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THE NATIONAL ASSEMBLY


THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

PUBLIC PETITIONS COMMITTEE

REPORT ON-

PUBLIC PETITION NO. 11 of 2022 REGARDING POLLUTION OF RIVER ATHI BY HON. VINCENT MUSYOKA, MP, MEMBER FOR MWALA CONSTITUENCY

APRIL, 2024

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 14 APR 2024	DAY: Thursday
TABLED BY:	Hon. Janet Sitheni (Vice Chairperson Public Petitions Committee)
CLERK-AT THE-TABLE:	Shibuko

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Directorate Of Legislative & Procedural Services
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Nairobi



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LIST OF ABBREVIATIONS AND ACRONYMS

AWWDA	-	Athi Water Works Development Agency
CECM	-	County Executive Committee Member
CEPT	-	Common Effluent Treatment Plant
EIA	-	Environmental Impact Assessment
EMCA	-	Environmental Management and Coordination Act
EPZA	-	Export Processing Zone Authority
ETP	-	Effluent Treatment Plant
GESIP	-	Green Economy Strategy and Implementation Plan
IATC	-	Inter-Agency Technical Committee
KFS	-	Kenya Forest Service
MAWASCO	-	Mavoko Water and Sewerage Company
MLD	-	Million Litres per Day
NEMA	-	National Environment Management Authority
NSWMS	-	National Solid Waste Management Strategy
URRP	-	Urban Rivers Restoration Programme
WASREB	-	Water Services Regulatory Board
WRA	-	Water Resources Authority
WRUA	-	Water Resources Users Association

CHAIRPERSON'S FORWARD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present this House the Report of the Public Petitions Committee regarding Pollution of River Athi. The Petition was presented to the House pursuant to Standing Order No. 225 (2) (a) by the Hon. Vincent Kawayo, Member of Parliament Mwala Constituency.

The Petitioners pray that the Government Chemist and National Environment Management Authority (NEMA) ascertain the specific chemicals and heavy metals that have permeated the waters of River Athi and identify specific companies responsible for releasing such chemicals into the River. The Petitioners pray that a thorough clean-up of River Athi be secured through budgetary and related provisions, further pollution be stopped and a withdrawal of licenses of companies polluting River Athi and other water bodies be enforced. Further, the Petitioners pray for clear demarcation of riparian lands along the River by the relevant authorities and turning them into recreational areas.

The Committee considered the Petition in line with the provisions of the Constitution, relevant Acts of Parliament and Standing Orders and observed that the activities upstream of River Athi including effluent emissions into the tributaries and poor waste management threatened the water quality of the river.

From the engagement with various stakeholders and site visit to both the upstream and downstream of River Athi, the Committee notes with concern the lapse in management of pollution of River Athi causing hazardous impacts to the consumers of the water. Alongside other recommendations, the Committee recommends that NEMA conducts inspection of all companies/industries in the River Athi Basin and other affected areas and submits a report of the inspection detailing the non-compliant industries/companies to the relevant Committee of the House within six (6) months. Thereafter, NEMA to take remedial measures against non-compliant companies/industries including but not limited to revocation of their licenses.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support offered during the consideration of the Petition. The Committee also thanks the Hon. Vincent Kawayo, M.P. for bringing to the attention of the House such a grievous matter affecting not only River Athi but also other water bodies in the country. The Chairperson expresses gratitude to the Members of the Committee for their devotion and commitment to duty during the consideration of the Petition. On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to table the report before the House.


HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date: 11-04-2024

PART ONE

1 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Public Petitions Committee is established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.



1.2 COMMITTEE MEMBERSHIP

The Public Petitions Committee was constituted in October 2022 and comprises the following Members:

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.

Kitui East Constituency

United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.

Turbo Constituency

United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.

Mavoko Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Edith Vethi Nyenze, M.P.

Kitui West Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Ernest Kivai Ogesi Kagesi, M.P.

Vihiga Constituency

Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.

Kuria East Constituency

United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.

Baringo Central Constituency

United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.

Awendo Constituency

Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.

Mbeere South Constituency

Independent

Hon. Bidu Mohamed Tubi, M.P.

Isiolo South

Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.

Machakos Town Constituency

Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.

Taveta Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Peter Mbogho Shake, M.P.

Mwatate Constituency

Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.

Sabatia Constituency

United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.

Makueni Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

1.3 COMMITTEE SECRETARIAT

The Public Petitions Committee is facilitated members of the secretariat:

Lead Clerk
Mr. Ahmed Kadhi
Senior Clerk Assistant

Ms. Anne Shibuko
First Clerk Assistant

Ms. Miriam Modo
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Mr. Shadrack Omondi
Legal Counsel II

Ms. Patricia Gichane
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Ms. Roselyne Njuki
Principal Serjeant-at-Arms

Mr. Paul Shana
Sergeant at Arms

Mr. Calvin Karungo
Media Relations Officer III

Mr. Peter Muteithia
Audio Officer

PART TWO

2 PUBLIC PETITION NO. 11 OF 2022 REGARDING POLLUTION OF RIVER ATHI

2.1 INTRODUCTION

1. Public Petition No. 11 of 2022 regarding Pollution of River Athi was presented by Hon. Vincent Musyoka, M.P. on Thursday, 22nd November, 2022 on behalf of the residents of Mwala Constituency.
2. The Petitioners averred that for several years, River Athi has been blatantly polluted with heavy metals and other harmful chemicals. That the discolouration of the river's waters indicate that the pollution source is in Nairobi's upstream section with various companies openly releasing their sewer and chemical wastes into the River Athi.
3. The Petitioners stated that the pollution is a serious health hazard that exposes residents of Mwala Constituency to infections such as cholera, skin infections and dysentery, especially in the view that most of the people consume the river's water directly.
4. That a number of the residents living along and near River Athi have already tested positive for cancer which is linked to the presence of chemicals and heavy chemicals in the river.
5. Further, the pollution was affecting a hydro-electric project initiated by the Hon. Vincent Musyoka, M.P, in Mwala Constituency that was meant to pump water for small scale farming since the use of the polluted water for irrigating vegetables and other plants predisposed residents to multiple diseases.

2.2 PETITIONERS' PRAYERS

The Petitioners prayed that the National Assembly through the Public Petitions Committee—

6. Engages the government chemist and National Environment Management Authority (NEMA) to ascertain the specific chemicals and heavy metals that have permeated the waters of River Athi, in order to use these chemicals to identify the companies responsible for releasing them into River Athi.
7. Secures due compensation of residents affected by the pollution of River Athi.
8. Secures thorough clean-up of the river through budgetary and related provisions.

9. Intervenes to bring to an end any further pollution and make proposals for the withdrawal of licenses of companies that pollute River Athi and other water bodies in the country.
10. Secures the demarcation of riparian lands and analyses the feasibility of making them recreational areas.
11. Makes any other recommendations it deems fit in addressing the matters raised in the Petition.

PART THREE:

STAKEHOLDERS' SUBMISSIONS ON THE PETITION

2.3 SUBMISSION BY PETITIONERS

12. The Hon. Vincent Musyoka, M.P, on behalf of the residents of Mwala Constituency and other affected persons appeared before the Committee on Thursday, 15th December, 2022 and submitted as follows, that-

2.3.1 Background of the Pollution

13. The Petition was prompted by the lack of responsibility by relevant authorities mandated to protect River Athi. That there had been various petitions but little has been done to address the issues of River Athi pollution.
14. River Athi is the second largest in the country serving Matungulu, Yatta, Mwala, Makueni, and Kitui among other areas. That on the upstream were the polluters' section and the downstream was the consumers' section. However, some of the pollution also came through the tributaries along the river.
15. During the dry season, the pollution of the river was evident as the aquatic life died and there was complete change in the colour and smell of the waters as opposed to the rainy season when the river appeared cleaner yet it was not.

2.3.2 Systematic Identification of Polluters

16. There were challenges in identifying pollutants which were occasioned by lack of specific data and information. That the polluters could be identified by first testing the heavy metals and chemicals present in the river and tracing backwards to identify industries producing and emitting the harmful chemicals into the river. Further, a visit to the identified companies to determine their proximity to the river and identifying their waste management policies would enable identification of pollutants.
17. That industrial polluters scapegoat informal settlements along the river and its tributaries for pollution since it is difficult to establish whether the source of pollutants is the informal settlements or the industries. Therefore, the need for a clear demarcation of the riparian lands, for example, 30 meters gap to avoid settlements after cleanup and even turning the riparian lands to recreational spaces.

2.3.3 Presence of Heavy Metals and Chemicals

18. A study was conducted by the University of Nairobi assessed the pollution of River Athi through analysis of heavy metals, industrial effluents, invertebrate community, and riverine vegetation between Ngara and Fourteen Falls.
19. The heavy metal analysis showed the elements of Lead (Pb) of between 3-98 mg/ml, Copper (Cu) of between 19-98 mg/ml, ferrous Iron (Fe) of between 190-857 mg/ml.
20. The invertebrate analysis showed that most of the invertebrate parts were found to disappear beyond Kijabe pointing to loss of aquatic life as the pollutants join the river through tributaries. The riverine vegetation was also progressively disappearing along the riverbanks due to the pollution.
21. A quick look at the Google Maps tracing the river upwards showed that Nairobi sewage was feeding into River Athi alongside other sewer lines. Many people had encroached into the riparian land, for example, at Globe Cinema, causing all manner of pollutants into the river.

2.3.4 The Effects of the Pollution

22. The river was increasingly choking with uncollected garbage, human waste from informal settlements, industrial gaseous emissions, liquid effluents and solid waste, agrochemicals, and other waste specially petrochemicals and metals from microenterprises and overflowing sewers.
23. The situation had occasioned spread of waterborne diseases, loss of sustainable livelihoods, loss of biodiversity, reduced availability and access to safe water and various toxic substances and metals poisoning affecting human productivity.
24. Other than the small-scale irrigation projects, billions of shillings used in bigger projects like Thwake Dam would not be meaningful as its source was River Athi which was heavily polluted.

2.4 SUBMISSIONS BY WATER RESOURCE AUTHORITY

The Water Resource Authority is established under Section 11 of the Water Act, 2016 and designated under Section 6 as an agent of the National Government responsible for regulating the management and use of water resources. The Chief Executive Officer, Water Resources Authority (WRA), Mr. Mohamed M. Shurie, OGW vide a letter Ref. WRA/8/36(39) dated 23rd June, 2023 submitted as follows—

25. In discharging its mandate, WRA monitors water quality and controls pollution of water resources through setting standards and guidelines in an integrated manner involving stakeholders in a given river basin for compliance to the Regulations. In so doing the Authority has developed standards and guidelines for water quality and pollution control which are implemented by stakeholders (including County Governments and other entities).
26. Pursuant to Part II of the Fourth Schedule to the Constitution of Kenya, 2010, County Governments have the function of refuse removal, refuse dumps and solid waste disposal as well as liquid discharge (domestic and industrial).
27. The main sources of pollution within the Athi Basin have been a challenge over the years; particularly:
 - i. Domestic liquid waste (grey water) and industrial discharges largely within urban and peri-urban areas of Nairobi, Thika, Kiambu, Ongata Rongai and Mavoko among others.
 - ii. Sewerage systems are overwhelmed beyond their capacity and hence inadequate treatment of effluent to the required standards before discharge.
 - iii. Insufficient sewerage coverage for conveyance of sewage to treatment plants.
 - iv. Treatment plants infrastructure in place is not adequate.
 - v. Unregulated dumpsites within riparian reserves.
 - vi. Informal settlements have no sewerage infrastructure and directly discharge grey waters into water resources
28. The unsatisfactory management of liquid and solid wastes by County Governments and their entities (including water service providers), land use changes, catchment degradation and encroachment on the riparian reserves are the major causes of pollution to Athi river through its tributaries - *Ngong, Mbagathi, Nairobi, Kirichwa, Mathare, Ruiuaka* rivers amongst others in the basin.

29. In order to mitigate the impacts of pollution from dumpsites and initiate collaboration with relevant stakeholders, the Authority mapped point and non-point sources of pollution (*point source are easily identifiable and specific while non-point are not*).
30. The Authority had engaged with, and disseminated the dumpsite pollution concerns to the stakeholders including Council of Governors and the concerned County Executive Committee Members (CECMs) in the Counties; taking into account the critical role played by County Governments in implementation of their function of solid waste management.
31. Data collected from monitoring activities, trends show that the polluted water undergoes self-cleansing through the experienced turbulences based on river morphology and bioremediation occasioned by the available aquatic flora and fauna in the river course. As the Athi river flows downstream (Thwake Dam) the quality of the water tends towards the normal raw surface quality.
32. Under the coordination of Ministry of Water, Sanitation and Irrigation, in a multisectoral approach, the Authority is a member of Inter-Agency Technical Committee (IATC) with focus to protect the Nairobi rivers from pollution. Further, the Authority together with other stakeholders is working in collaboration with Nairobi Rivers Commission on Nairobi Rivers Recovery Strategy with an Action Plan for facilitation under thematic areas:
- i. Catchment protection and restoration
 - ii. Riparian and wetlands reclamation and protection
 - iii. Waste to rivers (Sewerage - domestic liquid waste, Solid waste and Industrial and institutional waste)
 - iv. Drainage and hydrology.
33. Further, through series of efforts, the Authority has undertaken enforcement against Water Service Providers including Mavoko Water and Sanitation Company (MAVWASCO) under Machakos County Government with the view to facilitate their satisfactory management of the sewerage system that greatly contributes to the pollution of the Athi river.
34. Additionally, stakeholder discussions are underway with Government entities following the pollution Stop Orders issued to Export Processing Zones Authority (EPZA) and MAVWASCO in addition to the pollution Notification Letter to the CECM - Water and environment Machakos County Government.
35. In the event of non-compliance with the Stop Orders and compliance measures required of the aforementioned government agencies, the Authority is prevented from moving to court to seek compliance against continued pollution. This is in light of the Government's directive that state agencies should not seek enforcement

through court action. This has been a major deterrent in compliance with the standards and guidelines in place to mitigate on pollution.

36. Further, WRA has an established water quality and pollution monitoring network, from where point and non-point sources of pollution are monitored and enforcement undertaken against polluters.
37. Prior to issuance of an Effluent Discharge Permit, the Authority regulates pollution from point sources by requiring the development of an acceptable Waste Disposal/Discharge Control Plan. The facilities are thereafter required to acquire Effluent Discharge Permit and adhere to the conditions set out therein.
38. The Authority also enforces requirements of discharging facilities to pre-treat their waste to prescribed standards in accordance with environmental regulations to protect water resources from pollution.
39. The Authority conducts water abstraction and pollution surveys, engages stakeholders at grassroot levels. Further, the Authority advocates and calls upon private and public institutions to adopt sections/stretches of the river under the approach dubbed "*Adopt a River*" for the sustained conservation and protection of water resources.
40. Based on the priority and available capacity, the Authority has marked and pegged 103 km riparian reserve on river tributaries in Nairobi River basin with WRA"-inscribed concrete beacons. The marking and pegging still continues based on available funding.
41. The Authority anticipates that riparian reserve restoration, creation of river buffer zones, regulating the activities in the riparian reserves, riverbank stabilization through enhanced vegetation cover and gabions, ecological awareness creation, livelihoods water sports and recreational walkways will be embraced and incorporated for conservation and protection of the rivers from pollution.

2.5 SUBMISSIONS BY TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY

Tana and Athi Rivers Development Authority (TARDA) is a state corporation established under the TARDA Act CAP 443, Laws of Kenya in 1974 with the core mandate of basin based integrated development aimed at spurring socio-economic growth and environmental conservation in the Tana and Athi Rivers Basins. TARDA'S area of Jurisdiction covers approximately 138,000 km², comprising 100,000 km² of the Tana Basin and 38,000 km² of the Athi Basin. On 4th June 2023, the CEO, TARDA Mr. Mohamed Liban appeared before the Committee and submitted as follows—

2.5.1 Background

42. The Athi River was considered highly polluted with foul-smell and deep green colored water with litter on its banks being evidence of the extent of the pollution. Some of the pollution originates from inflows of raw sewerage, domestic waste, heavy metals, harmful chemicals, pesticides, gaseous emission, liquid effluent, water waste and solid wastes.
43. TARDA joined the Public Petitions Committee and other stakeholders in a site visit tour of four areas to ascertain pollution of the river. The visit identified various glitches that caused pollution of the river, including encroachment of riparian land, mismanagement of solid domestic waste, lack of functional effluent treatment plants, emission of raw industrial waste ending up in the river, and blocked sewers. However, the site visits also revealed an exemplary effluent treatment plant at the Amalia Apartments in Syokimau.

2.5.2 Causes of Pollution

44. The pollution of River Athi was majorly caused by both industrial and domestic wastes from Nairobi City County and neighbouring urban areas. That the high population growth and rapid urbanization did not match the corresponding waste management systems put in place especially in the densely populated areas.
45. Further, there was lack of proper enforcement of regulations that prohibit the polluters from polluting the river. Therefore, there is need for multi stakeholder approach in dealing with the menace since NEMA was limited in mandate and resources.

2.5.3 Impacts of Pollution

46. The pollution overrode the river's capacity to provide clean water hence causing serious health hazard such as waterborne diseases, cancer and poisoning. The pollution had caused loss of biodiversity such as fish species. The consumption of the water directly or indirectly through agricultural produce irrigated by the water from the river had caused secondary contamination of both humans and livestock.
47. Mismanagement of waste had also affected investments as some houses were evidently not occupied due to the choking smells from the nonfunctional ETPs. The long-term effects of the heavy metal poisoning were birth deformities and development challenges in children born around the area.

2.5.4 Efforts by TARDA

48. Coordinating conservation efforts to protect natural resources by cleaning Nairobi River which is a major feeder of River Athi and provision of waste management

solutions in the informal settlements in Nairobi area. TARDA was part of the Nairobi River Cleanup Commission spearheading restoration of the river. TARDA had since planted 50,000 assorted seedlings in collaboration with Daystar University in Athi River and donated others to farmers. The collaboration is also geared towards partnering in research development and proposal writing for grants and funding on environmental matters.

49. Water harvesting and improvement of accessibility through drilling and rehabilitation of boreholes and construction of check dams.
50. Multiple agencies had been given various roles, for example, pollution management was vested on NEMA. The role of approving plans along the Tana and River Athi had been taken over by county governments through County Integrated Development Plans (CIDPs) hence TARDA was no longer responsible. Further, Water Resource Authority (WRA) and Water Services Regulatory Board (WASREB) were mandated to manage water resources.
51. In the advent of the transition of various roles to the multiple agencies, there came financing challenges to TARDA especially on civic education. However, TARDA was engaging communities on clean water provision and toilets in informal settlements. TARDA had done a proposal which was before Parliament for review of some of the concerns raised and avoid confusion of allocation of roles within the multiple agencies. Despite the efforts on community education to manage domestic waste, most of the pollution was from industrial waste.
52. TARDA was before the Intergovernmental Technical Relations Committee (IGTRC) to forge a working relationship between TARDA, and other relevant agencies spearheaded by the national Government to improve service delivery.

2.6 SUBMISSIONS BY THE COUNTY GOVERNMENT OF MACHAKOS

The CECM in charge of Water, Irrigation, Environment and Climate Change, Machakos County, Hon. Catherine Mutanu appeared before the Committee on 4th July, 2023 and submitted as follows—

2.6.1 Background

53. Water pollution is a critical issue that needs to be addressed nationally and globally and the responsibility of water protection and pollution is shared between the National and County Governments as mandated by the Constitution of Kenya 2010. Specifically, the national Government focuses on water resource management while the county government is responsible for stormwater management and water sanitation services.

54. Athi River had its drainage basin from Ngong Hills and runs through Kajiado, Nairobi, Machakos, Makueni, Kitui and eventually drains into the Indian Ocean and potential point of pollution start from its source counties.
55. Despite efforts by Machakos County to curb the said pollution, other pollution points exist in Nairobi and Kiambu counties. Athi river passes through Mavoko which is a highly industrialized area with major factories that manufacture cement, steel and other edible products like KAPA, London Distillers, Golden Africa Ltd. among others.
56. Many people in Nairobi have invested in the said area because of its proximity to the capital. This has overstretched the existing infrastructure including the sewer systems, water supply, transport system and other social amenities.
57. The existing trunk sewerage system was constructed in the early 1990's with a design life of 30 years and currently, the system is beyond its design life and suffers frequent blockages since its overstretched and suffers frequent blockages. The existing trunk system however, only covers mainly Athi River town as targeted to the EPZA, Athi River.

2.6.2 Role of Interagency Technical Committee

58. To address the menace of pollution in River Athi, an Interagency Technical Committee was established under the Nairobi Rivers Commission comprising representatives from relevant government agencies inclusive of several counties (Kajiado, Machakos, Makueni, Kiambu, and Nairobi) to coordinate efforts for the fast-tracking and restoration of the Athi River Basin.

2.6.3 Pollution Sources and Industrial Development

59. The petition rightly points out that potential pollution points exist in Nairobi, Kiambu, and Machakos Counties, with Mavoko being highly industrialised. Many industries including cement and steel manufacturing are located near Athi River. The rapid industrial and population growth in the area has overstretched existing infrastructure, including sewer systems, water supply and transportation.

2.6.4 Interventions by the County Government of Machakos

60. Several interventions are underway to address the pollution of the Athi River including detailed engineering designs for the Mavoko Sewerage Infrastructure System have been completed, and efforts are being made to secure financing for its construction. This system will serve a population of over 500,000 people in Syokimau, Mlolong0, Athi River, and Lukenya areas.

61. The County Government, in collaboration with the National Government and the African Development Bank (ADB), is currently constructing the Machakos Sewer system, which is 52% complete and expected to be finished by December 2024.
62. The County Government, in conjunction with the Interagency Technical Committee and other government agencies, is actively mapping out sources of pollution along the Athi River. Further, a multi-agency committee has been constituted to tackle the conflict between EPZ and Mavoko water company.
63. The County Government has gazetted environmental inspectors who will assist in monitoring of pollution within River Athi. Additionally, the County Government has streamlined the licensing and building approvals plans and incorporated the environment department to ensure quality control.
64. The County Government is engaging with stakeholder partners on public private partnerships, for example, Safaricom on clean-up of Athi River Basin, Fresh Life to provide solutions to sanitation challenges in informal settlements (Kosovo, Kwa Mangeli and Mlolongo in Mavoko).
65. The MAVWASCO has a dedicated sewerage department responsible for preventive and corrective maintenance, as well as minor improvements to the existing sewerage network. The County Government has established Department of Sewerage, Sanitation and Waste Management and developed the Environmental Management Act 2022 to address pollution challenges and enhance environmental protection.
66. The County Government is engaging in environmental education and sensitization efforts, particularly during environmental forums like World Environmental Day and World Wetlands Day, are ongoing to raise awareness among the public.

2.6.5 Challenges

67. Despite the efforts being made, the County Government acknowledges that there are challenges that need to be addressed. Funding for the Mavoko Sewer Infrastructure Project has not been secured yet, which has delayed its implementation.
68. Industries in the absence of a conventional sewer network rely on onsite ETPs, which face operational challenges. The lack of real-time and portable effluent monitoring equipment has resulted in a reliance on technical capacity from other government agencies for quality analysis, causing delays in ascertaining pollution levels.
69. Administrative challenges between EPZA and Mavoko Water and Sewerage Company have hindered coordination in the maintenance and management of the sewerage infrastructure.

70. Many towns along the drainage basin within Machakos County still lack conventional sewerage coverage.
71. The gross vandalism of existing sewerage and other infrastructure continues to undermine the proper functioning of these systems.

2.6.6 Conclusion

72. It is important to highlight the proactive role and commitment of the County Government of Machakos in addressing the pollution of River Athi. Recognizing the significance of collaborative efforts, the Governor has actively engaged and partnered with various stakeholders, including becoming a part of the Nairobi Rivers Commission. This partnership signifies a collective commitment to reclaim and restore the river's health.
73. Furthermore, in line with sustainable environmental practices, the Governor has initiated plans for extensive tree growing along the riverbanks. This approach not only helps in preventing soil erosion but also promotes biodiversity, enhances water quality, and contributes to the overall restoration of the river ecosystem.
74. The efforts and dedication of the County, along with the collaboration of partners and the implementation of tree-growing initiatives, demonstrate a comprehensive and integrated approach to combatting the pollution of River Athi. Through these collective endeavours, we can look forward to a cleaner and revitalized river that benefits both the environment and the communities that depend on it.

2.7 SUBMISSION BY MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY AND NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

The Director General, National Environment Management Authority (NEMA) Mr. Mamo B. Mamo, appeared before the Committee on Thursday, 11th May, 2023 on behalf of NEMA and the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry, Hon. Soipan Tuya, CBS, and submitted as follows—

2.7.1 Importance of River Ecosystems in Kenya

75. That the Government of Kenya appreciated the multiple ecosystem goods and services provided by the Athi-Sabaki River ecosystem including provision of water for drinking and irrigation; fishing; and for leisure activities such as swimming.
76. The main sources of the Athi River drainage basin pollution arose from informal settlements, inadequate and dilapidated sewerage systems, garages, and industries along the riparian areas. To comprehensively address the menace, a strategy that addresses pollution matters from upstream (all the way to Ngong area); mid-stream and downstream locations needed to be adopted.

2.7.2 Legislative Framework

77. The Ministry had put in place several relevant pieces of legislation to help stem pollution of the Athi-Sabaki ecosystem including the Environmental Management and Coordination Act (EMCA, 1999); the Environmental Management and Coordination (Water Quality) Regulations of 2006; the Environmental Management and Coordination (Waste Management Regulations) of 2006; and the Environmental Management and Coordination (Wetlands, Riverbanks, Lake shores and Seashore Management) Regulations of 2009.

2.7.3 Interventions by the Ministry to Stem Pollution

78. The Green Economy Strategy and Implementation Plan (GESIP) 2016-2030 blueprint would aid Kenya's transition to a sustainable path through five thematic areas and strategies, including: promoting sustainable infrastructure; building resilience; sustainable natural resource management; promoting resource efficiency and social inclusion and sustainable livelihoods.
79. The National Solid Waste Management Strategy (NSWMS 2015) was the guiding principle of the strategy is that of 'zero waste' with interventions to phase out illegal dumpsites across the country in line with the envisioned waste hierarchy. Further, a number of guidelines to promote sustainable management of the ecosystem including National Sand Harvesting Guidelines and the Environmental Impact Assessment Guidelines.
80. The Nairobi River Commission had been established to provide strategic direction, oversight, and coordination of efforts towards the rehabilitation of Nairobi Rivers. The work and objectives of the commission would greatly contribute to reduction of pollution of the Athi- Sabaki ecosystem.
81. The Ministry through NEMA had the National Strategic Plan on Prevention and Control of Pollution of Athi-Sabaki river basin (2020), a five-year strategic plan whose objective was to restore the environmental health of the Athi-Galana-Sabaki River basin.
82. That the Nairobi Rivers Regeneration Programme 2009-2014 aimed at curbing pollution in the river ecosystem in a holistic manner had managed to arrest pollution from upstream sources of the Athi including abattoirs and establishments that did not have sewerage systems.
83. NEMA conducted a **pollution assessment** of River Athi which revealed that informal settlements like Korogocho, Mukuru Dandora and other residential areas in the Nairobi Metropolitan had inadequate sanitary and sewerage facilities and were major sources of human waste which were environmental hazards causing pollution of water sources.

84. NEMA had undertaken awareness creation in its implementation of the Urban Rivers Restoration Programme (URRP) and the Athi Sabaki Pollution Control Action Plan.
85. NEMA conducted **EIA and audits of facilities** within the Athi-Sabaki basin and action taken against the noncompliance entities. Such facilities are required to submit their environmental audit annually for review. However, depending on the nature of the facility, NEMA was also undertaking control audits in facilities considered to be of high risk to the environment.
86. On **riparian demarcation**, NEMA in collaboration with the Water Resources Authority (WRA) commenced the demarcation, mapping, and marking of illegal structures, dumpsites, and discharges in the Athi River Water Basin in line with the URRP. The mapping had been done in sections of major Nairobi Rivers including Kirichwa Kubwa, Kirichwa Ndogo, Nyong'ara, Ngong River, and Mathare River. The objective of the activity was to demarcate and protect riparian areas from harmful activities and improve the water quality in the rivers.
87. NEMA undertook inspections and monitoring exercises to establish the performance of the sewage treatment facilities within the Nairobi City Metropolitan since they were considered potential sources of pollution of River Athi waters.
88. On **water quality monitoring**, NEMA had conducting a water quality analysis on the upper drainage basin of Nairobi River covering the drainage basin from the source at Ondiri Swamp and up to, and along the Thika Express Way, Eastern Bypass towards Ruai, Lang'ata Road and upper parts of Ngong River. The water sampling was carried out in thirty-seven (37) sampling points in the Athi drainage basin and tested for various parameters including presence of heavy metals which indicated that some parameters were outside the permissible limits.
89. Additionally, NEMA had conducted an assessment of water quality in identified twenty-three (23) sampling points/sites to ascertain the suitability of Athi and Tana River drainage basins between 18th - 22nd December, 2020. The analysis report showed that none of the twenty-three (23) sites randomly sampled passed the test of standard of good quality water for domestic use. NEMA continued to monitor water quality on the Athi River Basin in the period between September 2022 and April 2023 both during the dry and rainy seasons for comparison.
90. The findings from the water quality monitoring indicated the presence of *Escherichia coli* (E. coli) which exceeded the limits and was the greatest polluter in the twenty-three (23) sites sampled. This was evident of human waste finding its way in to the water resources.

91. Fertilisers and agrochemicals in the upper catchments contributed to heavy pollution of water resources. Further, along the river basin, PH, temperature, total dissolved solids parameters were within the allowable limits. However, no traces of heavy metals were detected within the study area.
92. With regards to **enforcement actions**, NEMA was undertaking inspections and monitoring of performance of the sewer treatment facilities within Nairobi City Metropolitan as a potential area and source of pollutants. The inspection and monitoring exercise seek to establish compliance and ensure the waste water meets the required discharge standards and does not cause pollution. NEMA has conducted more than seventy (70) inspection to stop illegal discharge, mapping of 31 illegal dumpsites and informed the county government for remedial action.

2.7.4 Recommendations

The Director General, NEMA made the following recommendations to the Committee:

93. Demolition, removal and relocation of informal settlements to suitable and planned areas of the city away from the Nairobi Rivers. NEMA was implementing the Urban Rivers Restoration Programme (URRP) where discharging facilities and structures within River riparian areas were being mapped.
94. Concerted efforts to promote uptake of the National Solid Waste Management Strategy and a circular approach to waste instead of the prevailing linear approach where a “use and dump” attitude has encouraged wastefulness and improper waste management. In the circular approach, waste is treated as a resource as espoused in the Sustainable Solid Waste Management Act, 2022.
95. Provision of adequate sanitary facilities to accommodate for disposal and treatment of all human waste from the formal and informal settlement areas within Nairobi Metropolitan. NEMA was working with lead agencies and service providers including the State Departments for Water and Sanitation, Nairobi City County Government, Athi Water Works Development Agency (AWWDA) and Nairobi Water and Sewerage Company in plans and programs to provide sewer systems and to upgrade existing networks for instance the ongoing sewer masterplan for Nairobi and Satellite towns with the AWWDA.
96. Counties adjacent to River Athi to take immediate actions to set up and operationalize their County Environment Committees for purposes of proper environmental management within their jurisdictions.

2.8 SUBMISSION BY MINISTRY OF WATER, SANITATION AND IRRIGATION

The Cabinet Secretary, Hon. Alice Wahome appeared before the Committee on Thursday, 6th July, 2023 and submitted as follows—

97. Pollution of water bodies including rivers require a holistic approach hence the Cabinet in 2019 had established the Inter-Agency Technical Committee (IATC) on Rivers Protection and Pollution Management. The IATC was established to address the poor state of the country's rivers especially those traversing urban centers. The initial focus of the IATC was the restoration of the Athi River Basin which is the catchment for the upcoming Thwake Multipurpose Water Development Program.
98. The urban rivers are heavily polluted from untreated/partially treated waste-water discharges, industrial pollution, over-flow of toilets in the informal areas, polluted surface run-off in areas with low sanitation coverage and rotting garbage swept into the rivers.
99. The restoration of degraded river ecosystem had prompted various key interventions including nationwide upgrade of water, sewerage and storm water infrastructure, resettlement and upgrading of informal settlements, rehabilitation and protection of water catchment areas and riparian areas. Further, programs include establishment of sustainable solid waste systems, sustainable land use plans by county governments and smart farming and agricultural practices.
100. The IATC was set up to among others examine and identify sources and no-point pollution on Athi River including domestic and industrial waste discharges and identify public solid waste dumping sites close to rivers draining into Athi River. Further, the committee was tasked to examine legal and regulatory environment on solid and liquid waste management to identify weaknesses that promote pollution and propose improvement.
101. The IATC is comprised of Ministry of Water, Sanitation and Irrigation as the overall coordinator of the interventions; Water Resource Authority (WRA) as the lead agency; NEMA, County Governments of Nairobi, Kajiado, Machakos, Kiambu and Makueni; Thwake Project Implementation Team, Athi and Tanathi Water Works Development Agencies, Ministry of Lands, Public Works, Housing and Urban Development; and Kenya Forest Service (KFS).
102. The intervention measures for protection of River Athi for the Financial Years 2021/2022 and 2022/2023 include among others, riparian reserve pegging by WRA along Kamiti, Riara, Kirichwa Ndogo, Kirichwa Kubwa in upper Athi; regular water quality monitoring to assess the impacts of interventions; and supporting Water Resources Users Associations (WRUAs) to undertake catchment conservation activities.
103. Further, NEMA has pegged the riparian areas to protect them against prohibited activities and engaged environmental scouts to assist in containing 200 identified

sources of pollution and other interventions including informal settlements upgrading and sewerage improvement.

104. The main challenge of pollution of River Athi was due to lack of enough capacity of sewerage system. While Nairobi Metropolitan produces 400,000 cubic meters per day of sewage, the installed capacity of the sewerage system in Kariobangi and Ruai were only 192,000 cubic meters per day.
105. The Ministry through the Athi Water Works Development Agency (AWWDA) had undertaken comprehensive master plan and investment plan to connect households to sewerage system. The plan requires Kshs.106 billion for short- medium- and long-term phases and the Ministry is currently mobilizing for resources.
106. Enforcement agencies were enhancing compliance on known pollution points such as burst sewers, dumpsites on riparian reserves, industrial areas, garages, slaughterhouses, concealed effluent discharge pipes in both formal and informal settlements, dysfunctional water waste treatment systems among others.
107. The Nairobi River Commission will also assist in realizing the goal of cleaning up the urban rivers as it is mandated to spearhead restoration activities and supporting socioeconomic programs along the river basin.

2.9 SUBMISSIONS BY EXPORT PROCESSING ZONE AUTHORITY

The Export Processing Zones Authority (EPZA) is a state corporation under the Ministry of Investments, Trade and Industry established in 1990 by the EPZ Act CAP 517, Laws of Kenya. Our primary mandate is to promote and facilitate export-oriented investments while creating an enabling environment for such investments. The CEO Export Processing Zone Authority (EPZA) vide a letter Ref. EPZA/PROJ/7/5 and dated 25th August, 2023 made the following submissions—

108. Prior to licensing or renewing any EPZ company license, EPZA conduct a compliance audit to ensure that the company complies with the relevant laws of Kenya. To join the EPZ program, an Environmental Impact Assessment (EIA) license is required, and an annual environmental audit clearance is necessary to renew the company's license.
109. As part of our regular operations, EPZA conducts routine tests on effluents discharged by companies legally connected to our sewer line. Whenever complaints arise, EPZA takes them seriously and address them promptly. However, the Authority had not received any reports of affected individuals resulting from its operations.
110. The EPZA acknowledges the challenges in Athi River, Mlolongo, and its surroundings regarding the lack of proper sewer infrastructure and a garbage collection program and that these issues may contribute to waterborne diseases, as claimed by the Petitioners.
111. The major cause of the blockage adjacent to Apex Steel Plant that was witnessed by the honourable members of parliament on 30th May, 2023 was a result of illegal dumping of black cotton soil on top of the EPZA trunk sewer line.
112. The Authority had already written to the Municipal manager of Mavoko Sub- County regarding the illegal dumping and to further take corrective measures since the matter falls under the County Government of Machakos.
113. The authority has always endeavoured to operate its main trunk sewer line and the effluent treatment plant sustainably. The management of the sewerage services within Athi-River Township and its environs is under MAVWASCO and they have constructed several lines that are eventually hooked onto the EPZA trunk sewer line and the Authority has no control over the operations and maintenance of the said connections.
114. Part of challenges that the Authority is encountering are as a result of illegal dumping of solid waste on the sewer lines that are operated by MAVWASCO since all the waste ends up in the EPZA trunk sewer line. On several occasions, the Authority had written to the Managing Director, MAVWASCO with a view to addressing sanitation challenges within Mavoko Suh- County. The Authority through

a letter dated 27 June 2023 wrote to the County Executive Committee, Department of Water Irrigation, Environment and Climate Change-Machakos County with regard to constituting a multi-agency committee between EPZA and MAWASCO in regards to managing shared resources sustainably.

115. The Authority has personnel who man the Kenanie ETP on a 24-hour basis in order to prevent any threats of vandalism that can allow wastewater to be discharged into River-Athi illegally since that posed a huge environmental consequence for the communities living downstream. The EPZA ETPs Treatment process is very elaborate in that it cannot allow untreated wastewater to be discharged into River-Athi.
116. Apart from unblocking the blocked manhole adjacent to Apex Steel Plant, the Authority has also cleaned up several sections along its trunk sewer line in order to avert such unfortunate incidences from happening in the future.
117. The EPZA submitted to the Committee to consider—
 - a) Absolving the Authority from the allegations by the petitioners regarding the pollution of River Athi;
 - b) Protecting the EPZA trunk sewer line which plays critical role in facilitating export-oriented investments against any external aggressions in line with Environment and Land Court Ruling Case No.35 of 2010, Machakos. It was held that the entire sewerage infrastructure is the property of EPZA; and
 - c) Vindicating the Authority of any wrong doing as pertains this matter.
118. As part of continuous improvement, the Authority constructed a modern multi-billion Common Effluent Treatment Plant (CETP) of 10 (MLD) Million Liters per Day Capacity, and the new plant is expected to be operationalized before the end of this year. The new CETP is capable of fully treating the effluent to meet both international and other regulatory agencies' standards.
119. The Authority remains committed to safeguarding all matters of the environment for posterity by working closely with investors ad relevant government agencies. Finally, we sincerely appreciate the opportunity to respond to this matter and shall remain committed to our mandate of promoting sustainable and environmentally responsible investment practices within the Export Processing Zones.

2.10 SUBMISSIONS BY THE CABINET SECRETARY MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION

The Cabinet Secretary, Ministry of Interior and National Administration, Hon. (Prof.) Kithure Kindiki, appeared before the Committee on 24th August, 2023 and made submissions as follows—

120. The studies conducted by students on the chemical concentration and levels of pollution of River Athi indicate that commercial and household waste, hazardous industrial waste, bio-medical clinical waste, and special hazardous waste such as radioactive and explosive and e-waste were present in the water. Therefore, there were serious environmental pollution of River Athi.
121. The Government Chemist receives requests from individuals and companies to test samples from River Athi and the results confirm the presence of the said toxic elements. The industrial waste emanates from:
 - i. Manufacturing industries for drugs, cosmetics, plastics, synthetic fibres, paints, cleansing agents, and other consumer products which release chemical waste that eventually affects both human and the environment;
 - ii. Some chemicals get into the food chain disrupting the natural biotic cycle and threatening populations of organisms with extinction and jeopardising quality of food supply; and
 - iii. Natural waters from rivers and lakes are becoming unfit for domestic use and some streams become biologically barren.
122. The specific industries polluting River Athi include:
 - i. Metal industries producing waste from coking of coal and washing of blast furnace flue gases and pickling which contain cyanogen, phenol, limestone and fine suspended solids, plated chromium, lead, nickel, cadmium, zinc, copper, silver, grease and oils;
 - ii. Food processing companies producing high content of decomposable organic matter leading to oxygen depletion just like from domestic waste;
 - iii. Pharmaceutical industries producing antibiotic residues;
 - iv. Tanneries producing calcium, chromium, dissolved and suspended matter;
 - v. Pesticides aromatic compounds, acidity and high organic matter;

- vi. Petroleum industry (motor vehicle garages) producing grease and oils, acids, alkalis, cyanides, phenolic compounds, sulphur compounds, halogenated and nitrogenated hydrocarbons.
 - vii. Organic chemical industries producing phenols with high acidity and alkalinity
 - viii. Textile industries producing waste from cooking fibres arising from impurities in the fibre and chemicals used in processing;
 - ix. Paper and allied products industries producing effluents from the mills contain toxic compounds such as methyl mercaptan, pentachlorophenol and sodium pentachlorophenate; and
 - x. Rubber and plastic industries producing hydrocarbons and other organic compounds.
 - xi. Radioactive wastes from nuclear power plants, fuel reprocessing plants and hospitals and research laboratories using radioisotopes.
123. The Government Chemist Department had both human and technical capacity to carryout chemical analysis of the wastewater to ascertain the possible contaminants. However, the department will require additional financial support to meet the required tasks since the resource has been already overstretched.
124. The Ministry had no vote head to cater for compensation of residents affected by the pollution of River Athi. However, the polluter pays principle in the EMCA Act, 1999 would better address that by identifying the polluters and naming them to restore environmental justice.
125. The Government Chemist was ready and willing to assist in conducting research to unearth the chemicals present in the waters of River Athi. Further, for the analysis to generate detailed results, there is need for enough samples from different sites across the river. However, such analysis should be done after cost analysis because it has a budget implication.

PART FOUR

3 SITE VISITS

3.1 RIVER ATHI UPSTREAM

The Committee conducted site visits in the following areas on Tuesday, 30th May, 2023:

3.1.1 Site 1: Stream in Mlolongo



Figure 1. A River Athi tributary next to Signature Mall in Mlolongo

The Committee toured one of the River Athi tributaries next to Signature Mall in Mlolongo and made the following observations, that-

126. The stream next to Signature Mall was one of the feeders of River Athi which passes through residential areas;
127. The riparian land along the stream had been encroached by people who had built houses and changed the course of the river occasioning overflowing of the stream on to the road during rainy seasons;

128. The residential areas upstream especially in the slums channelled waste into the stream which ended up in River Athi; and
129. The Mlolongo and Syokimau areas were populous yet lacked a proper sewer line to manage the waste from residential areas.

3.1.2 Site 2: Effluent Treatment Plant in Mavoko area



Figure 2. An Effluent Treatment Plant by MAVWASCO in Valley View Estate, Syokimau

Mavoko Water and Sewerage Company Ltd. (MAVWASCO) was formed in 2006 in line with the water sector reforms as enshrined in the Water Act 2002. The company is licensed and regulated by the Water Services Regulatory Board (WASREB) to supply water and sewerage services within its specified area of jurisdiction which includes Syokimau, Mlolongo, Athi River, Kinanie and Kyumbi areas of Mavoko Sub County. The company has a functional board of directors constituted from key stakeholders within the service area. The County Government of Machakos has 100% shareholding of the company whose area of jurisdiction is approximately 693 Km² with a population of about 200,000 people. The Committee visited an Effluent Treatment Plant (ETP) managed by Mavoko Water and Sewerage Company (MAVWASCO) and made the following observations, that-

130. Valley View Estate hosting about 360 households in Mavoko handed over the facility to MAVWASCO in 2018 as a requirement that all sewer treatment plants be reverted to water and sewerage companies.

131. The plant was set up in one-and-a-half-acre land which was insufficient to manage the waste of such magnitude from the residential areas in Mavoko.
132. Besides MAVWASCO operating the plant without being licensed by NEMA, Valley View Estate emitted human waste into the plant which was dysfunctional and transmitted raw sewer into River Athi due to poor management by MAVWASCO.
133. The plant was an environmental hazard to the residents neighbouring it as well as those using River Athi waters. There was evidence of corrosion of the iron sheets possibly caused by the impact of sulphite and nitrite from the plant. Further, vacant houses neighbouring the plant was evidence of the impact the hazardous stench from the plant.
134. The plant was last exhausted in April 2023 after MAVWASCO took charge in November 2022 and was left exposed and dangerous without the lids closed.



Figure 3. A dysfunctional ETP with open lids managed by MAVWASCO in Mavoko area

3.1.3 Submissions by MAVWASCO

During the site visit at the Mavoko ETP, the Committee engaged the Managing Director, Mr. Michael Mangeli who submitted that-

135. The challenge of maintenance of the plant was occasioned by the residents' failure to pay water and sewerage bills due to billing together of water and sewerage yet the same company was not providing enough water services. MAVWASCO only had the capacity to supply 7,000 cm³ against the demand of 20,000 cm³.
136. Further, MAVWASCO faced financial challenges since the treatment exercise envisioned required huge capital yet the machines originally installed worked only up to late 2022;
137. The sewer line coverage in entire Mavoko Sub County was only 10% causing misbehaviour by residents including pumping of raw sewer into the environment.

3.1.4 Site 3: Amalia Apartments in Syokimau



Figure 4. A modern ETP at Amalia Apartments in Syokimau

The Committee visited Amalia Apartment in Syokimau, one of the residential areas where a model effective sewer treatment plant was installed and made the following observations:

138. The modern sewer treatment plant was ideal for household-level waste treatment and effectively treated waste from about 160 households from the 16-block apartment. The system was able to treat the waste and recycle it into water which was being reused to irrigate flowers and construction activities;
139. The technology and machinery used in the plant was able to store, mix, separate, remix and filter the output product before channelling it for other usage. The waste water treatment plant used microbes to recycle the water waste from the households and producing reusable water;

140. The plant was well maintained with an assigned engineer doing maintenance works. There was no stench coming out and all the manholes were well covered.



Figure 5. *Members of the Public Petitions Committee accompanied by NEMA and MAVWASCO officials inspecting an ETP at Amalia Apartment*

3.1.5 Site 4: Athi River EPZA, Apex Steel Rolling Mill



Figure 6. A sewer line operated by MAVWASCO next to Apex Steel Company in Kitengela

The Committee conducted a visit to Athi River EPZA next to Apex Steel Company (one of the companies next to River Athi tributaries) and observed that-

141. The unblocking of a sewer burst that had occurred in the sewer line co-managed by EPZA and MAVWASCO was underway. However, the officers doing the work were not properly equipped with the proper equipment for the work hence vulnerability to various kinds of hazards.
142. There was evidence of solid waste from both industrial and residential areas clogging the sewer line. The waste emanating from the eruption appeared untreated and unfit for transmission into River Athi.
143. The CEO, EPZA admitted that the failure in the management of sewer line was occasioned by lack of proper collaboration between EPZA and MAVWASCO. The EPZA always took liability yet the sewer line was also used by MAVWASCO but in cases of breakdown, repaired by EPZA.
144. The CEO, EPZA indicated that the treatment of the industrial waste was done at Kenanie area before the waste was dismissed into River Athi.

145. The CEO, EPZA stated that the Authority ensured industries/companies were compliant and that it monitored pretreatment of chemical effluents but not human waste before their transmission into the sewer line.
146. The industries under the EPZA were major pollutants of River Athi through emission of untreated industrial waste. The evident emission of industrial waste from EPZA industries required urgent attention and a quick stoppage as it posed a severe hazard to the users of River Athi waters for domestic, industrial and agricultural use.
147. The failures witnessed in the management of the EPZA-MAVWASCO sewer line were accumulation of various incidences of negligence.

3.2 RIVER ATHI, KIBAUNI / IKALAASA WARD IN MWALA (DOWNSTREAM)



Figure 7. *Hon. Vincent Musyoka, MP. during the inspection of a water project in Kiukuuni Village, Mwala Constituency*

The Committee conducted a site visit downstream River Athi in Mwala Constituency in Kiukuuni Village on Friday, 16th June, 2023 and noted as follows:

148. The Hon. Vincent Musyoka, M.P, Member for Mwala Constituency was constructing a Mini-hydro dam, which was 70% complete, aimed at generating electricity for

pumping water for irrigation and fish farming. The project was intended for duplication across other wards across the constituency.

149. The farming activities around the area relied on the water from River Athi which was highly polluted as evident in the coloration, an indication of chemical elements.
150. The consumers of the water downstream reported instances of skin and other diseases including cancer attributed to various chemical pollutants in River Athi water.
151. The consumers downstream called out for urgent interventions to stop pollution, treat and clean River Athi water getting to consumers downstream.
152. The residents called for the Committee to zoom in to large polluters and recommend personal responsibility.
153. The consumers also urged the Committee to conduct research to identify cancer victims affected by the pollution of River Athi to enable the polluters to be accountable and allow the victims to claim financial compensation.



Figure 8. *Members of the Public Petitions Committee inspecting the dam project along River Athi, at Kiukuuni Village in Mwala Constituency*

PART FIVE

ANALYSIS OF ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION

154. Arising from the findings and observations, the Committee makes determination on the following issues as per the prayers sought in the petition as follows:

Prayer No. 1: *Engages the Government Chemist and the National Environment Management Authority (NEMA) to ascertain the specific chemicals and heavy metals that have permeated the waters of River Athi, in order to use these chemicals to identify the companies responsible for releasing them into the river.*

155. Following engagements with the Government Chemist under the Ministry of Interior and National Administration and NEMA, the Committee notes that—

- a) According to the Ministry of Interior and National Administration, the Government Chemist had received requests from individuals and companies to test samples from River Athi and the results confirmed the presence of toxic elements majorly emanating from industrial waste.
- b) The chemicals and heavy metals present in River Athi water were from metal, food processing companies, pharmaceutical, tanneries, motor garages, organic chemical, textile industry, paper and allied products, rubber and plastic, and radioactive industries.
- c) The main source of pollution of the river Athi was in the upstream from Nairobi metropolitan, Athi River, Mlolongo and its environs. The lack of proper sewer infrastructure, improper garbage collection system, unregulated dumpsites, malfunctioning effluent treatment plants in the said areas contribute to pollution of River Athi.
- d) NEMA's findings for water quality monitoring carried out between 18th - 22nd December 2020 and between September 2022 and April 2023 (dry and wet seasons) indicated that no traces of heavy metals were detected in the sampled areas. However, presence of Escherichia coli (E. coli) was evident of human waste in the water resources which NEMA cited as the greatest polluter in the sampled sites.

Prayer No. 2: *Secures due compensation of residents affected by the pollution of River Athi:*

156. The Committee notes that—

- a) Residents in the downstream were at environmental and health risks due to the pollution of River Athi which is one of their main sources of water for domestic and farming use.
- b) Following a site visit to the downstream area of River Athi in Mwala Constituency, it was evident that River Athi waters were polluted as evidenced by the coloration of the water. Further, the consumers of the water reported instances of skin and other diseases including cancer attributed to various chemical pollutants in River Athi water.
- c) Section 25(4) of the Act also provides for the National Environment Restoration Fund within NEMA. The Fund acts as supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the Authority to intervene towards the control or mitigation of environmental degradation. However, according to NEMA, the Fund has no monies because NEMA had not collected environmental impact assessment (EIA) fees hence it was declared insolvent in 2019.
- d) The compensation of residents affected by pollution of River Athi is a complex process, as they will have to prove the elements of the effluent that caused the alleged health complications and the polluters liable for unlawful discharge of the chemicals. This process is best resolved through a petition before court.
- e) Section 142 of the EMCA 1999 provides for offences relating to pollution and provides that the court may direct the polluter to meet the cost of the pollution to any third parties through adequate compensation, restoration or restitution. The polluter pays principle is applicable in Kenya and the court may apply this principle when issuing environment restoration orders as provided in sections 108 and 111 of the Act.

This includes the compensation of victims for health complications as a result of environmental degradation caused by the pollution. A petition of similar nature before the environmental and land court at Mombasa (Petition 1 of 2016 - KM & 9 others v Attorney

General & 7 others [2020] e KLR) saw the residents of Owino-Uhuru village secure their right to a healthy environment through compensation in monetary and non-monetary reliefs.

Prayer No.3: ***Secures through clean-up of River Athi through budgetary and related provisions***

157. The Committee notes that—

- a) From the submissions from various stakeholder including NEMA, WRA, TARDA, and Ministry of Interior & National Administration, there was consensus of the need to clean-up River Athi.
- b) In the advent of the transition of various management roles regarding pollution of rivers, to the multiple agencies, there was financing challenges to TARDA as well as the duplicity of functions leading to unclarity of which agency was responsible to secure clean-up of the river.
- c) TARDA had done a proposal which was before Parliament for review of some of the concerns raised to avoid confusion of allocation of roles within the multiple agencies.
- d) There was an upstream clean-up of River Athi was being undertaken by the Nairobi Rivers Clean-up Commission which was established through a Gazette Notice Number 14891 on 2nd December 2022 to reclaim the rivers of Nairobi metropolitan.
- e) The mandate of the clean-up of River Athi extends to the Machakos County and the work and objectives of the commission is expected to contribute to reduced pollution of the Athi-Sabaki ecosystem.
- f) The commission comprises of various stakeholders such as NEMA, TARDA and WRA. Further the clean-up of River Athi downstream falls within the mandate of TARDA as it is charged with the responsibility to implement any projects for the purpose of utilization and protection of water and soils within the Tana and Athi River Basins.

Prayer No.4: ***Intervenes to bring an end to any further pollutions and makes proposals for the withdrawal of licences of companies that pollute River Athi and other water bodies in the country.***

- a) NEMA was not effectively discharging its regulatory role, as per section 42 of Environmental Management and Coordination Act (EMCA) that requires an environmental impact assessment to be conducted before any substance can be deposited in a lake, river or wetland, especially if that substance is likely to have adverse environmental effects.
- b) There was inadequate cooperation and coordination between NEMA, TARDA and the County Government of Machakos in enforcing the Environmental Management and Coordination Act (EMCA) hence create lapses in the regulation of pollution of the river.
- c) Under the Fourth Schedule of the Constitution the county governments are mandated with the function of refuse removal, refuse dumps and solid waste management. Therefore, the management of sewers is a devolved function. Sewer management in Mavoko Sub- County is managed by Mavoko Water and Sewerage Company (MAVWASCO), which provides both water and sewerage services.
- d) MAVWASCO provides water and sanitation services to Syokimau, Mlolongo, Athi River, Kinanie and Kyumbi areas within Mavoko sub-county and the Kitengela town in Kajiado county. Mavoko town and Mlolongo are supplied by the EPZA, Nol Turesh bulk suppliers and other private suppliers. MAVWASCO's several sewer lines connect to the EPZA Trunk sewer line.
- e) Most of the municipalities under MAVWASCO remain underserved by the sewerage network, majority rely on onsite sanitation and septic tanks. The industries and residencies within the Mavoko area do not have proper sewer infrastructure or an effective effluent treatment plant system (ETP).
- f) For instance, EPZA Water Service Provider identified several illegal sewer connections to their existing sewer line. There is also an issue of broken pipes, overflowing of sewers and toilets. Further the present Kenanie waste water treatment works has exceeded its capacity thus only 30% of its effluent are treated. This results in the discharge of untreated effluent in the river.
- g) Polluting companies could not be specifically identified as the necessary testing of the effluent discharge was not undertaken. The WRA has the mandate of water sampling and can undertake the same.

- h) As per the various submissions and the findings of the site visit by the committee on 30th June 2023 EPZA WSP and MAVWASCO were cited for unlawful discharge of effluent and these parties reported back to the committee of the remedial measures they undertook to halt the pollution.
- i) The regulatory bodies including NEMA, WRA and TARDA claimed not to have recourse or the necessary mandate and budgetary resource to hold polluting companies accountable.
- j) However, it is evident that a lack of cooperation and effective coordination between these agencies create lapses in the regulation of pollution of the river.

Prayer No.5: ***Secures the demarcation of riparian lands and analyses the feasibility of making them recreational areas.***

158. The Committee notes that—

- a) Some riparian lands had been encroached by human and industrial activities that were contributing to the pollution of the River Athi tributaries and led to changing the course of the tributaries and flooding on the roads during rainy seasons.
- b) Demarcation of riparian land and the creation of recreational areas would improve the river's water quality through revegetation of the river banks and the removal of illegal structures.
- c) NEMA, in collaboration with the Water Resources Authority (WRA) had commenced the demarcation, mapping, and marking of illegal structures, dumpsites in the Athi River Water Basin in line with the (URRP) Urban Rivers Regeneration Programme.
- d) The Environmental Management and Coordination (water quality) Regulations (2006), provides that the recommended riparian distance is at a minimum of six metres and a maximum of 30 metres from the highest water mark.
- e) The Ministry of Lands & Physical Planning is collaborating through Inter Agency Technical Committee (IATC) and the Ministry of Water, Sanitation & Irrigation are lead agencies and authorities in repossession of encroached riparian land.

PART SIX

COMMITTEE OBSERVATIONS

159. The activities of industries/companies in the Athi River Basin pose environmental threats to the residents in the Athi River Basin.
160. The enforcement actions and inspection by NEMA on the industrial establishments was not satisfactory.
161. The sewer systems in Athi River were old and overstretched by the rapid industrial and population growth thus could not sustain the demand. The Kenanie Effluent Treatment Plant that was for domestic waste was also being used for industrial waste.
162. Nairobi Metropolitan had a capacity of 192,000 cubic meters of sewer yet it produces about 400,000 cubic meters of sewer thus becoming a major source of upstream pollutants into the River Athi.
163. Some estates in Athi River emitted human waste into a dysfunctional Effluent Treatment Plant operated by MAVWASCO leading to transmission of raw sewer into River Athi.
164. Administrative challenges between EPZA and Mavoko Water and Sewerage Company hindered coordination in the maintenance and management of the sewerage infrastructure in Athi River.
165. The activities upstream of River Athi including effluent emissions into the tributaries and poor waste management threatened the water quality of the river and further compromises the water collected at the Thwake Dam project.
166. Continuous tests based on requests from researchers, public health department and industries indicated poor water quality in River Athi.
167. According to the Ministry of Interior and National Administration, the Government Chemist had received requests from individuals and companies to test samples from River Athi and the results confirmed the presence of toxic elements majorly emanating from industrial waste.
168. In the advent of the transition of various management roles regarding pollution of rivers, to the multiple agencies, there was financing challenges to TARDA as well as the duplicity of functions leading to unclarity of which agency was responsible to secure clean-up of the river.

169. The County Government of Machakos and NEMA lacked adequate enforcement officers to monitor the discharge of effluents in the river especially at night.
170. Enforcement measures against pollution along River Athi and other riparian areas was inadequate due to poor coordination of agencies involved. For instance, the Ministry of Interior and National Administration relied on requests made by NEMA for assistance in enforcement to assist in stopping the discharge of pollutants into the river. The multiagency approach was more reactive rather than proactive.
171. The efforts made by the multiagency team led by the County Commissioner of Machakos after the Committee's site visit had led to positive results. Enforcement notices had been issued to polluters especially in the upstream and there were improvements regarding compliance.

PART SEVEN

COMMITTEE RECOMMENDATIONS

Pursuant to the provisions of Standing Order 227, the Committee recommends that—


172. On the prayer for the committee to engage the Government Chemist and National Environment Management Authority (NEMA) to ascertain the specific chemicals and heavy metals that have permeated the waters of Athi River in order to identify the companies responsible for the pollution, the Committee recommends that, **the water sampling to be undertaken within sixty (60) days by the Government Chemist and the Water Resources Authority (WRA) which has the mandate of water quality sampling and the sample analysis report be used by the WRA to issue restoration orders to the polluting companies.**
173. On the prayer to secure clean-up of the River Athi through budgetary and related provisions the Committee recommends that **TARDA is given budgetary allocation to spearhead the clean-up of Athi River and to collaborate with other agencies NEMA, WRA, WASREB and the County Government of Machakos.**
174. On the prayer to secure due compensation of residents affected by the pollution the committee **rejects this prayer as the issue of compensation is best resolved through adjudication.**
175. On the prayer to end further pollution through the revocation or withdrawal of licenses of the polluting companies in River Athi and other water bodies, the committee recommends that **NEMA conducts inspection of all companies/industries in the River Athi Basin and other affected areas and submits a report of the inspection detailing the non-compliant industries/companies to the relevant Committee of the House within six (6) months. Thereafter, NEMA to take remedial measures against non-compliant companies/industries including but not limited to revocation of their licenses.**
176. On the prayer to secure the demarcation of the riparian lands and analyse the feasibility to make them recreation areas the committee recommends that **WRA is accorded budgetary allocation under the Urban Rivers Regeneration Programme for demarcation and marking with beacons riparian reserve along the River Athi ecosystem. The Ministry of Water, Sanitation & Irrigation considers the proposal of the Petitioner of establishment of recreational walkways to enhance conservation and ecological awareness of riparian land.**

The Committee further recommends that—

- 177. The Environmental Management and Coordination Act be amended to provide for vetting by the National Assembly of the NEMA Board.
- 178. The pending regulations on Environmental Bond that will compel polluting companies to pay a guarantee into the Restoration Fund be fast-tracked.
- 179. The national government and the county governments of the affected areas in collaboration with development partners to ensure provision of adequate sewer system for the affected areas.
- 180. The report be debated in the House.

Signed:  11-04-2024

THE HON. NIMROD MITHUKA MBAI, MP
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

 THE NATIONAL ASSEMBLY PAPERS LAID	
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ANNEXURES

- Annex 1:** Adoption List
- Annex 2:** Public Petition No. 11 of 2022 Regarding Pollution of River Athi
- Annex 3:** Letter Ref. WRA/8/36(39) dated 23rd June, 2023 by Water Resources Authority
- Annex 4:** Letter Ref. EPZA/PROJ/7/5 and dated 25th August, 2023 by Export Processing Zone Authority (EPZA)
- Annex 5:** Minutes of the 14th Sitting of the Public Petitions Committee held on 25th March 2024
- Annex 6:** Minutes of the 53rd Sitting of the Public Petitions Committee held on Thursday, August 24, 2023
- Annex 7:** Minutes of the 36th Sitting of the Public Petitions Committee held on Thursday, July 6, 2023
- Annex 8:** Minutes of the 35th Sitting of the Public Petitions Committee held on Tuesday, July 4, 2023
- Annex 9:** Minutes of the 34th Sitting of the Public Petitions Committee held on Tuesday, June 4, 2023
- Annex 10:** Minutes of the 28th Sitting of the Public Petitions Committee held on Thursday, May 11, 2023
- Annex 11:** Minutes of the 10th Sitting of the Public Petitions Committee held on Thursday, December 15, 2022



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

**ADOPTION OF THE REPORT ON THE CONSIDERATION OF PUBLIC PETITION NO. 11 OF 2022
REGARDING THE POLLUTION OF RIVER ATHI**

We, the undersigned Honourable Members of the Public Petitions Committee, today Monday, 25th March, 2024, do hereby affix our signatures to this Report on the consideration of Public Petition No. 11 of 2023 regarding the Pollution of River Athi, to affirm our approval and confirm its accuracy, validity and authenticity: -

S/NO	NAME	DESIGNATION	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P.	Vice-Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Ernest Ogesi Kivai, M.P.	Member	
5.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
6.	Hon. John Walter Owino, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. Caleb Mutiso Mule, M.P.	Member	
11.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
12.	Hon. Peter Mbogho Shake, M.P.	Member	
13.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
14.	Hon. John Bwire Okano, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	



REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (FIRST SESSION)

PUBLIC PETITION
(NO. 14 OF 2022)
REGARDING POLLUTION OF RIVER ATHI

CNA
Approved for
Presentation
SWA
16/11/22.

Rt. Hon. Speaker
You may approve.
also Kimani DP
16/11

I, the **UNDERSIGNED** on behalf of the residents of Mwala Constituency and Machakos County;

DRAW the attention of the House to the following:

1. **THAT**, Article 42 of the Constitution of Kenya states that every person has the right to a clean and healthy environment;
2. **THAT**, Article 62(1)(i) of the Constitution defines all rivers as public land, while Article 69(1) mandates the State to establish systems of environmental impact assessment, environmental audit and monitoring of the environment;
3. **THAT**, for several years now, River Athi has been blatantly polluted with heavy metals and other harmful chemicals
4. **THAT**, the discoloration of the River's water indicates that the pollution source is in Nairobi's downstream section, with various companies openly releasing their sewer and chemical wastes into the River;
5. **THAT**, the pollution is a serious health hazard that exposes residents of Machakos County to infections such as cholera, skin infections and dysentery, especially in view of the fact that most people consume the River's water directly;
6. **THAT**, a number of residents living along and near River Athi have already tested positive for cancer, which is directly linked to the presence of chemicals and heavy metals in the River.
7. **THAT**, further, the pollution is affecting a hydro-electric project initiated by the Member for Mwala Constituency that is meant to pump water for small scale farming since the use of polluted water for

NATIONAL ASSEMBLY
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15 NOV 2022
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

PUBLIC PETITION
REGARDING POLLUTION OF RIVER ATHI

irrigating vegetables and other plants predisposes residents to multiple diseases.

8. **THAT**, efforts to have the matter addressed by various authorities have not borne fruit;
9. **AND THAT** the matter in respect of which this Petition is made is not pending before any Court of Law or Constitutional body.

THEREFORE, your humble Petitioners pray that the National Assembly through the Public Petitions Committee: -

- (i) Engages the Government Chemist and the National Environment Management Authority (NEMA) to ascertain the specific chemicals and heavy metals that have permeated the waters of River Athi, in order to use these chemicals to identify the companies responsible for releasing them into the River;
- (ii) Secures due compensation of residents affected by the pollution of River Athi;
- (iii) Secures thorough clean-up of River Athi through budgetary and related provisions;
- (iv) Intervenes to bring an end to any further pollutions and makes proposals for the withdrawal of licences of companies that pollute River Athi and other water bodies in the country;
- (v) Secures the demarcation of riparian lands and analyzes the feasibility of making them recreational areas, and
- (vi) Makes any other appropriate recommendations it deems fit in addressing the matters raised in this Petition.

And your Petitioners will ever pray.

PRESENTED BY:

THE HON. VINCENT MUSYOKA MUSAU KAWAYA, MP
MEMBER FOR MWALA CONSTITUENCY

SIGNATURE:


DATE: 10/11/2022



WATER RESOURCES AUTHORITY

NHIF Building, 9th Floor, Wing B,
P.O. Box 45250-00100, Ngong Road,
Nairobi, Kenya

Tel: +254 020 2732291/ 2729048
Fax: +254 020 2729950
Email: info@wra.go.ke
Website: www.wra.go.ke

Ref : WRA/8/36 (39)
Date : 23rd June, 2023

The Clerk of the National Assembly
National Assembly
Continental House- Parliament Buildings
NAIROBI

**RE: MEETING WITH THE PUBLIC PETITIONS COMMITTEE
REGARDING VARIOUS PETITIONS**

Contents of our letter dated 16th June, 2023 (REF. KNA/DLPS/PPETC/CORR/2023/106).

The Authority's Chief Executive Officer (CEO) has been in contact with the Committee Chairperson with a view to seeking the Committee's indulgence in respect to the meeting scheduled for 27th June, 2023.

The CEO has been away from Nairobi on an urgent official engagement and hereby requests the Public Petitions Committee to consider the attached written memorandum (together with the accompanying annexes) submitted on behalf of the Authority. In the event that the Committee needs additional clarification(s) on the report, the Authority is ready to appear before it on an alternative date to be confirmed by the Committee.

Janet Olewe
For: CHIEF EXECUTIVE OFFICER

Cc.

Hon. Nimrod Mbai

Committee Chairman

Public Petitions Committee

National Assembly

Continental House- Parliament Buildings

NAIROBI

Hon. Kuntai Kool

Board Chairman

Water Resources Authority

NHIF Building, 9th Floor Wing B

NAIROBI



EPZA
 EXPORT PROCESSING
 ZONES AUTHORITY | **KENYA**
 Your Investment & Trade Partner

MS Mistry
 Anne
 PLS deal

3 H/cleone, PPC
 Kaloma, TNA
 TNA/HPPS

RE: EPZA/PROJ/7/5

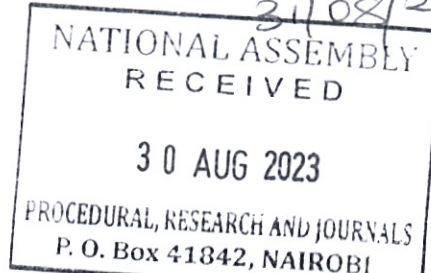
25th August 2023

Clerk of the National Assembly,
 The National Assembly,
 Office of the Clerk,
 P.O. Box 41842 – 00100.
NAIROBI.

DLPS
 Please deal.

31/08/23

@Head-PPC



T. J. Jaramba
 31/8/23

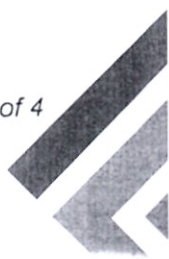
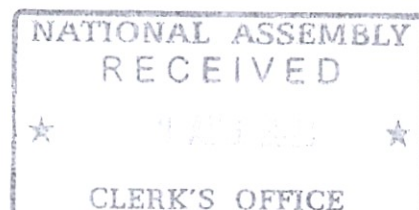
Dear Madam,

RE: MEETING WITH THE PUBLIC PETITIONS COMMITTEE REGARDING A PUBLIC PETITIONS ON THE POLLUTION OF RIVER ATHI

We acknowledge the receipt of your letter Ref. KNA/DLPS/PPETC/CORR/2023/143 dated 17th August 2023 regarding the above-mentioned matter. We appreciate the concerns raised by the petitioners and would like to address them as follows:

1. **THAT** the Export Processing Zones Authority (EPZA) is a state corporation under the Ministry of Investments, Trade and Industry established in 1990 by the EPZ Act CAP 517, Laws of Kenya. Our primary mandate is to promote and facilitate export-oriented investments while creating an enabling environment for such investments.
2. **THAT** prior to licensing or renewing any EPZ company license, we conduct a compliance audit to ensure that the company complies with the relevant laws of Kenya. To join the EPZ program, an Environmental Impact Assessment license is required, and an annual environmental audit clearance is necessary to renew the company's license.
3. **THAT** as part of our regular operations, we conduct routine tests on effluents discharged by companies legally connected to our sewer line.
4. **THAT** whenever complaints are brought to our attention, we take them seriously and address them promptly. However, we have not received any reports of affected individuals resulting from our operations.
5. **THAT** we acknowledge the challenges in Athi River, Mlolongo, and its surroundings regarding the lack of proper sewer infrastructure and a garbage collection program. We recognize that these issues may contribute to waterborne diseases, as claimed by the petitioners.

Administration Building, Viwanda Road, Off
 Nairobi - Namanga Highway, Athi-River, EPZA
 P.O. Box 50563- 00200 Nairobi, Kenya
 ISDN: +254-45-6621 000
 Office Cell: +254-45-6621000
 0709537000
 Email: information.desk@epzakenya.com
 Website: www.epzakenya.com



6. **That** the major cause of the blockage adjacent to Apex Steel Plant that was witnessed by the honorable members of parliament on 30th May, 2023 was a result of illegal dumping of black cotton soil on top of the EPZA trunk sewer line.
7. **That** the Authority had already written to the Municipal manager of Mavoko Sub-County regarding the illegal dumping and to further take corrective measures since the matter falls under the County Government of Machakos.
8. **The** authority has always endeavored to operate its main trunk sewer line and the effluent treatment plant sustainably.
9. **That** the management of the sewerage services within Athi-River Township and its environs is under MAVWASCO and they have constructed several lines that are eventually hooked onto the EPZA trunk sewer line and the Authority has no control over the operations and maintenance of the said connections.
10. **That** the part of challenges that the Authority is encountering are as a result of illegal dumping of solid waste on the sewer lines that are operated by MAVWASCO since all the waste ends up in the EPZA trunk sewer line.
11. **That** on several occasions, the Authority has written to the Managing Director- MAVWASCO with a view to addressing sanitation challenges within Mavoko Sub-County.
12. **That** the Authority through a letter dated 27th June 2023 wrote to the County Executive Committee, Department of Water Irrigation, Environment and Climate Change-Machakos County with regard to constituting a multi-agency committee between EPZA and MAVWASCO in regards to managing shared resources sustainably.
13. **That** the Authority has personnel who man the Kinanie ETP on a 24-hour basis in order to prevent any threats of vandalism that can allow wastewater to be discharged into River-Athi illegally since this poses huge environmental consequences for the communities living downstream.
14. **That** the EPZA ETPs Treatment process is very elaborate in that it cannot allow untreated wastewater to be discharged into River-Athi.
15. **That** Apart from unblocking the blocked manhole adjacent to Apex Steel Plant, the Authority has also cleaned up several sections along its trunk sewer line in order to avert such unfortunate incidences from happening in the future.

In light of the above, the Authority kindly requests the National Assembly through the Public Petitions Committee to consider the following:

- I. The committee should consider absolving the Authority from the allegations by the petitioners regarding the pollution of River Athi.
- II. That the Committee should consider protecting the EPZA trunk sewer line which plays a critical role in facilitating export-oriented investments against any external aggressions in line with Environment and Land Court Ruling Case No.35 of 2010, Machakos. It was held that the entire sewerage infrastructure is the property of EPZA. (See the attached ruling).
- III. It is the prayer of the Authority that the committee vindicates the Authority of any wrong doing as pertains this matter.

The Authority further wishes to notify the Public Petitions Committee that:

- I. As part of continuous improvement, the Authority has constructed a modern multi-billion Common Effluent Treatment Plant (CETP) of 10 (MLD) Million Liters per Day Capacity, and the new plant is expected to be operationalized before the end of this year. The new CETP is capable of fully treating the effluent to meet both international and other regulatory agencies' standards.
- II. The Authority remains committed to safeguarding all matters of the environment for posterity by working closely with investors and relevant government agencies.

Finally, we sincerely appreciate the opportunity to respond to this matter and shall remain committed to our mandate of promoting sustainable and environmentally responsible investment practices within the Export Processing Zones

Yours faithfully,



HUSSEIN ADAN MOHAMED
Ag. CHIEF EXECUTIVE OFFICER

Copy: Mr. Richard Cheruiyot,
Chairman,
Export Processing Zones Authority,
P. O. Box 50563-00200,
NAIROBI.

Attachments

1. Copy of letter inviting M.D MAVWASCO for a consultative meeting.
2. Copy of letter to the CES, Water Irrigation, Environment and Climate Change-
Machakos County
3. Copy of the letter to Municipal Manager Mavoko Sub-County
4. Copy of the letter by Managing Director MAVWASCO
5. Copy of Court Ruling t Machakos Environmental and Lands Court Case No.35 of
2010
6. Five (five)Photos showing the removal of black cotton soil from the EPZA trunk sewer
line Behind Apex Steel Works



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 14TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON MONDAY, MARCH 25, 2024, IN MEDUSA 2 ROOM, MARINA ENGLISH POINT HOTEL, MOMBASA COUNTY AT 10.00 A.M

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 3. Hon. Ernest Ogesi Kivai, M.P. | | |
| 4. Hon. Bidu Mohamed Tubi, M.P. | | |
| 5. Hon. John Walter Owino, M.P. | | |
| 6. Hon. Caleb Mutiso Mule, M.P. | | |
| 7. Hon. Maisori Marwa Kitayama, MP | | |
| 8. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 9. Hon. Edith Vethi Nyenze, M.P. | | |
| 10. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 11. Hon. John Bwire Okano, M.P. | | |
| 12. Hon. Peter Mbogho Shake, M.P. | | |

APOLOGIES

- | | | |
|--------------------------------------|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. Sloya Clement Logova, M.P. | | |

IN-ATTENDANCE

- | | | |
|-----------------|---|-----------------------------|
| 1. Mr. Noah Too | - | Principal Clerk Assistant I |
|-----------------|---|-----------------------------|

SECRETARIAT

- | | | |
|-------------------------|---|-------------------------------|
| 2. Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 3. Ms. Miriam Modo | - | Clerk Assistant I |
| 4. Ms. Anne Shibuko | - | Clerk Assistant I |
| 5. Mr. Willis Obiero | - | Clerk Assistant III |
| 6. Ms. Peninnah Naisiae | - | Legal Counsel II |
| 7. Mr. Martin Sigei | - | Research Officer III |
| 8. Ms. Roselyn Njuki | - | Senior Serjeant-at-Arms I |
| 9. Mr. Calvin Karungo | - | Media Relations Officer III |
| 10. Mr. Peter Mutethia | - | Audio Officer |
| 11. Ms. Felistas Muiya | - | Public Communications Officer |

The Chairperson called the meeting to order at 10:00 a.m. and proceedings began with prayers by Hon. Edith Vethi Nyenze, M.P.

KIN./PPETC/2024/095: ADOPTION OF AGENDA**AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising

5. Consideration of Report on Public Petition No. 13 of 2023 regarding Access Roads for Residents of Narok East Constituency
6. Consideration of Report on Public Petition No. No. 11 of 2022 regarding Pollution of River Athi
7. Any Other Business
8. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Ernest Kagesi, M.P. and seconded by Hon. Suzanne Ndunge Kiamba, M.P.

MIN./PPETC/2024/096: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/097: CONSIDERATION OF REPORT ON PUBLIC PETITION NO. 13 OF 2023 REGARDING ACCESS ROADS FOR RESIDENTS OF NAROK EAST CONSTITUENCY

The Committee reviewed the draft Report and made the following observations -

1. Hell's Gate National Park is home to diverse wildlife and plant species that are vital to the ecosystem. The claim by the Ministry of Tourism and Wildlife and the Kenya Wildlife Service (KWS) that the decision to restrict access to the park was intended to prevent rapid degradation of the park's flora and fauna that could arise from increased human interference.
2. The closure of the access road was driven by the need to safeguard the sensitive infrastructure supporting the Geothermal power plant from potential damage or destruction as well as protect human beings from injury.
3. To provide access to the residents, the two proposed roads were -
 - i.) the Kongoni-Nkorionto-Suswa Road that passes through Oserian Land; and
 - ii.) the Kasarani-Kongoni Road that passes through Orpower plant.
4. Oserian Development Company and the Kenya Wildlife Service (KWS) agreed to provide an easement at the adjoining boundary for purposes of constructing the access road for the community in line with Section 98 (1) & (2) of the Land Registration Act, 2012 which provides that "An owner of land or a lessor may, by an instrument in the prescribed form, grant an easement over the land, lease or a part of that land to the owner of another parcel of land or a lessee for the benefit of that other parcel of land."
5. Section 143 of the Land Act of 2012 confers upon the National Land Commission the power to create public rights of way for the benefit of the national or county government, a local authority, a public authority or any corporate body to enable all such institutions, organisations, authorities and bodies to carry out their functions, referred to in this Act as a wayleave; or a right of way created for the benefit of the public as a communal right of way.

The Committee made the following recommendation -

In response to the above prayer, the Committee recommends that:

As per the deliberations during the stakeholder engagement process, a multi-agency team headed by the Ministry of Roads and Transport and comprised of KenGen, the Kenya Wildlife Service, Ministry of Tourism and Wildlife, the National Land Commission, and the Ministry of Interior and National Administration be constituted within six months of tabling of this report, to commence the acquisition of land to construct the road through the Kongoni-Nkorionto-Suswa Road.

MIN./PPETC/2024/098:

CONSIDERATION OF PUBLIC PETITION NO. 11 OF 2022 REGARDING POLLUTION OF RIVER ATHI

The Committee reviewed the draft Report and made the following observations -

- (i) The activities of industries/companies in the Athi River Basin pose environmental threats to the residents in the Athi River Basin.
- (ii) The sewer systems in Athi River were old and overstretched by the rapid industrial and population growth thus could not sustain the demand. The Kenanie Effluent Treatment Plant that was for domestic waste was also being used for industrial waste.
- (iii) Nairobi Metropolitan had a capacity of 192,000 cubic meters of sewer yet it produces about 400,000 cubic meters of sewer thus becoming a major source of upstream pollutants into the River Athi.
- (iv) Some estates in Athi River emitted human waste into a dysfunctional Effluent Treatment Plant operated by MAVWASCO leading to transmission of raw sewer into River Athi.
- (v) Administrative challenges between EPZA and Mavoko Water and Sewerage Company hindered coordination in the maintenance and management of the sewerage infrastructure in Athi River.
- (vi) The activities upstream of River Athi including effluent emissions into the tributaries and poor waste management threatened the water quality of the river and further compromises the water collected at the Thwake Dam project.
- (vii) Continuous tests based on requests from researchers, public health department and industries indicated poor water quality in River Athi.
- (viii) According to the Ministry of Interior and National Administration, the Government Chemist had received requests from individuals and companies to test samples from River Athi and the results confirmed the presence of toxic elements majorly emanating from industrial waste.
- (ix) In the advent of the transition of various management roles regarding pollution of rivers, to the multiple agencies, there was financing challenges

to TARDA as well as the duplicity of functions leading to unclarity of which agency was responsible to secure clean-up of the river.

- (x) The County Government of Machakos and NEMA lacked adequate enforcement officers to monitor the discharge of effluents in the river especially at night.
- (xi) Enforcement measures against pollution along River Athi and other riparian areas was inadequate due to poor coordination of agencies involved. For instance, the Ministry of Interior and National Administration relied on requests made by NEMA for assistance in enforcement to assist in stopping the discharge of pollutants into the river. The multi-agency approach was more reactive rather than proactive.
- (xii) The efforts made by the multi-agency team led by the County Commissioner of Machakos after the Committee's site visit had led to positive results. Enforcement notices had been issued to polluters especially in the upstream and there were improvements regarding compliance.

The Committee made the following recommendations:

Pursuant to the provisions of Standing Order 227, the Committee recommends that -

- (xiii) On the prayer for the committee to engage the Government Chemist and National Environment Management Authority (NEMA) to ascertain the specific chemicals and heavy metals that have permeated the waters of Athi River in order to identify the companies responsible for the pollution, the Committee recommends that, the water sampling to be undertaken within sixty (60) days by the Government Chemist and the Water Resources Authority (WRA) which has the mandate of water quality sampling and the sample analysis report be used by the WRA to issue restoration orders to the polluting companies.
- (xiv) On the prayer to secure clean-up of the River Athi through budgetary and related provisions the Committee recommends that TARDA be given budgetary allocation to spearhead the clean-up of Athi River and to collaborate with other agencies NEMA, WRA, WASREB and the County Government of Machakos.
- (xv) On the prayer to secure due compensation of residents affected by the pollution the committee rejects this prayer as the issue of compensation is best resolved through adjudication.
- (xvi) On the prayer to end further pollution through the revocation or withdrawal of licenses of the polluting companies in River Athi and other water bodies, the committee recommends that NEMA conducts inspection of all companies/industries in the River Athi Basin and other affected areas and submits a report of the inspection detailing the non-compliant industries/companies to the relevant Committee of the House within six (6) months. Thereafter, NEMA to take remedial measures against non-compliant companies/industries including but not limited to revocation of their licenses.

(xvii) On the prayer to secure the demarcation of the riparian lands and analyse the feasibility to make them recreation areas the committee recommends that -

- i.) WRA is accorded budgetary allocation under the Urban Rivers Regeneration Programme for demarcation and marking with beacons riparian reserve along the River Athi ecosystem.
- ii.) The Ministry of Water, Sanitation & Irrigation to consider and report to Petitioner in regard to proposal of establishment of recreational walkways to enhance conservation and ecological awareness of riparian land within one year.

(xviii) The Environmental Management and Coordination Act be amended to provide for vetting by the National Assembly of the NEMA Board.

(xix) The pending regulations on Environmental Bond that will compel polluting companies to pay a guarantee into the Restoration Fund be fast-tracked.

(xx) The national government and the county governments of the affected areas in collaboration with development partners to ensure provision of adequate sewer system for the affected areas.

(xxi) The report be debated in the House.

MIN./PPETC/2024/099:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:45 p.m. The next meeting will be held on Monday 25th March, 2024 at 02:30 p.m.

For Sign: 
(CHAIRPERSON)

Date..... 09-04/2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 53RD SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, AUGUST 24, 2023, IN THE COMMITTEE ROOM ON SECOND FLOOR, CONTINENTAL HOUSE AT 10:00 AM

PRESENT

- | | | |
|---------------------------------------|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Ernest Ogesi Kivai, M.P. | | |
| 6. Hon. Maisori Marwa Kitayama, M.P. | | |
| 7. Hon. Edith Vethi Nyenze, M.P. | | |
| 8. Hon. Caleb Mutiso Mule, M.P. | | |
| 9. Hon. Peter Mbogho Shake, M.P. | | |
| 10. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 11. Hon. John Bwire Okano, M.P. | | |
| 12. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

- | | | |
|---|---|------------------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 2. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 3. Hon. Bidu Mohamed Tubi, M.P. | | |

IN-ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Mr. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. Mr. Martin Sigei | - | Research Officer III |
| 6. Ms. Lilian Mburugu | - | Media Relations Officer III |
| 7. Ms. Rehema Koech | - | Audio Officer III |

MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION

- | | | |
|---------------------------------|---|------------------------------------|
| 1. Hon. (Prof.) Kithure Kindiki | - | Cabinet Secretary |
| 2. Mr. Wilson Njenga | - | PAS, Internal Security |
| 3. Mr. Beverly Opwora | - | Secretary, National Administration |
| 4. Mr. Francis Gachuri | - | Secretary, Communications |
| 5. Mr. William Munyoki | - | Deputy Government Chemist |
| 6. Mr. James Walemo | - | Asst. Government Chemist |
| 7. Dr. Muendo Muthini (PhD.) | - | Asst. Government Chemist |

BUSINESS REGISTRATION SERVICE

- | | | |
|------------------------|---|----------------------------------|
| 1. Mr. Kenneth Gathuma | - | Director General, BRS |
| 2. Mr. Zacharia Mwangi | - | Assistant Registrar of Companies |

MIN./PPETC/2023/341: PRELIMINARIES

The Chairperson called the meeting to order at 10.00 am. and Hon. Maisori Marwa Kitayama, M.P. said the prayers.

MIN./PPETC/2023/342: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. **Consideration of Public Petition No. 44 of 2023 regarding enhancement of house allowance for teachers working and residing within Kilifi Municipality**
 - *Meeting with the Petitioner (Hon. Owen Yaa Baya, CBS, M.P)*
6. **Consideration of Public Petition No. 11 of 2022 regarding Pollution of River Athi**
 - *Meeting with the Cabinet Secretary, Ministry of Interior and National Administration*
7. **Consideration of Public Petition No. 36 of 2023 Regarding Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency.**
 - *Meeting with Director General, Business Registration Service*
8. Any Other Business
9. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Ernest Ogesi Kivai, M.P. and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2023/343: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Minutes of the following previous sittings were confirmed as follows;

- i.) Minutes of the 35th Sitting held on Tuesday, 4th July, 2023 were confirmed as true record of the proceeding having been proposed by Hon. Suzanne Ndunge Kiamba, M.P. and seconded by Hon. Edith Nyenze, M.P.
- ii.) Minutes of the 37th Sitting held on Thursday, 6th July 2023 were confirmed as true record of proceedings having been proposed by Hon. Maisori Marwa Kitayama, M.P. and seconded by Hon. Edith Nyenze, M.P.
- iii.) Minutes of the 45th Sitting held on Thursday, 3rd August 2023 were confirmed as true record of proceedings having been proposed by Hon. Suzanne Ndunge Kiamba, M.P. and seconded by Hon. Caleb Mutiso Mule, M.P.

MIN./PPETC/2023/344: MATTERS ARISING

Arising from MIN./PPETC/2023/290 regarding Consideration of Public Petition No. 10 of 2023 regarding Resettlement of Residents of Muthanga Farm, the Committee noted that the matter required urgent attention and the Secretariat needed to get more information on the status of the Petition earlier tabled by another Member.

MIN./PPETC/2023/345: CONSIDERATION OF PUBLIC PETITION NO. 44 OF 2023 REGARDING ENHANCEMENT OF HOUSE ALLOWANCES FOR TEACHERS WORKING & RESIDING WITHIN KILIFI MUNICIPALITY

Meeting with the Petitioner (Hon. Owen Yaa Baya, CBS, M.P)

The Agenda was deferred.

MIN./PPETC/2023/346: CONSIDERATION OF PUBLIC PETITION NO. 11 OF 2022 REGARDING POLLUTION OF RIVER ATHI

Meeting with the Cabinet Secretary, Ministry of Interior and National Administration

The Cabinet Secretary, Ministry of Interior and National Administration, Hon. (Prof.) Kithure Kindiki, made submissions as follows -

1. That, studies conducted by students on the chemical concentration and levels of pollution of River Athi indicate that commercial and household waste, hazardous industrial waste, bio-medical clinical waste, and special hazardous waste such as radioactive and explosive and e-waste were present in the water. Therefore, there were serious environmental pollution of River Athi.
2. That, the Government Chemist receives requests from individuals and companies to test samples from River Athi and the results confirm the presence of the said toxic elements.
3. That, the industrial waste emanates from: -
 - i.) Manufacturing industries for drugs, cosmetics, plastics, synthetic fibres, paints, cleansing agents, and other consumer products which release chemical waste that eventually affects both human and the environment;
 - ii.) Some chemicals get into the food chain disrupting the natural biotic cycle and threatening populations of organisms with extinction and jeopardising quality of food supply; and
 - iii.) Natural waters from rivers and lakes are becoming unfit for domestic use and some streams become biologically barren.
4. That, the specific industries polluting River Athi include:
 - i.) Metal industries producing waste from coking of coal and washing of blast furnace flue gases and pickling which contain cyanogen, phenol, limestone and fine suspended solids, plated chromium, lead, nickel, cadmium, zinc, copper, silver, grease and oils;
 - ii.) Food processing companies producing high content of decomposable organic matter leading to oxygen depletion just like from domestic waste;
 - iii.) Pharmaceutical industries producing antibiotic residues;

- iv.) Tanneries producing calcium, chromium, dissolved and suspended matter;
 - v.) Pesticides aromatic compounds, acidity and high organic matter;
 - vi.) Petroleum industry (motor vehicle garages) producing grease and oils, acids, alkalis, cyanides, phenolic compounds, sulphur compounds, halogenated and nitrogenated hydrocarbons.
 - vii.) Organic chemical industries producing phenols with high acidity and alkalinity
 - viii.) Textile industries producing waste from cooking fibres arising from impurities in the fibre and chemicals used in processing;
 - ix.) Paper and allied products industries producing effluents from the mills contain toxic compounds such as methyl mercaptan, pentachlorophenol and sodium pentachlorophenate; and
 - x.) Rubber and plastic industries producing hydrocarbons and other organic compounds.
 - xi.) Radioactive wastes from nuclear power plants, fuel reprocessing plants and hospitals and research laboratories using radioisotopes.
5. That, the Government Chemist Department has both human and technical capacity to carry out chemical analysis of the waste water to ascertain the possible contaminants. However, the department will require additional financial support to meet the required tasks since the resource has been already overstretched.
 6. That, the Ministry of Interior and National Administration had no vote head to cater for compensation of residents affected by the pollution of River Athi. However, the polluter pays principle in the EMCA Act, 1999 would better address that by identifying the polluters and naming them to restore environmental justice.
 7. That, the Government Chemist is ready and willing to assist in conducting research to unearth the chemicals present in the waters of River Athi. Further, for the analysis to generate detailed results, there is need for enough samples from different sites across the river. However, such analysis should be done after cost analysis because it has a budget implication.

Members Concerns

- i.) **With regards to the measures undertaken by the Ministry to stem pollution of River Athi,** the CS indicated that whilst the lead agency in enforcement in matters pollution was NEMA, the Ministry was ready to support enforcement measures by coordinating all agencies involved. The Ministry relied on requests by NEMA for assistance in enforcement to assist in stopping the discharge of pollutants into the river. The CS undertook to assemble all county security intelligence teams in the riparian counties of River Athi within a week to investigate the matter and assist in stopping discharge of pollutants into the river as an interim measure.

- ii.) Regarding the measures to stem pollution of River Athi and other water bodies across the country, the CS stated that perhaps it was time to review the mandate of the Water Resource Protection Police Unit to include critical water bodies susceptible to pollution especially in the urban areas where manufacturing plants are rampant polluters.
- iii.) With regards to the last tests done on River Athi and how the department confirms that what is released into the river is the correct samples tested, the Government Chemist stated that they conduct continuous tests based on requests from researchers, public health department and industries required by NEMA to have their samples tested to establish whether they are fit for discharge into the river. However, the samples were not brought by NEMA and the last samples from River Athi tested were on the request of industries. Therefore, the Government Chemist only analyzes and presents results of the samples brought forth, but enforcement and confirmation of the discharge was to be done by NEMA in collaboration with security teams.
- iv.) With regards to the multi-agency approach of dealing with the matter and why the Ministry was reactive rather than preventive; the CS indicated that as the coordinator of all national government functions, he would assemble all the agencies involved especially along the areas of concern to come up with remedial measures. The CS further indicated that the reactive nature of problem solving was a concern, but the Ministry was not helpless and was undertaking to correct the wrongs already happening in that sector.
- v.) Regarding the presence of carcinogenic substances in the waters of River Athi; the CS confirmed that preliminary tests done on the samples and published by various researchers confirm the presence of carcinogenic substances including Lead and other heavy metals.
- vi.) The Committee sought to understand the gaps in enforcement and whether there were challenges of corruption. The CS indicated that corruption was a national problem that could not be excluded as a concern in the enforcement framework of environmental protection as there could be officers colluding with polluters but that did not amount to blanket condemnation. However, the CS undertook to conduct a cleanup of the relevant agencies and scale up enforcement along the water cause.
- vii.) On the question of compensation of the victims of the pollution; the CS indicated that the best approach would be to adhere to the EMCA Act and identify the persistent polluters who should be penalized and be forced to pay for damages and compensate the victims.

Committee Resolutions

After engaging the Cabinet Secretary, the Committee resolved that the Government Chemist submits a written report of tests done on the River Athi from at least five locations along the river including Nairobi, Mavoko, Kilimambogo and towards Thwake Dam and that the report be annexed to the Committee report on the petition.

MIN./PPETC/2023/347: CONSIDERATION OF PUBLIC PETITION NO. 36 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MISUFINI, VIBANDANI AND KIBARANI SUB LOCATION, TEZO LOCATION, KILIFI NORTH CONSTITUENCY.

Meeting with Director General, Business Registration Service

The Director General, Business Registration Service, Mr. Kenneth Gathuma appeared before the Committee and presented on the ownership of the Coast Development Company Limited. However, after the presentation, the Committee noted inconsistencies as the number of shares by directors/shareholders did not add up and the transfer of shares to subsequent shareholders was not captured correctly.

The Committee also noted as per the Director General's submission that the Company had filed returns last in 1983 and was deemed dormant yet it had not been deregistered after defaulting the annual filing of returns for the entire period.

Committee Resolution

After the deliberations, the Committee resolved not to admit the submission by the Director General owing to the inconsistencies. Therefore, the Director General was directed to submit a new response on the subject matter after thorough review and cross checking of facts.

MIN./PPETC/2023/348: ANY OTHER BUSINESS

Attendance by non-Members of the Committee

Members inquired from the Secretariat on whether it is procedural to allow non-Members to attend Committee meetings. The Secretariat clarified that Standing Order 195 expressly provides for attendance by non-Members of select Committee. That a Member may attend a meeting of any committee of the House of which he or she is not a member, but such a Member shall not be entitled to vote on any matter before the committee. Further, such a member shall submit a written request to the Chairperson at least twenty-four hours before the meeting.

Committee retreat

The Committee was informed about the upcoming working retreat to be held from 28th August, 2023 to 1st September, 2023 in Machakos County for the Committee to consider various petitions.

MIN./PPETC/2023/349: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 01:30 p.m. The next meeting will be held on Thursday, 24th August 2023 at 3.00 p.m.

Sign: 

(CHAIRPERSON)

Date..... 07/11/2023



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

**MINUTES OF THE 36TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD
ON THURSDAY, JULY 6, 2023, IN THE MAIN CHAMBER, PARLIMANET
BUILDINGS AT 11:00 AM**

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 3. Hon. John Walter Owino, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, M.P. | | |
| 5. Hon. Bidu Mohamed Tubi, M.P. | | |
| 6. Hon. Edith Vethi Nyenze, M.P. | | |
| 7. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 8. Hon. John Bwire Okano, M.P. | | |

APOLOGIES

- | | | |
|---|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. Ernest Ogesi Kivai, M.P. | | |
| 4. Hon. Caleb Mutiso Mule, M.P. | | |
| 5. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 6. Hon. Peter Mbogho Shake, M.P. | | |
| 7. Hon. Sloya Clement Logova, M.P. | | |

IN ATTENDANCE

MINISTRY OF WATER, SANITATION AND IRRIGATION

- | | | |
|------------------------|---|------------------------------|
| 1. Hon. Alice Wahome | - | Cabinet Secretary |
| 2. Eng. Patricia Kiane | - | Deputy Director |
| 3. Eng. Samuel Alima | - | Secretary |
| 4. Mr. Ismail Chemjor | - | Advisor |
| 5. Ms. Stella Muthungu | - | Personal Assistant to the CS |

SECRETARIAT

- | | | |
|-------------------------|---|-----------------------------|
| 1. Ms. Miriam Modo | - | First Clerk Assistant |
| 2. Mr. Willis Obiero | - | Clerk Assistant III |
| 3. Mr. Shadrack Omondi | - | Legal Counsel II |
| 4. Ms. Patricia Gichane | - | Legal Counsel II |
| 5. Mr. Martin Sigei | - | Research Officer III |
| 6. Ms. Lilian Mburugu | - | Media Relations Officer III |

MIN./PPETC/2023/233: PRELIMINARIES

The Chairperson called the meeting to order at 11.00 a.m. and Hon. Edith Vethi Nyenze, M.P. said the prayers.

MIN./PPETC/2023/234: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. **Meeting with CS, Ministry of Water, Sanitation and Irrigation on the following Petitions regarding:**
 - a) *Ward Based Solution as a long-term remedy to perennial water shortage in Kenya*
 - b) *Pollution of River Athi*
 - c) *Desiltation of Matinga Dam in Kitui West Constituency*
6. Any Other Business
7. Adjournment

The proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Bidu Mohamed Tubi, M.P. and seconded by Hon. Maisori Marwa Kitayama, M.P.

MIN./PPETC/2023/235: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2023/236: MEETING WITH CS, MINISTRY OF WATER, SANITATION AND IRRIGATION ON THE FOLLOWING PETITIONS REGARDING

Consideration of a Public Petition Regarding Ward Based Solution as a long-term remedy to perennial water shortage in Kenya

The CS appeared before the Committee and submitted as follows—

Introduction

The CS indicated that with regards to the Petition, domestic water access was at 71% across the country while sanitation coverage was at 32% in the urban and 22% in rural areas. However, some areas faced the challenge of climate change leading to lack of natural water sources. That the proposal by the Petitioner was a little bit complicated as the reticulation of water from storage sources was a responsibility of the county governments. Further, many areas did not have systems in place such as piping.

The role of the Ministry in water provision

That the Ministry had undertaken various programs and projects in partnership with different stakeholders to ensure every citizen access safe water. The Ministry often conducted detailed

feasibility studies of a project to determine water source availability, economic feasibility and use of appropriate technology. The need analysis undertaken is based on the area to be served and the population expected to benefit. The solutions adopted must address the problem for the particular locality. The ministry concurred with the Petitioner that in some cases ground water offered solution to water challenges.

The efforts by the Ministry in water provision

That the Ministry was undertaking measures to ensure ground water development projects including—

- a) *Water for schools*: The National Water Harvesting and Groundwater Exploitation Program and Water for Schools Program targeted provision of water in schools and surrounding communities countrywide. In the last two years, the project had enabled drilling of 81 boreholes for small irrigation schemes and service about 35,000 people.
- b) *Kenya Ground Water Mapping Program*: The Ministry had signed a memorandum of understanding with the Kenya National Groundwater Mapping Program to cover the entire country. The program was being implemented in phases in conjunction with county governments, state corporations, development partners and academia among other stakeholders. Currently, the project had covered Southern Turkana and Marsabit County and was in the process of undertaking groundwater mapping of Athi and Tana River Basins.
- c) *The Horn of Africa Groundwater for Resilience Project*: The project was seeking interventions in aquifer systems within regional and trans-boundary implications in ASAL areas. The project was targeting the rehabilitation of 400 rural water schemes and drilling borehole where necessary. Further, it was seeking to develop the stakeholder's capacity and strengthening of enabling environment for sustainable management, access and use of groundwater.
- d) *Integrated Water Resources Assessment in Nairobi Metropolis for Sustainable Use and Management of Groundwater Resources*: The project was targeting integration of water resources assessment within Nairobi Metropolis and to establish the impacts of development within the area on groundwater and surface water resources.
- e) Other programs include borehole drilling by county governments, National Water Harvesting and Storage Authority, Water Works Development Agencies and Development Partners.

Conclusion

The CS stated that—

- i. County governments need to pull up efforts in water provision through mobilization of funds, awareness creation and collaborating with community projects to reticulate water from the available sources despite the maintenance and sustainability.

- ii. The development of water resources and storage of water was squarely within the mandate of the Ministry. However, the Ministry could not achieve the proposals in the Petition without the participation of county governments.

Committee Concerns

- i. On the best methods of realizing the proposal for the county governments to engage with stakeholders such as local community projects, the CS proposed that the county governments could engage and support local community water projects. Further, the counties could collaborate to maintain water projects done by various stakeholders e.g., CDF, Development Partners to avoid bureaucracies experienced at different levels of service provision.
- ii. On the question as to whether the Ministry jointly support CDF water projects by matching the allocated budget, the CS indicated that such an arrangement was possible and had worked out in other projects. However, the Members could amend the NG CDF Act to allow for administration of ward-based solutions to address perennial water challenges.
- iii. On the issue as to why the efforts done by the Ministry or other stakeholders were not getting to the villages, the CS responded that the right to clean water was entrenched and was progressively being realized. Further, the main challenges included low water levels due to climate change.
- iv. The Committee urged the CS to engage the Petitioner as he was seeking to contribute from his expertise to assist the Ministry come up with better ideas. The CS undertook to reach out to the Petitioner to discuss the proposals in the Petition.

Consideration of a Public Petition Regarding Pollution of River Athi

The CS submitted a written submission on the subject matter and further stated that the pollution of River Athi was a concern and the Ministry was aware of the situation and were mobilizing resources to establish huge water treatment plants especially prioritizing the Tana and Athi Rivers.

Committee Concerns

- i. On the status of EPZA sewer system, the CS indicated that the sewer system was old and was constructed in 1993 and needed upgrading. Further, EPZA had continued to provide water services without being controlled by Water Services Regulatory Board (WASREB). Therefore, there were discussions ongoing for EPZA to get out of water provision.
- ii. On the ramifications of the River Athi pollution on the Thwake Dam project, the CS noted that the dam had a capacity of 688 million cubic meters and was at 83% completion with final completion expected by 6th February 2024. Therefore, the Ministry was constantly monitoring activities upstream and water quality for bacteria and chemical analysis.

- iii. Regarding the solutions to addressing the pollution challenges upstream, the CS stated that there were investments going on to provide total sewer correction in Nairobi and its environs. The CS further stated that Nairobi had the capacity of 192,000 cubic meters of sewer yet it produced about 400,000 cubic meters of sewer thus becoming a major source of upstream pollutants into the River Athi.

Consideration of a Public Petition Regarding Desiltation of Matinga Dam in Kitui West Constituency

The CS submitted as follows—

- i. Matinga Dam is in Kitui West Constituency in Kitui County and was constructed in 1955. The design storage capacity of the dam is one million cubic metres and serves a population of 200,000 people in Nguutani, Mutonguni and Kauwi wards, with water for domestic and irrigation use.
- ii. The Dam was first desilted in 1972 and has been accumulating silt since then. Currently, the dam reservoir is entirely silted, and all components of the dam are in a dilapidated state and therefore cannot be utilized by the beneficiary community.
- iii. Tanathi Water Works Development Agency (TAWWDA) has been directed to undertake comprehensive engineering studies & surveys and prepare detailed technical designs for the rehabilitation of Matinga Dam.
- iv. The studies and survey conducted will be for the desilting of the dam, rehabilitation of the dam embankment, spillway and fencing of the dam reservoir area. The Agency will conclude these studies and submit them to the Ministry of Water, Sanitation, and Irrigation by 31st July 2023 for funding consideration.

Committee Concerns

On the status of colonial dams across the country, the CS indicated that there was need for auditing and mapping of all the colonial dams to establish their status. Further, there were about 408 such dams and the Ministry had begun working on some of them using new designs like establishing check dams to arrest the silt before it gets into the main dams. The CS also noted that despite encroachment of the lands allocated for various dams, some of them were strategically located and land was already set aside for them.

MIN./PPETC/2023/237: ANY OTHER BUSINESS AND ADJOURNMENT

There being any other business, the Chairperson adjourned the meeting at 1:15 p.m. The next meeting would be held on Thursday, 6th July, 2023 at 3.00 p.m.

Sign:  _____

(CHAIRPERSON)

Date: 9/8/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 35TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, JULY 4, 2023, IN THE MINI CHAMBER, COUNTY HALL, PARLIMANET BUILDINGS AT 3:00 PM

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, M.P. | | |
| 5. Hon. Edith Vethi Nyenze, M.P. | | |
| 6. Hon. Caleb Mutiso Mule, M.P. | | |
| 7. Hon. Peter Mbogho Shake, M.P. | | |
| 8. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 9. Hon. John Bwire Okano, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. John Walter Owino, M.P.
3. Hon. Ernest Ogesi Kivai, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
6. Hon. Sloya Clement Logova, M.P.

IN ATTENDANCE

COUNTY GOVERNMENT OF MACHAKOS

- | | | |
|------------------------------|---|--|
| 1. Ms. Hon. Catherine Mutanu | - | CEC, Water, Irrigation, Environment and Climate Change |
| 2. Ms. Winnie Musyoki | - | Chief Officer, Sewerage, Sanitation and Waste Management |
| 3. Mr. Benson Metho | - | Chief Officer, Environment and Natural Resources |
| 4. Ms. Jacqueline Malavu | - | Environment Inspector |
| 5. Mr. Johnstone Mutava | - | Environment Inspector |
| 6. Mr. Geoffrey Mulwa | - | Finance Officer |

EXPORT PROCESSING ZONES AUTHORITY

- | | | |
|--------------------|---|---------------------------|
| 1. Mr. Peter Mutui | - | General Manager |
| 2. Mr. Fred Biketi | - | Ag. Assistant Manager S&E |

MAVOKO WATER AND SEWERAGE COMPANY

1. CPA Michael Mang'eli - Managing Director
2. Mr. Jesse Ambundo - Technical Manager

SECRETARIAT

1. Ms. Miriam Modo - First Clerk Assistant
2. Mr. Willis Obiero - Clerk Assistant III
3. Mr. Shadrack Omondi - Legal Counsel II
4. Mr. Martin Sigei - Research Officer III
5. Ms. Lilian Mburugu - Media Relations Officer III

MIN./PPETC/2023/228: PRELIMINARIES

The Chairperson called the meeting to order at 3.00 p.m. and Hon. Janet Jepkemboi Sitienei, M.P. said the prayers.

MIN./PPETC/2023/229: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
- 5. Consideration of a Public Petition regarding Pollution of River Athi**
 - a) *Meeting with CEC, Environment, Machakos County*
 - b) *Meeting with Managing Director, Mavoko Water and Sewerage Company (MAVWASCO)*
 - c) *Meeting with CEO, Export Processing Zone Authority (EPZA)*
6. Any Other Business
7. Adjournment

The proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Maisori Marwa Kitayama, M.P and seconded by Hon. Joshua Chepyegon Kandie, M.P

MIN./PPETC/2023/230: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2023/231: CONSIDERATION OF A PUBLIC PETITION REGARDING POLLUTION OF RIVER ATHI

Meeting with CEC, Water, Irrigation, Environment and Climate Change, Machakos County

The CEC appeared before the Committee and submitted as follows: -

- i.) Water pollution is a critical issue that needs to be addressed nationally and globally and the responsibility of water protection and pollution is shared between the National and County Governments as mandated by the Constitution of Kenya 2010. Specifically, the national Government focuses on water resource management while the county government is responsible for stormwater management and water sanitation services.

- ii.) Athi River has its drainage basin from Ngong Hills and runs through Kajiado, Nairobi, Machakos, Makeni, Kitui and eventually drains into the Indian Ocean and potential point of pollution start from its source counties.
- iii.) Despite efforts by Machakos County to curb the said pollution, other pollution points exist in Nairobi and Kiambu counties. Athi river passes through Mavoko which is a highly industrialized area with major factories that manufacture cement, steel and other edible products like KAPA, London Distillers among others.
- iv.) Many people in Nairobi have invested in the said area because of its proximity to the capital. This has overstretched the existing infrastructure including the sewer systems, water supply, transport system and other social amenities.
- v.) The existing trunk sewerage system was constructed in the early 1990's with a design life of 30 years and currently, it is beyond its design life and suffers frequent blockages since it is overstretched.
- vi.) The existing trunk system however, only covers mainly Athi River town as targeted by EPZA.
- vii.) To address the menace of pollution in River Athi, an Interagency Technical Committee was established under the Nairobi Rivers Commission comprising representatives from relevant government agencies inclusive of several counties to coordinate efforts for the fast-tracking and restoration of the Athi River Basin.
- viii.) That county government had secured engineering design for the sewer system and was appealing to the national government for support.
- ix.) The National Government and the county government and the African Development Bank are currently constructing the Machakos Sewer System which is about 52% complete and is expected to be completed in December, 2024.
- x.) That the county was also streamlining building approvals to avoid mishaps in approvals which sometimes allowed for encroachment of the riparian lands.
- xi.) That the county government was in support of the proposal to go for the CEOs and managers of companies which did not comply instead of closing the companies.

Members Concerns

- i.) The Committee inquired about the blame apportioned to the county government for allowing developers to build structures along the river, illegal sand harvesting and lack of cooperation between the county and other agencies. The CEC stated that the department of environment was not involved in planning before but were now involved in making such approvals hence a big step towards cooperation to manage pollution.
- ii.) Regarding illegal sand harvesting, the CEC stated that meetings were ongoing with sand harvesters to bring them on board in clean up exercise.
- iii.) With regards to lack of cooperation, the CEC indicated that the county government had an open-door policy allowing various stakeholders such as TARDA to work closely in tree planting and other efforts to manage pollution and there was evidence available to that effect.

- iv.) The Committee inquired about the efforts done by the County Government before the petition was launched. The CEC indicated that there was already an established strategic plan dealing with the issue of pollution.
- v.) Regarding the concerns of raw sewer emissions into River Athi, the CEC stated that environmental officers were on the lookout and public education had borne fruit especially with regards to reducing emissions of raw sewer at night. The County had committed to recruit and deploy 84 enforcement officers. Further, there was one prosecution already done for suspected emission of raw sewer.
- vi.) Regarding the Kenanie ETP being used for industrial waste despite being residential, the CEC indicated that the county was aware, and the situation was unfortunate.
- vii.) Regarding the efforts by the multiagency team led by the County Commissioner, the CEC stated that enforcement notices had been issued to polluters especially in the upstream and a there were a lot of improvements regarding compliance. However, some cases were challenging to address as catching the polluters on the act was difficult especially at night due to lack of enough enforcement officers. The CEC also indicated that they were engaging the Nairobi County Government who were also members of the Nairobi River Commission to assist in managing pollution from the upstream side in Nairobi.

Meeting with Managing Director, Mavoko Water and Sewerage Company (MAVWASCO)

The Managing Director, MAVWASCO appeared before the Committee and submitted that MAVWASCO was an agency under the County Government of Machakos hence the response by the CEC would suffice for the agency as it was jointly done.

Further, the Managing Director informed the Committee as follows -

- i.) That after the Committee's site visit, the EPZA sewer line's manhole that had blocked had now been successfully unblocked by the technical department working jointly with EPZA.
- ii.) That the status of the ETP at Valley View Estate had been improved as they engaged a consultant who enabled the installation of a new system using bacterial treatment of the waste. Further, NEMA had been invited to take samples for analysis.
- iii.) That the water project especially along Mombasa road was not complete yet but would enable provision of water to the residents of Mavoko area hence addressing the challenges previously witnessed.

Members Concerns

Regarding the Kenanie ETP meant for domestic waste being used by EPZA for industrial waste, the CEO stated that the ETP was under the EPZA it had met the standards set by NEMA.

Challenges in enforcing enforcement

Regarding the challenges in enforcements required to stop pollution of River Athi, the CEO mentioned as follows -

- i.) Failure by the national government to do a deed of transfer to allow for the assets from the defunct water service boards to be transferred to water and sewerage companies hence making such companies not to have enough capacity;
- ii.) Vandalism of the sewer infrastructures leading to blockage and malfunctioning; and
- iii.) Lack of enough capacity for policing all the sewer lines and manholes to ensure proper usage.

Efforts by MAVWASCO

Regarding management of sewers and the efforts by MAVWASCO to reduce pollution, the CEO stated mentioned as follows -

- i.) MAVWASCO had been involved in corrective and preventive maintenance of sewer lines, for example, unblocking sewer lines. However, sewer lines upgrade was capital intensive hence the gap in infrastructural development.
- ii.) Through stakeholder forums, the company was engaging industrial and individual customers to manage issues and ensure improvement of ETPs.
- iii.) There was need to invest in a new sewer system.

Solutions to the pollution problem

- i.) Regarding what needed to be done to bolster the efforts towards reduction of pollution, the MD stated that a new sewer system would be ideal for Mavoko area because there were several other areas without a sewer line. Further, the design was already there and TANATHI was sourcing for funds to enable a solution.
- ii.) Also, MAVWASCO proposed the need to have seals at their effluent disposal points for the factories inside EPZA to trap solid waste such as clothes which occasionally found their way into the sewer line and blocked it.

Committee Observations

After the deliberations and engagement with MAVWASCO, the Committee noted as follows -

- i.) There were insufficient resources and funding of water works agencies such as MAVWASCO.
- ii.) The policies issued by WASREB yet there was still infighting withing several government institutions and bodies involved in the management of pollution.

Meeting with CEO, Export Processing Zone Authority (EPZA)

The CEO, EPZA did not appear before the Committee but sent a representative, the General Manager, Mr. Peter Mutui to represent him. However, the Committee declined and requested that the CEO appears in person later.

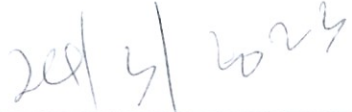
MIN./PPETC/2023/232:

ANY OTHER BUSINESS AND ADJOURNMENT

There being any other business, the Chairperson adjourned the meeting at 5:30 p.m. The next meeting would be held on Wednesday, 5th July, 2023 at 11.00 a.m.

Sign: 

(CHAIRPERSON)

Date: 



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 34TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, JULY 4, 2023, IN THE MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS AT 11:00 AM

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Ernest Ogesi Kivai, M.P. | | |
| 6. Hon. Maisori Marwa Kitayama, M.P. | | |
| 7. Hon. Edith Vethi Nyenze, M.P. | | |
| 8. Hon. Caleb Mutiso Mule, M.P. | | |
| 9. Hon. Peter Mbogho Shake, M.P. | | |
| 10. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 11. Hon. John Bwire Okano, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Bidu Mohamed Tubi, M.P.
3. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
4. Hon. Sloya Clement Logova, M.P.

IN ATTENDANCE

ETHICS AND ANTI-CORRUPTION COMMISSION

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. Paschal Mweu | - | Director Investigations |
| 2. Ms. Catherine Ngari | - | Senior Officer |
| 3. Mr. Abraham Kemboi | - | Officer, EACC Western Region |

TANA AND ATHI RIVER DEVELOPMENT AUTHORITY (TARDA)

- | | | |
|-----------------------|---|-----------------------|
| 1. Mr. Mohamed Liban | - | Managing Director |
| 2. Ms. Maureen Nyamai | - | Head, Legal Services |
| 3. Ms. Nancy Owande | - | Conservation Officer |
| 4. Ms. Loise Muthoni | - | Communication Officer |
| 5. Mr. Michael Ogero | - | ICT Officer |
| 6. Mr. Clement Mbeswa | | |

SECRETARIAT

- | | | |
|----------------------|---|---------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant |
|----------------------|---|---------------------------|

- | | | |
|-------------------------|---|-----------------------------|
| 2. Mr. Willis Obiero | - | Clerk Assistant III |
| 3. Mr. Shadrack Omondi | - | Legal Counsel II |
| 4. Ms. Patricia Gichane | - | Legal Counsel II |
| 5. Mr. Martin Sigei | - | Research Officer III |
| 6. Ms. Lilian Mburugu | - | Media Relations Officer III |

MIN./PPETC/2023/220: PRELIMINARIES

The Chairperson called the meeting to order at 11.00 a.m. and Hon. Caleb Mutiso Mule, M.P. said the prayers.

MIN./PPETC/2023/221: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sitzings
4. Matters Arising
5. Adoption of report on *Poor Implementation of Edu-Afya Medical Scheme in Public Secondary Schools*
6. **Meeting with National Lands Commission (NLC) on the following Petitions regarding:**
 - a) *Degazettement of Hola Irrigation Scheme Land to Allow for the Expansion of the County Headquarters of Tana River*
 - b) *Access Roads for Residents of Narok East Constituency*
 - c) *Delayed Adjudication and Settlement of Residents of Mnarani Sublocation, Kilifi County*
7. **Consideration of a Public Petition regarding Graft Investigations at West Kano Irrigation Scheme**
 - *Meeting with CEO, Ethics and Anti-Corruption Commission (EACC)*
8. **Consideration of a Public Petition regarding Pollution of River Athi**
 - *Meeting with Managing Director, Tana and Athi River Development Authority (TARDA)*
9. Any Other Business
10. Adjournment

The proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Marwa Kitayama, M.P. and seconded by the Hon. Ernest Ogesi Kivai, M.P.

MIN./PPETC/2023/222: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/223: ADOPTION OF REPORT ON POOR IMPLEMENTATION OF EDU-AFYA MEDICAL SCHEME IN PUBLIC SECONDARY SCHOOLS

The Agenda was deferred.

MIN./PPETC/2023/224: MEETING WITH NATIONAL LANDS COMMISSION (NLC) ON THE FOLLOWING PETITIONS REGARDING VARIOUS PETITIONS

The Agenda was deferred.

MIN./PPETC/2023/225: CONSIDERATION OF A PUBLIC PETITION REGARDING GRAFT INVESTIGATIONS AT WEST KANO IRRIGATION SCHEME

Meeting with CEO, Ethics and Anti-Corruption Commission (EACC)

The Committee was informed that vide a letter EACC.6/8/2 VOL III (14) dated 3rd July, 2023 that the CEO, EACC Mr. Twalib Mbarak, CBS had nominated Mr. Paschal Mweu, OGW, the Director Investigations to appear on behalf of the Commission.

During the meeting, the Director Investigations submitted as follows-

Background

1. On 19th August, 2015, EACC, received a report that three officials of West Kano Irrigation Scheme had embezzled public funds which had been released to the Scheme by the Government through the then Ministries of Agriculture and Water and Irrigation under the Economic Stimulus Program (ESP) in Financial Year 2009/2010. Additional reports were later received regarding mismanagement of tractors and suspected misappropriation of rice purchase funds.

The Revolving Fund

2. The West Kano Irrigation Scheme was established in the year 1974 and become operational in 1976. The Scheme was owned by 837 rice farmers, organized into 59 groups in a total acreage of 2,230;

3. The Scheme received a grant of Kshs54,331,938 under the Economic Stimulus Program (ESP) in the Financial Year 2009/2010 to be advanced to farmers to improve rice production. The grant was provided in form of cash disbursements and farm-inputs, which were channeled through the Ministries of Agriculture and Water and Irrigation;

4. The Scheme members received cash advances totaling Kshs25,573,847 for tilling, seed-bed preparation and transplanting; spraying, harvesting; post-harvest activities-drying of rice, packaging and storage, based on farm acreage. The Scheme received Kshs11,691,680.00 for operation and maintenance meant for piping, pumping of water, dykes, water-pans, electricity, canals and access roads. A further Kshs 27,966.00 was provided for loading and off-loading of farm-inputs. The Scheme Farmers received farm inputs including chemicals, rice seeds and fertilizer worth Kshs17,038,445 based on farm acreage.

5. On 31st December 2010, the Scheme members formed a Revolving Fund to ensure sustainability. The Fund was composed of four officials, who included a Chairperson, Secretary, Treasurer and an official from the then National Irrigation Board (NIB). The officials opened a bank account at Kenya Commercial Bank (KCB) for the Revolving Fund.

6. On 31st December 2012, the Revolving Fund received a grant of Kshs18,468,752.20 into its Kenya Commercial Bank account from the Ministry of Cooperative Development and Marketing. On 20th March, 2013, the Scheme Farmers met and resolved to share the grant of Kshs 18,468,752.20 amongst themselves based on farm acreage at the rate of Kshs8,140 per acre.

Allegation of mismanagement of tractors

7. The Commission investigated and established that in 2015, West Kano Irrigation Cooperative Society and Ahero Irrigation Cooperative Society received tractors from JICA and the Ministry of Agriculture, Livestock and Fisheries at a subsidized rate. The machinery was to be paid by the County Government of Kisumu and the two cooperative societies.
8. The investigations established that the tractors had been run down due to mismanagement and poor maintenance. A committee comprised of National Government and County Government Officials was established to provide technical advice on how to revive the machinery. The Committee prepared a report and made various recommendations including disposing off the old tractors but the report had not been acted upon.

Alleged misappropriation of Rice Purchase Funds

9. In the years 2020 and 2021, the Government of Kenya through KNTC resolved to buy milled rice from farmers in Mwea, Ahero, West Kano, and Bunyala Irrigation Schemes and an amount of Kshs 600 million was set aside for the purchases. The purchases were to be executed through farmers' cooperatives within the Schemes.
10. West Kano Irrigation Scheme reported the lowest supply to KNTC. There were cases of direct rice purchases from individuals who were not members of the cooperative society. The KNTC paid only for delivered rice.

Status of the Investigations

11. The field investigations into the graft allegations at the West Kano Irrigation Scheme were complete and the files were undergoing review to inform appropriate recommendations.

Committee Concerns

12. On why the investigations had taken long, the EACC indicated that they faced challenges in accessing evidence from the archives in relevant state departments and documents held by officials of the cooperative society whom some had passed away and documents swept by floods. The Petitioner had provided information but EACC had to look for evidence of the allegations. However, the investigations were since complete and the files were undergoing review before final recommendations.
13. Regarding the interactions of the Petitioner and EACC, the Commissioner stated that they had on several occasions interacted with the Petitioner to discuss the issues in the Petition hence he was always accommodated contrary the allegations.

Misappropriation of funds at the Scheme

14. On whether funds were misappropriated in the West Kano Irrigation Scheme and who was responsible, the EACC indicated that the rise sales fund was channeled directly to farmers although they did not have proper structures and was managed by the West Kano Irrigation Cooperative Society hence they could be held responsible.
15. As to whether there was evidence of corruption, the EACC indicated that the formation and structure of the committee dealing with rise sales fund was a major concern as it was not properly structured and there were no minutes or records of any meeting capturing their deliberations. Despite having a representative from NIA as a signatory, the committee did not have structured way of engagement and utilizing the funds. Therefore, the revolving funds were shared and wound-up contrary to the intended purpose.

Status of the tractors

16. Regarding the state of the 13 tractors provided by JICA, the EACC cited failure by the cooperative society to conduct maintenance of the machinery but Kisumu County Government could have also helped in maintenance works.

Committee Observations

17. The operations of the revolving fund were a major concern with regards to how the West Kano Cooperative Society's committee was constituted and operated in unstructured manner and wound up the contrary to the intended purpose.
18. The funds and the machineries were released to the cooperative society without proper structures in place leading to misappropriation.

MIN./PHETC/2023/226: CONSIDERATION OF A PUBLIC PETITION REGARDING POLLUTION OF RIVER ATHI

Meeting with Managing Director, Tana and Athi River Development Authority (TARDA)

In response to the issues raised in the Petition, the Managing Director, TARDA, Mohamed Liban indicated as follows:

Background

19. That Athi River was considered highly polluted with foul-smell and deep green colored water with litter on its banks being evidence of the extent of the pollution. Some of the pollution originates from inflows of raw sewerage, domestic waste, heavy metals, harmful chemicals, pesticides, gaseous emission, liquid affluence, water waste and solid wastes.

Site Visit

20. TARDA joined the Public Petitions Committee and other stakeholders in a site visit tour of four areas to ascertain pollution of the river. The visit identified various glitches that caused pollution of the river, including encroachment of riparian land, mismanagement of solid domestic waste, lack of functional effluent treatment plants, emission of raw industrial waste ending up in the river, and blocked sewers. However, the site visits also revealed an exemplary effluent treatment plant at the Amalia Apartments in Syokimau.

Causes of pollution

21. That pollution of River Athi was majorly caused by both industrial and domestic wastes from Nairobi City County and neighboring urban areas. That the high population growth and rapid urbanization did not match the corresponding waste management systems put in place especially in the densely populated areas.
22. Further, there was lack of proper enforcement of regulations that prohibit the polluters from polluting the river. Therefore, there us need for multi stakeholder approach in dealing with the menace since NEMA was limited in mandate and resources.

Impacts of pollution

23. The pollution overrode the river's capacity to provide clean water hence causing serious health hazard such as waterborne diseases, cancer and poisoning.
24. The pollution had caused loss of biodiversity such as fish species.
25. The consumption of the water directly or indirectly through agricultural produce irrigated by the water from the river had caused secondary contamination of both humans and livestock.
26. Mismanagement of waste had also affected investments as some houses were evidently not occupied due to the choking smells from the nonfunctional ETPs.
27. The long-term effects of the heavy metal poisoning were birth deformities and development challenges in children born around the area.

Efforts by TARDA

28. Coordinating conservation efforts to protect natural resources by cleaning Nairobi River which is a major feeder of River Athi and provision of waste management solutions in the informal settlements in Nairobi area. TARDA was part of the Nairobi River Cleanup Commission spearheading restoration of the river.
29. TARDA had since planted 50,000 assorted seedlings in collaboration with Daystar University in Athi River and donated others to farmers. The collaboration is also geared towards partnering in research development and proposal writing for grants and funding on environmental matters.
30. Water harvesting and improvement of accessibility through drilling and rehabilitation of boreholes and construction of check dams.

Committee Concerns

31. With regards to why TARDA had not done anything to stop the pollution of the river, the Managing Director stated that multiple agencies had been given various roles, for example, pollution management was vested on NEMA. The role of approving plans along the Tana and River Athi had been taken over by county governments through County Integrated Development Plans (CIDPs) hence TARDA was no longer responsible. Further, Water Resource Authority (WRA) and Water Services Regulatory Board (WASREB) were mandated to manage water resources.

32. With regards to why TARDA appeared helpless, the MD indicated that in the advent of the transition of various roles to the multiple agencies, there came financing challenges to TARDA especially on civic education. However, TARDA was engaging communities on clean water provision and toilets in informal settlements. TARDA had done a proposal which was before Parliament for review of some of the concerns raised and avoid confusion of allocation of roles within the multiple agencies. Despite the efforts on community education to manage domestic waste, most of the pollution was from industrial waste.
33. The Committee inquired whether TARDA was working with other agencies to ensure all stakeholders to solve the pollution problem. The MD indicated that TARDA was before the Intergovernmental Technical Relations Committee (IGTRC) to forge a working relationship between TARDA, and other relevant agencies spearheaded by the national Government to improve service delivery.

MIN./PPETC/2023/227: ANY OTHER BUSINESS AND ADJOURNMENT

There being any other business, the Chairperson adjourned the meeting at 1:15 p.m. The next meeting would be held on Tuesday, 4th July, 2023 at 3.00 p.m.

Sign: _____

(CHAIRPERSON)

Date: _____

4/8/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 28TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, MAY 11, 2023, IN THE PAVILION HALL, HILTON GARDEN INN HOTEL, MACHAKOS COUNTY AT 10:30 AM

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. Ernest Ogesi Kivai, M.P.
4. Hon. Edith Vethi Nyenze, M.P.
5. Hon. Suzanne Ndunge Kiamba, M.P.
6. Hon. Peter Mbogho Shake, M.P.

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
5. Hon. Caleb Mutiso Mule, M.P.
6. Hon. Bidu Mohamed Tubi, M.P.
7. Hon. Maisori Marwa Kitayama, M.P.
8. Hon. John Bwire Okano, M.P.
9. Hon. Sloya Clement Logova, M.P.

INATTENDANCE

MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY

1. Mr. Rodney Omari - Liaison Officer
2. Mr. Akhal Lonea - Liaison Officer, Parliamentary Desk

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)

1. Mr. Mamo B. Mamo - Director General, NEMA
2. Mr. Yebhama Ouma - Deputy Director, Environmental Compliance

SECRETARIAT

1. Mr. Samuel Kalama - Principal Clerk Assistant II
2. Mr. Shadrack Omondi - Legal Counsel II
3. Ms. Patricia Gichane - Legal Counsel II
4. Mr. Willis Obiero - Clerk Assistant III

5. Ms. Rahab Chepkilim - Audio Officer

MIN./PPETC/2023/180: PRELIMINARIES

The Chairperson called the meeting to order at 11.00 a.m. and Hon. Janet Jepkemboi Sitienei, M.P. said the prayers.

MIN./PPETC/2023/181: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sitzings
4. Matters Arising
5. **Consideration of Public Petition regarding Ward Based Solution as long-term remedy to perennial water shortage in Kenya**
 - *Meeting with Chairperson, Council of Governors*
 - *Meeting with CEO, Water Resource Authority*
 - *Meeting with the Director General, NEMA*
 - *Meeting with the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry*
6. **Consideration of Public Petition regarding Pollution of River Athi**
 - *Meeting with the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry*
 - *Meeting with the Director General, NEMA*
7. Any other Business
8. Adjournment & Date of Next Meeting

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business of the Meeting having been proposed by the Hon. Ernest Ogesi Kivai, M.P. and seconded by the Hon. Suzanne Ndunge Kiamba, M.P.

MIN./PPETC/2023/182: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/183: CONSIDERATION OF PUBLIC PETITION REGARDING WARD BASED SOLUTION AS LONG-TERM REMEDY TO PERENNIAL WATER SHORTAGE IN KENYA

The Agenda was deferred.

MIN./PPETC/2023/184: CONSIDERATION OF PUBLIC PETITION REGARDING POLLUTION OF RIVER ATHI

Submissions by the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry

The Cabinet Secretary was represented by the Director General, NEMA who submitted as follows:

Importance of River Ecosystems in Kenya

- i. That the government of Kenya appreciated the multiple ecosystem goods and services provided by the Athi- Sabaki River ecosystem including provision of water for drinking and irrigation; fishing; and for leisure activities such as swimming.
- ii. That the main sources of the Athi River drainage basin pollution arose from informal settlements, inadequate and dilapidated sewerage systems, garages, and industries along the riparian areas. To comprehensively address this menace, a strategy that addresses pollution matters from upstream (all the way to Ngong area); mid- stream and downstream locations needed to be adopted.

Legislative framework

That the Ministry had put in place several relevant pieces of legislation to help stem pollution of the Athi-Sabaki ecosystem including the Environmental Management and Coordination Act (EMCA, 1999); the Environmental Management and Coordination (Water Quality) Regulations of 2006; the Environmental Management and Coordination (Waste Management Regulations) of 2006; and the Environmental Management and Coordination (Wetlands, Riverbanks, Lake shores and Seashore Management) Regulations of 2009.

Interventions put in place by the Ministry.

- i. That the Green Economy Strategy and Implementation Plan (GESIP) 2016-2030 blueprint will aid Kenya's transition to a sustainable path through five thematic areas and strategies, including: promoting sustainable infrastructure; building resilience; sustainable natural resource management; promoting resource efficiency and social inclusion and sustainable livelihoods.
- ii. That the National Solid Waste Management Strategy (NSWMS 2015) was the guiding principle of the strategy is that of 'zero waste' with interventions to phase out illegal dumpsites across the country in line with the envisioned waste hierarchy.
- iii. There were several guidelines to promote sustainable management of the said ecosystem including the National Sand Harvesting Guidelines, and the Environmental Impact Assessment Guidelines.
- iii.iv. That the President launched the Nairobi River Commission whose mandate is to provide strategic direction, oversight, and coordination of efforts towards the rehabilitation of Nairobi Rivers. The work and objectives of this commission will greatly contribute to reduced pollution of the Athi- Sabaki ecosystem.

Programmes and Projects

- i. That the Ministry through NEMA had the National Strategic Plan on Prevention and Control of Pollution of Athi-Sabaki river basin (2020), a 5-year strategic plan whose objective was to restore the environmental health of the Athi-Galana-Sabaki River basin.

- i. That the Nairobi Rivers Regeneration Programme 2009-2014 aimed at curbing pollution in the river ecosystem in a holistic manner had managed to arrest pollution from upstream sources of the Athi including abattoirs and establishments that did not have sewerage systems.
- ii. That the Ministry through NEMA had established the Urban Rivers Restoration Programme aimed at controlling and reducing pollution in our urban rivers.

Interventions and Role of NEMA

- The pollution assessment revealed that informal settlements like Korogocho, Mukuru Dandora and other residential areas in the Nairobi Metropolitan with inadequate sanitary and sewerage facilities were major sources of human waste which were a hazard to health and environment and caused pollution of water sources.
- That NEMA had undertaken awareness creation in its implementation of the Urban Rivers Restoration Programme (URRP) and the Athi Sabaki Pollution Control Action Plan.
- That NEMA in collaboration with the Water Resources Authority (WRA) commenced the demarcation, mapping, and marking of illegal structures, dumpsites, and discharges in the Athi River Water Basin in line with the URRP, which was one of the Authority's key Work Plan activities.
- That NEMA undertook inspections and was monitoring the performance of the sewage treatment facilities within the Nairobi City Metropolitan since they were considered as potential areas of processes and sources of materials that were dangerous to health and environment, particularly in the downstream areas of Nairobi and other rivers.
- That NEMA undertook the mapping of dumping sites along the upper sections of the drainage basin for purposes of taking further action in collaboration with other stakeholders.
- That NEMA had carried out water quality analysis on the upper drainage basin of Nairobi River covering the drainage basin from the source at Ondiri Swamp and up to, and along the Thika Express Way, Eastern Bypass towards Ruai, Lang'ata Road and upper parts of Ngong River.
- That in collaboration with Water Resources Authority (WRA), NEMA had marked areas that have encroached Nairobi River riparian areas.

Recommendations

That NEMA recommends as follows:

- Enhance funding to the Urban Rivers Restoration Programme (URRP) in NEMA to address the pollution challenges within the Athi Basin
- Promote uptake of the National Solid Waste Management Strategy
- Strengthen collaboration between National Government and County Governments in environmental management.
- Support continued compliance and enforcement actions by NEMA within the Athi Basin targeting all enterprises close to the river.

- Counties adjacent to the Athi River to take immediate actions to set up and operationalize their County Environment Committees for purposes of proper environmental management within their jurisdictions.

Committee's Concerns

Annual Environmental Audit

The Committee inquired how NEMA carried out impact assessments on companies suspected of polluting River Athi. The DG indicated that NEMA conducts annual environmental audits on specific facilities. Further, companies also do self-audits and present their results to NEMA. The DG undertook to provide copies of environmental audits of sampling points along Athi River to the Committee.

In addition, NEMA had put measures in place including provision of adequate sanitary facilities to accommodate for disposal and/or treatment of all human waste and wastewater generated in Korogocho, Dandora, Mukuru and other areas within the Nairobi Metropolitan area.

Allegations of Corruption by NEMA officers

The Committee raised concerns about alleged corruption by officers allowing companies to operate without proper compliance in waste management. The DG stated that the Authority was doing its best to ensure compliance at every stage.

ETP Compliance

The Committee inquired why some factories were operating without whatever ETP means in full (ETP)s. NEMA responded as follows:

- That there were about 40 factories without ETPs and others with nonfunctional ETPs.
- That a compliance assistance program was initiated to enable the companies comply progressively.
- That NEMA conducts routine inspections, offers 14 days to the companies to comply, after which closure was a last resort after a risk analysis is conducted.
- That the program had yielded progressive results in compliance journey as companies had since installed state of the art treatment plants.
- That NEMA had staffing challenges to enforce compliance across the country hence the justification for methods such as the assisted compliance.
- That most of the factories began operations before NEMA was established thus managed to get licenses without the current NEMA requirements such as ETP.

Source of pollution of River Athi

The Committee sought to establish the causes of pollution of River Athi. NEMA responded that the old dilapidated and dysfunctional sewer system was a major cause of pollution.

Environmental Restoration Fund

The Committee inquired about the state of the environmental restoration fund. NEMA indicated as follows:

- That the fund was declared insolvent in 2019 hence NEMA was unable to collect funds to enable it to execute its mandate.
- That there were budgetary challenges since the environmental impact fee had been capped at 0.01% of a project.
- However, NEMA had formulated a proposal which was under consideration regarding environmental financial assurance. The proposal if approved will require high-risk industries to pay a financial guarantee which could be used in the unlikely event they fail to comply.

The role of NEMA in testing carcinogens

The Committee inquired about the role of NEMA in testing River Athi water. The DG indicated as follows:

- That NEMA's mandate was to implement environmental policies, but through the lead agencies it tests samples in designated laboratory.
- That the testing budget was only Kshs5 million per year hence straining the authority in exercising its mandate.
- That to bridge the financial gap, NEMA received Kshs1 billion from Green Climate Fund in South Korea to address pollution concerns in Athi River through the Upper Athi River Catchment Project. However, the fund had not been released from the National Treasury.
- That NEMA was unable to undertake some of its activities after being stopped from collecting project fees which were cut but had since been reinstated.

Industrial pollution in River Athi

The Committee was concerned about the presence of carcinogens in the aquatic environment and inquired to know the specific chemicals in the Athi River water. The DG indicated that there was likelihood of carcinogens in the aquatic environment because of the sources of pollution, however, more research needed to be done on the specifics.

The Committee also queried whether the inspections by NEMA had proved the existence of the chemicals in the river. NEMA stated that according to the last inspection in December, 2022 most companies had channeled their waste through the EPZ sewer line and not into the river directly. However, some of the areas like Mavoko did not have proper sewerage systems, hence allowing companies to channel their waste directly into the river.

Committee Observations

After the deliberations, the Committee made the following observations:

1. NEMA faces a budgetary deficit leading to understaffing and minimal budget to carry out testing, hence affecting the capacity to undertake its mandate.

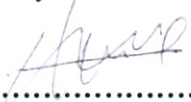
2. There was no comprehensive analysis of compliance by industries along the River Athi.
3. Assisted compliance was a noble idea but must be balanced to avoid rogue officers misusing the innovative idea of helping industries stay in business.

Committee way forward

The Committee requested NEMA to assist in mapping out the specific areas for the site visit along the River Athi.

MIN./PPETC/2023/185: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1:40 p.m. The next meeting would be held on Friday, 12th May 2023.

Sign: 

(CHAIRPERSON)

Date..... 8.08.2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE TENTH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, DECEMBER 15, 2022, IN THE CONFERENCE ROOM, HILTON GARDEN INN HOTEL, SIXTH FLOOR AT 9:30 AM

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. Ernest Ogesi Kivai, M.P. | | |
| 5. Hon. Edith Vethi Nyenze, M.P. | | |
| 6. Hon. Caleb Mutiso Mule, M.P. | | |
| 7. Hon. Peter Mbogho Shake, M.P. | | |
| 8. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 9. Hon. Sloya Clement Logova, M.P. | | |

ABSENT WITH APOLOGIES.

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. John Walter Owino, M.P.
3. Hon. Maisori Marwa Kitayama, M.P.
4. Hon. Bernard Muriuki Nebart, M.P.
5. Hon. John Bwire Okano, M.P.
6. Hon. Bidu Mohamed Tubi, M.P.

IN-ATTENDANCE

PETITIONERS IN THE PETITION REGARDING AMENDMENT OF THE CONSTITUTION OF KENYA TO PROVIDE FOR THE OFFICE OF THE PRIME MINISTER, DEPUTY PRIME MINISTER AND LEADER OF OFFICIAL OPPOSITION

- | | | |
|----------------------|---|------------|
| 1. Mr. Victor Okul | - | Petitioner |
| 2. Ms. Naomi Kemunto | - | Petitioner |
| 3. Mr. John Ohaga | - | Petitioner |

PETITIONER IN THE PETITION REGARDING POLLUTION OF RIVER ATHI

- | | | |
|---------------------------|---|------------|
| Hon. Vincent Kawayu, M.P. | - | Petitioner |
|---------------------------|---|------------|

SECRETARIAT

- | | | |
|-------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant II |
| 3. Ms. Willis Obiero | - | Clerk Assistant III |
| 4. Ms. Patricia Gichane | - | Legal Counsel II |
| 5. Mr. Shadrack Omondi | - | Legal Counsel II |
| 6. Mr. Martin Sigei | - | Research Officer III |
| 7. Ms. Eunice Jalang'o | - | Office Assistant |
| 8. Mr. Yeziel Jillo | - | Serjeant-At-Arms |

MIN./PPETC/2022/43: PRELIMINARIES

The Chairperson called the meeting to order at 9.30 a.m. and said the prayers. The Members of the Committee introduced themselves after which the Lead Clerk introduced the secretariat. The Petitioners also introduced themselves.

MIN./PPETC/2022/44: CONSIDERATION OF A PUBLIC PETITION REGARDING AMENDMENT OF THE CONSTITUTION OF KENYA TO PROVIDE FOR THE OFFICE OF THE PRIME MINISTER, DEPUTY PRIME MINISTER AND LEADER OF OPPOSITION.

1) Brief from Legal Counsel

The Legal Counsel presented a brief on the Petition (*See attached Brief on the Petition*) as follows:

The Petition

The Legal Counsel briefed the Committee that the Petitioner drew the attention of the House to his prayer seeking amendment of the Constitution to introduce the Office of the Prime Minister, the Office of the Deputy Prime Minister and the Leader of the Opposition. The petitioner averred that ethnicity-based politics leads to chaos and discontentment and is only beneficial to tribes with numbers. He explained that the amendment will bring an end to the divisive politics in the country and the '*winner takes it all system*' in the Government.

Analysis

The Legal Counsel stated that the Constitution in Article 94(3) provides for the role of the Parliament of passing amendments to the Constitution in the exercise of its legislative authority.

- a) That a proposal to amend the Constitution shall be enacted in accordance with Article 256 and 257. The proposal must be subjected to a referendum if the amendment relates to:
- the supremacy of the Constitution;
 - the territory of Kenya; the sovereignty of the people;
 - the national values and principles of governance referred to in Article 10(2)(a) to (d);
 - the Bill of Rights; the term of the office of the President;
 - the independence of the Judiciary and Commissions and Independent Offices to which Chapter Fifteen applies;

- the functions of Parliament; the objects, principles and structure of devolved government; or the provisions of the Chapter 16.
- b) The Constitution provides that an amendment that does not relate to the matters enumerated above may be enacted either through Parliamentary initiative as provided for under Article 256 or by a popular initiative, by the people and Parliament, in accordance with Article 257.
 - c) The Petitioner seeks the amendment of the Constitution through Parliamentary Initiative as provided under Article 256.
 - d) If the Committee considers and approves the Petition, the approved content will be reduced to a legislative proposal sponsored by the Committee for consideration by the House. Standing Order 114 (7A) provides for the procedure to be adopted with respect to a Legislative Proposal to amend the Constitution.

Therefore, the Committee should seek to interrogate -

- a) The views of the Petitioner on the proposed amendments, in particular
 - which specific provisions of the Constitution he seeks to amend;
 - the responsibilities of the proposed Offices; and
 - the manner of appointment and removal from the proposed Offices.
- b) The views of stakeholders such as -
 - the Leader of the Majority Party and the Leader of the Minority Party;
 - the Attorney General, Commissions and Independent Offices as the Independent Electoral and Boundaries Commission, the Public Service Commission;
 - the Kenya Law Reform Commission; and
 - the NGO Council as a corporate representative of the civil society.

Submission by the Petitioners

The Petitioner made submissions before the Committee as follows:

a) Constitutional history of the Prime Minister Position

The Petitioner presented the historical background of the Offices of the Prime Minister and Leader of Official Opposition noting the transitions from a parliamentary to presidential systems. The Petitioners stated that the two offices have previously featured in Kenya's journey as follows:

- i. Independence Constitution Order in Council 1963 provided for the Office of the Prime Minister during the transition phase of independence.
- ii. Attempted reforms to re-introduce the Office of PM in 1992 but introduction of multiparty democracy introduced the Office of the Opposition Leader.
- iii. Constitutional Review Commission (Bomas Draft) agreed to the creation of the Offices of Prime Minister and two deputies and Official Opposition Leader
- iv. The Wako Draft which was defeated in 2005 National Referendum also contained the idea of introducing the two offices.
- v. After the 2007 PEV, Agenda Four of the National Reconciliation Accord provided for the constitutional reforms to create temporarily the Office of the Prime Minister and two deputies.

- vi. The Committee of Experts published the harmonized draft on 17th November, 2009 for public participation and forwarded the final draft to the Parliamentary Select Committee on 8th January, 2010.
- vii. The proposals to have the offices were turned down in the Naivasha Retreat without justification and either pure presidential system or devolution was proposed.
- viii. Devolution was chosen leading to the disbandment of the Offices of Prime Minister and Official Opposition Leader.

The Petitioners submitted that the current Constitution is a product of high voltage, horse-trading among political elites hence a compromised system. That the thinking of the political class back then was first to give Kenyans a new Constitution and then make amendments later. The Petitioners submitted that the time for amendments had come.

b) The rational for the proposal to introduce Office of the Prime Minister

The Petitioners submitted to the Committee that the proposal to establish the Offices of Prime Minister and Official Opposition Leader would be necessary for the following reasons:

- i. Inclusivity and elimination of ethnic majoritarianism: The arithmetic formula of politics is based on tribal numerical strength which is disadvantageous to tribes with minimal numbers. Therefore, an expanded executive will include other tribes at the highest decision-making organs of the state.
- ii. Democratic deficiency responsible for post-election violence would be cured by expanding the executive.
- iii. A better cooperation between Parliament and Executive: That a functional link between the two organs is non-existent today because Cabinet Secretaries cannot address Parliament or respond to questions at the Floor of the House. The CSs are juggling between ministerial duties and appearing before the committees of Parliament, functions which can be undertaken by a substantive Prime Minister.
- iv. End secessions and agitations. The existence of deep rooted sense of marginalization among a section of Kenyans with regards to political representation has provided fertile ground for repeated attempts of secession for example,
 - The Shifta War or Gaf Daba (1963–1967): A secessionist group of ethnic Somalis in the Northern Frontier District of Kenya who attempted to join Somalia.
 - The Mombasa Republican Council famously known for “*Pwani si Kenya*” (2008): Ethnic Mijikenda tribes of coastal counties who attempted to secede due to land injustice and underrepresentation in government.
 - Peoples Republic of Kenya (2017): Claims of a section of Kenyans trying to form own country after the 2017 disputed elections and the mock swearing in of ‘Opposition Leader’ which attempted to separate the country into two due to alleged repeated electoral fraud and underrepresentation in government.

c) The rational for the proposal to introduce Office of the Official Opposition Leader

The Petitioner presented the rational as follows.

- i. Institutionalization and formalization of opposition politics: The office was in existence in the 9th and 10th Parliaments through the National Assembly Standing Orders but was scrapped off

after the promulgation of the Constitution 2010. The office will provide a legal framework for engaging opposition in important national discourse.

- ii. Ending “winner takes all” and pacification of losers: Pure presidential system creates stiff competition which provides grounds for voter manipulation, speculation of election rigging and conspiracies of interference with elections. The Office will accommodate the hopes of election losers and provide a platform for the losers to continuously engage in nation building.
- iii. Enhance opposition accountability: Currently the “opposition” is operating from the streets and promote the idea that the only way to engage government is through street protest. They are not accountable to anyone hence the need to bring them to Parliament where they can be held to account. They will also have a chance to convince the MPs to implement some parts of their manifestos.
- iv. Reduce voter apathy: The number of registered voters who did not vote in the past three general elections has been on the rise due to lack of adequate representation of the presidential vote. About 30% who did not vote in 2022 believed voting is an exercise in futility because the system lacks equality of vote. The office of the Official Opposition will reverse this trend.
- v. Accommodation of divergent views: The voters who did not vote for the day’s government will have a voice through this office. Differences of opinion will be accommodated and encouraged because there will be a platform for alternative voice.
- vi. Enhance openness of government and reduce corruption: The occupant of this office will be the principal whistle blower of corruption in government. This will enhance accountability and reduce corruption in government.
- vii. End of “mongrel” or Handshake politics: The loser of an election will have a distinct role of keeping the government in check and on toes to deliver the promises to the people. The conundrum of government opposition itself and opposition joining government will be in the past.
- viii. Enhance democracy: This office will increase the level of citizen participation in government by providing a platform to critic without fear of persecution or witch-hunt.
- ix. Enhance quality debate in Parliament: The opposition will have the opportunity to ask questions on the Floor of the House concerning pertinent issues affecting the people hence enhancing the vibrancy of debates.
- x. End of patronage politics: Opposition will ensure that national government resources are distributed without favouritism or discrimination.
- xi. End of state capture: State capture is normalized through “handshakes” and unchecked powers of rogue government officials, which can be addressed by a functional opposition.

d) Appointment of Prime Minister and Deputy Prime Ministers

The Petitioner submitted to the Committee as follows:

- i. Appointment: That the appointment of the offices shall be carried out by the President within seven (7) days after a presidential election and they will take oath alongside other Members of Parliament. They will take another oath when the Cabinet is constituted and the President, Deputy President, Prime Minister and the two deputies shall not be from the same ethnicity.
- ii. Age: The office holder to have between 40 years and 65 years since the office is a high adrenaline space.
- iii. Term of office: Serves until he or she dies, resigns, or dismissed, or the next appointment after a presidential election. A person shall not serve for more than two terms.

- iv. Duties: The office shall supervise other ministries, prepare government sponsored legislation and link the Executive and Legislature. Also, responds to questions in Parliament once a week or on demand.
- v. Resignation: May resign from office by delivering a written notice to the President after which the President shall appoint another office holder within seven days.
- vi. Dismissal: Can be dismissed for gross violation of the Constitution or insubordination.
- vii. Vote of no confidence: A Member of the National Assembly supported by at least two-thirds of all Members at any time during a sitting of the National Assembly through a Motion.

e) Official Opposition Leader

- i. Qualification: The presidential candidate with the second highest number of votes in a presidential election. Will be a Member of both Houses and appoint two deputies from the membership of Senate and National Assembly. The Opposition Leader will address Parliament once annually and will participate in parliament after amendment of the Standing Orders.
- ii. Removal from office: A Member of the National Assembly supported by at least two-thirds of all Members at any time during a sitting of parliament through a Motion.
- iii. Vacancy: In case of a vacancy in the office by resignation, incapacitation, death and impeachment, the running mate at the most recent presidential elections shall assume the office after the vacancy is declared by the Speaker of the National Assembly.
- iv. Resignation: The Official Opposition Leader shall address the letter of resignation to the Speakers of both Houses.

f) Perking Order/Order of Precedence

In Parliament, the Leader of Opposition will be ranked third after the Speaker and Prime Minister. In official public functions he or she will be ranked sixth after President, Deputy President, Speakers of both Houses, and the Chief Justice.

g) Expenses of the new offices

The Petitioner presented that the establishment of the offices is more of a reorganization of the existing offices. The Prime Minister and the two deputies will take over the five offices of Prime Cabinet Secretary, Majority Leaders of the National Assembly and Senate and their deputies. The Opposition Leader will take up the current Minority Leader of both Houses and their deputies hence no or negligible additional costs.

h) Laws to be amended

- i. Insertion of a new Article 107A on creation of the Leader of Official Opposition
- ii. Repeal and replace Article 108 on order of precedence in the National Assembly to include the Offices of Prime Minister and Official Leader of Opposition
- iii. Insert a new Part 2A on creation of the Offices.

i) The BBI judgement in relation to the Petition

The judgement annulled the proposal based on the constitutionality of the process and not the contents of the Bill. The proposed offices of the Prime Minister and Official Opposition Leader were

neither challenged by the petitioners nor any other interested parties. Hence Parliament can move forward to initiate the proposed changes through a parliamentary initiative in Article 256

j) The President's commitment towards the proposals raised in the Petition

- i. The creation of the office of Prime Cabinet Secretary is in sync with the proposals herein.
- ii. The President has shown to be a proponent of the creation of the Office of the Official Leader of Opposition through several high-profile public fora pronouncements.
- iii. The Kenya Kwanza Manifesto also outlines the intent to create these offices.

k) Prayers

The Petitioner prayed to the Committee to submit a favourable report to the House for consideration of the establishment of the offices to address the historical omissions definitively.

Committee Concerns

The Committee raised the following issues.

a) The specific areas in the Constitution to be amended

With regard to the specific areas of the Constitution to be amended, the Petitioner responded that he was seeking to amend the Constitution to insert a new Article 107A to create the office of the Leader of Official Opposition, repeal and replace Article 108 on Order of precedence, and insertion of a new Article 2A to create the said offices.

b) The manner of appointment and removal from office and the House the Prime Minister will be a member

With regards to the manner of appointments and removal, the Petitioner stated that the Prime Minister will be appointed by the President and removed through a Motion by a Member of the National Assembly supported by two-thirds. The opposition leader will be the presidential candidate with the second highest votes and will be removed in the same manner as the Prime Minister in Parliament.

The Petitioner proposed that the Prime Minister be accommodated in both Houses depending on the questions raised.

c) Cost/budget for running the proposed offices

With regards to the budget of running the offices, the Petitioner proposed that the existing Office of the Prime Cabinet Secretary be renamed and strengthened to be the Office of the Prime Minister. With regards to the Office of the Official Opposition Leader, the Petitioner proposed an amendment for the opposition leader to take the offices of minority leadership hence using the same existing budget or additional negligible costs.

d) The Leadership gap existing without the offices

The committee sought to identify the existing gap in leadership since already there is overrepresentation of Kenyans at various levels.

With regards to overrepresentation, the Petitioner submitted that despite the current state of affairs, the pertinent issues being addressed in the proposal cannot be ignored. For example, tension during and after elections makes the country to lose more money.

With regards to the gaps being addressed, the Petitioner mentioned that there is a gap in the linkage between the executive and legislature hence the need for the Prime Minister as it were before. Also, the Petitioner identified the lack of vibrancy in debates that was created by the Prime Minister's time. The Petitioners also cited gender balance as an opportunity/gap that can be addressed in the setting up of these offices.

e) Why the Petitioner wants amendment through Article 256

The Committee sought to know why the Petitioner preferred amendment through Article 256 and not Article 257.

With regards to this, the Petitioner stated that the BBI judgement ruled that the President cannot amend the Constitution using the "Wanjiku" route. Also, mounting a campaign for amendment of the Constitution for the common citizens would be difficult hence the parliamentary route. Also, the parliamentarians are better placed to amend laws.

Committee Resolutions

The Committee resolved to seek the views of the following:

- i. House Leadership (Majority and Minority Leaders)
- ii. Attorney General
- iii. IEBC
- iv. Public Service Commission
- v. Controller of Budget
- vi. NGO Council

MIN./PPETC/2022/45: CONSIDERATION OF A PUBLIC PETITION REGARDING POLLUTION OF RIVER ATHI

1) Brief from Legal Counsel

The Legal Counsel presented a brief on the Petition (*See attached Brief on the Petition*) as follows:

The Petition

The Legal Counsel briefed the Committee that the Hon. Vincent Kawayu, M.P., on behalf of the residents of Mwala Constituency drew the attention of the House to the prayer for the investigation of pollution of River Athi that has led to the discoloration of the river downstream.

The petitioner seeks the intervention of the House to-

- i. engage the Government Chemist and National Environment Management Authority (NEMA) to ascertain the specific chemicals and heavy metals that have permeated the waters of Athi River in order to identify the companies responsible for the pollution;

- ii. secure thorough cleanup of the River Athi through budgetary and related provisions;
- iii. secure due compensation of residents affected by the pollution;
- iv. end further pollution through the revocation or withdrawal of licences of the polluting companies in river Athi and other water bodies;
- v. secure the demarcation of the riparian lands and analyse the feasibility to make them recreation areas; and
- vi. make any other appropriate recommendations it deems fit.

Analysis of applicable legal provisions

The Legal Counsel highlighted the following legal provisions underpinning the Petition:

- i. The Environmental Management and Coordination Act, 1999
- ii. Article 42(1) (a) of the Constitution
- iii. Article 69 (1) (f) and (g) of the Constitution
- iv. Section 118 (1)(e) of the Public Health Act
- v. On the issue of revocation of licenses and permit in a bid to end pollution, section 36 of the Water Act provides that a person requires a water permit to discharge a pollutant into any water resource.
- vi. On budgetary provisions for the clean-up of the river Athi, it is within the mandate of Parliament, under Article 95 (4) (b) to appropriate funds for expenditure by a national state organ.

The Committee should seek to interrogate-

- i. The views of the Petitioner and the views of the public or local communities along the River Athi in Mwala Constituency. The Petitioner should advise the committee on the extent of the manifest pollution of the river.
- ii. The views of the residents as to the effects of the pollution to their health.
- iii. An analysis by the Government Chemist of samples from the waters of the River Athi;
- iv. An environmental audit by NEMA on the level and nature of pollution of the River Athi.
- v. The views of the factories operating along the River Athi with regard to their waste management practices and the alleged pollution of the River Athi;
- vi. The views of NEMA on the remedial measures available to ensure restoration of the environment and an end to pollution of the River.
- vii. The views of the Cabinet Secretary responsible for the Environment, to ascertain whether this riparian area may be converted to recreational areas.
- viii. The views of Cabinet Secretary responsible for Water and Sanitation and relevant state agencies including the Water Resources Authority and the Tana and Athi River Development Authority, with regards to the pollution and clean-up of the river.

2) Submissions by the Petitioners

The Petitioner made his submissions before the Committee as follows:

a) Background of the Petition

The Hon. Vincent Kawaya, M.P, stated that the Petition was prompted by the lack of taking responsibility by the authorities mandated to protect River Athi. The Petitioner averred that there had

been similar petitions on the same matter but probably with different prayers, however, little had been done on the same.

The Petitioner stated that River Athi is the second largest in the country which starts from Ngong Hills through Athi River where it is joined downstream by Nairobi River as you approach Fourteen Falls. The river can be classified into up and down stream. The upstream is any area just before Fourteen Falls which could be referred to as polluters section while the downstream could be referred to us consumers' section. Most of the pollution also come with the tributaries that joins at the river flowing from Ngong. River Athi serves Matungulu, Yatta, Mwala, Makueni, and Kitui.

During the dry season, the pollution of the river is evident since even the fish in the river die, which is not evident during the rainy season. The pollution is also evident by the complete change in the color and smell of the water. Hon. Vincent Kawayu stated that the status of the river caught his interest since he was doing a hydroelectric project to pump water for small scale irrigation in Mwala Constituency.

b) Systematic identification of polluters

The honorable Member stated that the challenge in identification of pollutants could be attributed to lack of specific data and information. He presented to the Committee that it is important to first identify the pollutants present in the river then trace backwards to the industries/companies producing them to provide evidence. Since the government has the database of companies producing certain chemicals, then the backward tracing could help identify the polluters. In addition, a visit to the identified companies and determining their proximity to the river and identifying their waste management policies would enable identification of pollutants.

Hon. Kawayu stated that the presence of informal settlement along the rivers enable the industrial polluters to hide since it's difficult to establish whether the source of pollutants is the informal settlements or the industries. Therefore, the need for a clear demarcation of the riparian lands, for example, 30 meters gap to avoid settlements after cleanup and even turning the riparian lands to recreational spaces.

c) Presence of pollutants

The honorable Member stated that research by the University of Nairobi assessing the pollution of River Athi through the analysis of heavy metals present, industrial effluents, invertebrate community, and riverine vegetation between Ngara and Fourteen Falls. The heavy metal analysis showed the elements of Lead (Pb) of between 3-98 mg/ml, Copper (Cu) of between 19-98 mg/ml, ferrous Iron (Fe) of between 190-857 mg/ml.

The invertebrate analysis showed that most of the invertebrate parts were found to disappear beyond Kijabe Street meaning loss of aquatic life as the pollutants join the river through tributaries. The riverine vegetation was also progressively disappearing along the riverbanks due to the pollution.

Further, the Hon. Kawayu stated that a quick look at the Google Maps tracing the river upwards showed that Nairobi sewage is feeding into River Athi alongside other sewer lines. Many people have encroached into the riparian land, for example, at Globe Cinema, causing all manner of pollutants into the river.

d) The effects of the pollution

The honorable Member stated that another study stated that River Athi received large amount of pollution from Nairobi with a population of over four (4) million people. That alongside population growth and overpopulation, poor waste solid management emerged as a key health risk.

Therefore, the river is increasingly choking with uncollected garbage, human waste from informal settlements, industrial gaseous emissions, liquid effluents and solid waste, agrochemicals, and other waste specially petrochemicals and metals from microenterprises and overflowing sewers. The situation occasioned spread of waterborne diseases, loss of sustainable livelihoods, loss of biodiversity, reduced availability and access to safe water and various toxic substances and metals poisoning affecting human productivity.

Hon. Kawayu stated that even using the water for irrigation and by mere consumption of vegetables on water polluted by chemicals can cause cancer. Furthermore, other than the small-scale irrigation projects, billions of shillings used in bigger projects like Thwake Dam would not be meaningful as its source is River Athi, hence the need for a thorough cleanup.

e) Coordination with Nairobi River Commission

The Petitioner presented to the Committee that National Environment Management Authority (NEMA) has failed to handle these pollution matters with very little action. Therefore, there is need to also coordinate with the newly formed Nairobi River Commission.

3) Committee Concerns

a) Lack of adherence to the law

From the presentation of Hon. Vincent Kawayu, the Committee noted the lack of adherence to the existing laws by polluters. The Committee expressed concerns over the lack of responsibility by authorities and agencies who were not doing their job with regards to protecting the rivers because even if the rivers were to be cleaned up, there would still be need for maintenance.

b) The need for strong recommendations within the law

The Committee noted the need for making strict and strong recommendations that would be effective in dealing with polluters and protecting the rivers and follow it through.

c) Licenses to discharge wastes

The Committee sought to understand whether there were some companies with licenses to discharge their wastes into the rivers. The honorable Member in response stated that the Committee should put NEMA to task to understand why and how there were such licenses and what actions were taken against those polluters.

d) Site visit of River Athi

The Committee sought to identify how to conduct a site visit along River Athi to establish facts on the ground and visualize the problem. Hon. Vincent Kawayu informed the Committee that it was

necessary to identify the polluters by also visiting both the upstream and downstream using a low-flying chopper and meet the communities downstream to interact with the people affected. Hon. Kawayia also brought to the attention of the Committee that the timing of the visit was very important because depending on the season, the river could provide different results. For example, during the dry season, the pollutants are more visible than in the rainy season where the rains wash away some of the effluents.

4) Committee Resolutions

The Committee resolved as follows:

- i. Meeting with the stakeholders, National Environment Management Authority (NEMA), Ministry of Environment, Climate Change and Forestry, Ministry of Water and Sanitation, and the County Government of Machakos to assist in establishing the facts about the issues raised in the Petition.
- ii. Established a sub-committee to advise on the roadmap of the proposed site visit of River Athi to visualize the extent of the problem and identify polluters with the help of experts. The subcommittee was comprised of:
 1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
 2. Hon. Janet Jepkemboi Sitienci, M.P - Vice Chairperson
 3. Hon. Caleb Mutiso Mule, M.P.
 4. Hon. Sloya Clement Logova, M.P.
 5. Hon. John Bwire Okano, M.P.
 6. Hon. Suzanne Ndunge Kiamba, M.P.

MIN./PPETC/2022/46:

ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1.00 p.m. The date of the next meeting would be on Thursday, 15th December, 2022 at 2.30 p.m.

Sign: .....
(CHAIRPERSON)

Date: .....