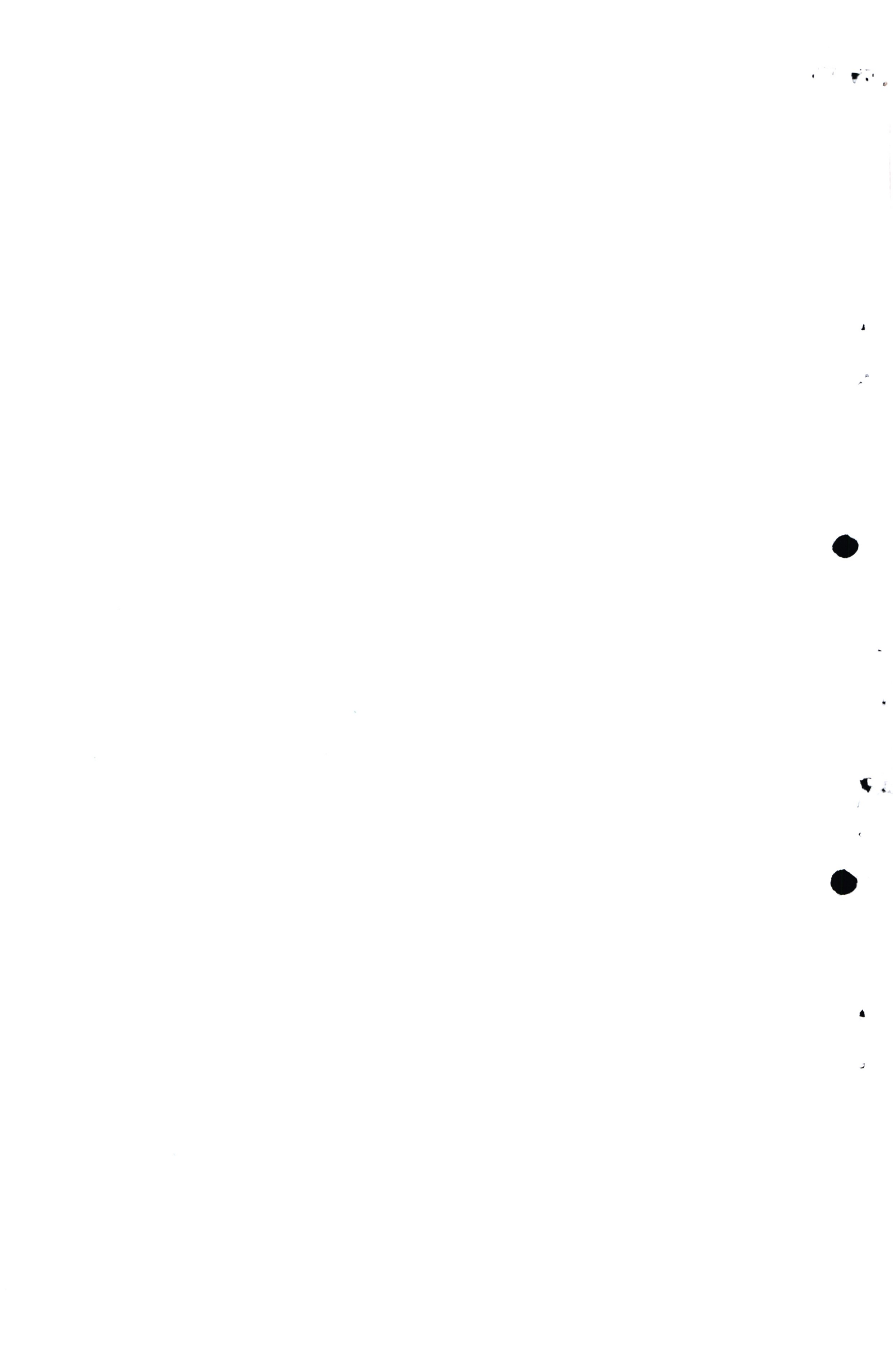
THE NATIONAL ASSEMBLY

MEMBERS ATTENDANCE LIST

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Date: 04/09/2014 Venue: 7<sup>th</sup> floor Protector Agenda: KENYA MINERS ASSOCIATION PETITION REPORT

	Name	Signature
1.	<u>CHAIRPERSON</u>	
2.	<u>VICE -CHAIR</u>	
3.	<u>Hon. MOITALIEL OLE KONTA</u>	
4.	<u>HON JACKSON ROP</u>	
5.	<u>Hon Gidema Mushi</u>	
6.	<u>Hon. ABDINOOR MOHAMAD ALI</u>	
7.	<u>Hon. Major Muluvi</u>	
8.	<u>Hon. Chacku F. Lanya</u>	
9.	<u>HON-DR. W.K. OTTICHALO</u>	
10.	<u>Hon Samuel m. Ndiritu</u>	
11.	<u>HON. ABDULAZIZ A.F</u>	



	Hon. Abdullahi Diniye	<del>✱</del>
12.	RONALD TONSI	<del>hont</del>
13.	Hon. Charles Mongane	creni <u>Chamuk</u>
14.	Hon. Zainab K. Chidye	Chidye
15.	Hon. Aisha Kettera	<del>Chidye</del>
16.	Hon. Dr. Reginalde Wanyonyi	Wanyonyi.
17.	Hon. Hassan Dukich	<del>Hassan</del>
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		Wanyonyi.
26.		
27.		