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THE SENATE

TWELFTH PARLIAMENT | SIXTH SESSION

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

ON

PETITION TO EXPUNGE THE ALLEGED OFFENDING PROVISIONS IN
THE WATER SERVICES REGULATIONS, 2021 AND THE WATER
RESOURCES REGULATIONS, 2021

PAPERS LAID	
DATE	9 TH JUNE, 2022
TABLED BY	SMK
COMMITTEE	LC WE & NR
CLERK AT THE TABLE	HAGGAN

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

JUNE, 2022

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LIST OF ABBREVIATIONS/ SYNONYMS

CoG	- Council of Governors
CS	- Cabinet Secretary
KPLC	- Kenya Power and Lighting Company
NDICCC	- National Development Implementation and Communication Cabinet Committee
NDITC	- National Development Implementation Technical Committee
WASREB	- Water Services Regulatory Board
WRA	- Water Resources Authority
WRR	- Water Resources Reanalysis
WRRP	- Water Resilience and Restoration Program
WRUA	- Water Resources Users Association
WSP	- Water Service Providers

PREFACE

Mr. Speaker Sir,

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

Committee Membership

The Committee comprises of the following Members.

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

At the sitting of the Senate held on 16th September, 2021, Hon. Sen. Kenneth Lusaka, Speaker of the Senate reported to the Senate that a Petition has been submitted through the Clerk, to expunge the alleged offending provisions in the Water Services Regulations, 2021 and the Water Resources Regulations, 2021.

Pursuant to standing order 232(1) and the Second Schedule to the Standing Orders of the Senate, the Petition was committed to the Standing Committee on Land, Environment and Natural Resources.

Pursuant to Articles 37 and 119(1) of the Constitution, section 5(2) the Petition to Parliament (Procedure) Act and standing order 232 of the Senate Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within

CHAPTER 1

INTRODUCTION

1.0 Background

1. At the sitting of the Senate held on 16th September, 2021, Hon. Sen. Speaker Kenneth Lusaka, Speaker of the Senate reported to the Senate that a Petition has been submitted through the Clerk, to expunge the alleged offending provisions in the Water Services Regulations, 2021 and the Water Resources Regulations, 2021. Pursuant to standing order 232(1) and the Second Schedule to the Standing Orders of the Senate, the Petition was committed to the Standing Committee on Land, Environment and Natural Resources.

1.1. Underlying Constitutional and Statutory Provisions

2. **Article 1(1) and (2)** of the constitution of Kenya, reposes all sovereign Power in the People of Kenya, exercised solely in accordance with the Constitution
3. **Article 1(3) (a) and 1(4)** of the Constitution of Kenya delegates sovereign power of the constitution to inter alia parliament and the legislative assemblies of the county governments and that the sovereign power of the people is exercised at the national and county level.
4. **Article 37** of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while **Article 119(1)** of the Constitution provides that “*every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.*”
5. **Article 119** of the constitution provided that any person has a right to petition parliament to consider any matter within its authority.

6. Section 5(2) of the Petition to Parliament (Procedure) Act, provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House*. In this regard, standing order 232 of the Senate Standing Orders provides as follows-

232. Committal of Petitions

(1) Every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.

(2) Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.

7. Standing order 233 requires the Clerk to, within fifteen days of tabling of the report on a petition under Standing Order 232 (Committal of Petitions), submit a copy of the report to the petitioner or petitioners.

1.2. The Complaint

8. This complaint before the Senate seeks to expunge the alleged offending provisions in the Water Services Regulations, 2021 and the Water Resources Regulations, 2021

1.2.1. Background Facts of the Petition

9. That this petition is of national importance, and it touches on fundamental rights of Kenyan citizens as provided for and protected by the Constitution of Kenya. In particular, reference is made to Article 43 (1) (d) that guarantees the right of every Kenyan to clean and safe water in adequate quantities.

the prescribed period.

To enable a judicious disposal of the Petition, the Committee resolved to conduct an inquiry on the issues raised in the Petition. In this regard the Committee invited the Petitioner to a meeting of the Committee for the Petitioner to elaborate further on the issues raised in the Petition and to supply supporting evidence on the same.

The Committee proceeded to invite the Cabinet Secretary (CS), Ministry of Water, Sanitation, and Irrigation, to address respective issues raised on the Petition.

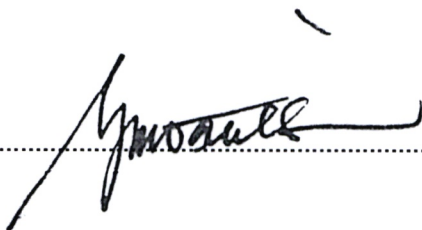
ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioners, Mrs. Sicily K. Kariuki, EGH, Cabinet Secretary, Ministry of Water, Sanitation, and Irrigation, and the other stakeholders for their submissions and contribution to the resolution of this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Land, Environment and Natural Resources on the Petition to expunge the alleged offending provisions in the Water Services Regulations, 2021 and the Water Resources Regulations, 2021.

Signed:



Date: 19/05/2022

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

10. That access to water for the most vulnerable citizens still remains unfulfilled, and/or unsustainable. A huge population of Kenya access water from non-regulated services providers or directly from the sources.
11. That affordability in the cost of water is an important factor determining levels of access for millions of citizens in Kenya.
12. That sustained access to water is an important non-pharmaceutical defence and especially important contributor to the resilience of the most vulnerable population to the vagaries of COVID-19 pandemic.
13. That during the ongoing pandemic, COVID-19, the already vulnerable population were further disadvantaged, with many others entering that category due to increased demand and use of safe water.
14. That a big part of the population in what has been categorized as non-commercially viable areas still depend on small scale water service providers for their water service.
15. That the Water Act (2016) provides for ring-fencing of all incomes derived from water conservation and supply services, for continued conservation and expansion of service bracket.
16. That due to the linkage between abstraction and access and utilization of water, cost of water is an elementary unit of production and impactful to the economy of Kenya.
17. That special attention is drawn to the Legal Notice No. 168, in which Cabinet Secretary in charge of Water, Sanitation, and Irrigation has published proposed Water Resources, 2021, whose proposal provide significant changes in the obligations of water users, and particularly in increasing the nominal cost of abstraction of water from various sources.
18. That the costs proposed charges in the regulations have the potential to lock out many

small scale water service providers, who in any event find themselves struggling to bear the current charges.

19. That the said Water Resources Regulations (2021) will have the effect of substantially altering the cost of water for regulated water service providers, who will pass the cost directly to users who are already bent over from the weight of tax and reduced incomes.
20. That the overall impact of the new regulations would be deepening a failure to observe, protect and fulfil the right to water as provided for in the Constitution of Kenya.
21. That the proposed regulations pose the risk of reducing the resilience of the population against the current COVID-19 pandemic.
22. That there have been efforts to address the aforesaid by civil society and the Council of Governors, and these remain unresolved.
23. That to the best of our knowledge none of the issues pointed out are pending or unresolved in a court of law, or constitutional or other legal body.
24. That section 103 on collaboration with the Water Resources Users Association seems to give water resources authority powers to micromanage the WRUAs.
25. Increase in water use fee for the irrigators is quite high and will impact on their cost of operations notwithstanding the already high taxes and double taxation.
26. The regulations are not clear on catchment management and conservation and should propose a percentage to be ploughed back to catchment restoration.
27. That there should be no fee for data access from WRA.

The Petitioners prayed that:

28. The Senate expunges and reinstates the otherwise amended charges as expressed in Part 2 of Schedule B in the impugned regulations.
29. Pursuant to standing order 232(1) of the Senate Standing Orders, the Petition was committed to the Land, Environment and Natural Resources Committee.

CHAPTER 2

CONSIDERATION OF THE PETITION

2.0 Approach taken by the Committee

30. In considering the Petition, the Committee observed that it would be important to verify the facts alleged by the Petition. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.

31. In this regard the Committee received the Petition from the Petitioner through the House and further met with the Petitioners on several occasions as it met with stakeholders.

32. Thereafter the Committee invited the Cabinet Secretary, Ministry of Water, Sanitation, and Irrigation, who virtually appeared before the Committee.

2.1. Petitioners Submissions

33. Vide a letter REF: SEN/DCS/LENR/2/2021/(59) dated 22nd September, 2021, the Committee invited the Petitioners to virtually appear before the Committee on Wednesday, 6th October, 2021 who thereafter appeared and defended their Petition as follows (**Annex III**):-

34. The oral submission was made pursuant to a petition made with regards to Petition to expunge the offending provisions in the Water Services Regulations, 2021 and the Water Resources Regulations, 2021, and the associated invitation by the Senate Standing Committee on Land, Environment and Natural Resources for the oral submission on 6th October 2021.

35. The petition was of national importance, and it touched on the fundamental rights of Kenyan citizens as provided for and protected by the Constitution of Kenya. In particular, reference is made to Article 43 (1) (d) that guarantees the right of every

Kenyan to clean and safe water in adequate quantities. Reference was made to Article 43 (1) (d) the Constitution of Kenya.

36. Access to water for the most vulnerable citizens still remains unfulfilled, and/or unsustainable. A huge population of Kenya access water from non-regulated service providers or directly from the sources. According to WASREB Impact Report 13, 40 percent of the urban population in Kenya lives in low-income informal settlements. Of this population, only 53 percent are served by WSPs. The current population served by the regulated Water Service Providers within their licenced service area is at 57 percent implying that the rest of the population is still dependent on services that are not regulated.
37. Affordability in the cost of water is an important factor determining levels of access for millions of citizens in Kenya. In support of this assertion, the Petitioners stated that with a population of 50 million, 32 percent of Kenyans rely on unimproved water sources, such as ponds, shallow wells and rivers, while 48 percent of Kenyans lack access to basic sanitation solutions. These challenges are especially evident in rural areas and urban slums where people are often unable to connect to piped water infrastructure. In rural Kenya, the average total coping costs for an unreliable or distant water supply are approximately \$38 per month. In comparison, the average water bill of a typical household in Nairobi that is connected to a piped system is only \$4.46 per month. This comparison highlights the economic burdens that often fall more heavily on unconnected rural customers than on households with piped connections.
38. According to Statement by Cabinet Secretary, Ministry Of Water, Sanitation And Irrigation, Sicily K. Kariuki (Mrs), EGH, during World Water Day 2021, the current level of access in Kenya is estimated at a national average of 64 percent for water, 26 percent for sanitation in urban areas with non-revenue water at 41 percent and the annual water per capita is less than 500 cubic metres, making the country a severe

water stress according to the UN global scale on water security which stipulates minimum of 1000 cubic metres per person per year. (WRRP6, Pg. 1)

39. Sustained access to water is an important non pharmaceutical defence and especially important contributor to the resilience of the most vulnerable population to the vagaries of COVID-19 pandemic. In cognizant of the impact posed by COVID-19 pandemic in the provision of water and sanitation services across the country, the Government invested Kshs. 1.62 billion to drill and equipped 193 boreholes and construct 193 elevated steel water tanks to supply 33 million litres per day of water to enable 1,600,000 residents access free water in the informal settlements in Nairobi. According to Statement by Cabinet Secretary, ministry of water, sanitation and irrigation, Sicily K. Kariuki (Mrs), EGH, during World Water Day,2021.
40. During the pandemic, COVID-19, the already vulnerable population were further disadvantaged, with many others entering that category due to increased demand and use of safe water. The negative impact of COVID-19 on the private sector has trickled down to household welfare via reduced job opportunities and lower earnings. Unemployment has almost doubled compared to its pre-COVID level. Wage workers—and especially women—who are still employed face a reduction in working hours and earnings. Almost 1 in 3 household-run businesses are not operating currently, with revenues decreasing across all sectors. Remittances have fallen, and few households have benefitted from direct cash assistance. Youth are also negatively affected by the pandemic, with revenues and profits strongly reduced as stated by a World Bank Report.
41. According to Utz Pape, World Bank Senior Economist in the Poverty & Equity Global Practice of the World Bank, Kenya has made considerable progress with poverty reduction over the last years, but COVID-19 has destroyed the livelihoods of many Kenyans, pushing an estimated two million people into poverty. A swift and well-targeted response is needed to protect livelihoods and avoid trapping more

people in long-term poverty.

42. A big part of the population in what has been categorized as non-commercially viable areas still depend on small scale water service providers for their water services. Regulated service providers only cover a population of 25.6million people, leaving a half of the population of Kenya serviced by small scale water service providers. Further, of the 25.6m, only 14.6m are getting served. This means 11m population not getting service in regulated water service provider areas. A total of approximately 30 million population depend on service from alternative service providers.

Parameter	2018/19	2019/20
Total Population in Service Area, No.	23,430,887	25,660,154
Total Population Served - Water, No	13,823,455	14,677,969
Population Served - Sewer, No.	3,909,335	3,921,094
Population Served - Sanitation, No.	19,081,584	22,345,399
Production, M ³ /year	272,092,927	449,572,682
Turnover, Kshs/year	22,634,589,875	22,796,171,562
Per Capita Production, l/c/d	90	84
Per Capita Consumption, l/c/d	32	31

Table 1: Provision of Water Services

43. The Water Act (2016) under section 132 provides for ring-fencing of all incomes derived from water conservation and supply services, for continued conservation and expansion of service bracket. It provides that all income through water permits, abstraction and water user fees shall be entirely used for the conservation and management of water resources. Under section 131 of the Act, all funds collected for water services by the licensed water services providers holding county or national public assets on behalf of the public through water services bills and other sources, shall be used entirely for the purpose of covering costs for the provision of water

services and asset development according to Regulations made by the Regulatory Board. The Regulations fail to clearly outline the proportionality and application of the incomes. As currently stands, conservation efforts are largely financed outside the framework of financing support of levies collected by the regulator.

44. Due to the linkage between abstraction and access and utilization of water, cost of water is an elementary unit of production and impactful to the economy of Kenya. The projected water demand is as follows:

- (a) **Projected domestic water demand** is based on an assumed population increase of 75 percent between 2010 and 2030. About 67.8 percent of the total population will live in urban areas, while the remaining 32.2 percent will live in rural areas.
- (b) **Projected industrial water demand** is based on the assumption set out in Kenya's Vision 2030: Industrial water use will increase in line with the growth of urban water demand.
- (c) **Projected irrigation water demand:** Building on Kenya's Vision 2030, the government aims to increase the area under irrigation to 1.2 million ha by 2030.2 To achieve this, the land under irrigation and drainage will be expanded by 40,000 ha annually, of which 8,000 ha shall be rehabilitated per year. Achieving this target will result in irrigation water demands of 18,048 MCM/year by 2030.
- (d) **Projected inland fisheries demand** is also assumed to increase with population growth. The development of fishponds is expected to increase by 176 percent between 2010 and 2030. (Kenya Hydro economy briefing)

45. Special attention was drawn to the Legal Notice No.168, in which Cabinet Secretary in charge of Water, Sanitation and Irrigation has published proposed Water Resources Regulations, 2021, whose proposals provide significant changes in the obligations of water users, and particularly in increasing the nominal cost of

abstraction of water from various sources. The proposals on fees and water use charges proposed in the Water Resources Regulations 2021 are significantly different from proposals presented during the public consultation for the draft Water Resources Regulations 2019. It is unclear at what point the Cabinet Secretary derived the alternative rates included in the regulations 2021. The Regulatory Impact Statement for the Water resources regulations 2019 was published to enable the Cabinet Secretary, Members of Parliament, and the Kenyan Community to be informed of the environmental, social and economic implications of the implementation of the proposed Water Resources Regulations 2019, and document issues upcoming from public consultation of the same.

46. The Regulatory Impact Statement clearly reports the Stakeholder Exploratory Consultation held on 20th November 2018, and Stakeholder Consultation Technical Requirements for Developing Draft Rules held on 31st January – 1st February 2019 . Regional consultations were held in Eldoret, Kisumu, Nyeri and Mombasa between 18th September and 18th December 2019. On 28-29th March 2019 consultations were held with Civil society and the private sector. A final stakeholder consultation was held on 30-31 May 2021. In all of these reported consultations, there isn't listed a proposal to adjust the suggested fees and water use charges, nor a record of a plenary proposal, or consensus for such adjustment.
47. That costs proposed charges in the regulations have the potential to lock out many small scale water service providers, who in any event find themselves struggling to bear the current charges. Particular reference to the Second Schedule, part B on Domestic, Public and Livestock water use charges, that proposes a rise from 50cts to 5 KES per cubic meter of abstracted water. (Water Resources Regulations 2021)
48. The said Water Resources Regulations (2021) will have the effect of substantially

altering the cost of water for regulated water service providers, who will pass the cost directly to users who are already bent over from the weight of tax and reduced incomes.

49. The overall impact of the new regulations would be deepening a failure to observe, protect and fulfil the right to water as provided for in the Constitution of Kenya. Water Resources Regulations 2021 sets stage for high water bills as services providers that are non-profit making institutions seek to transfer the costs. That said, the water service providers do not have the liberty to directly transfer water resources charges onto their tariffs since they are limited within a 3-yr cycle of tariff approval. Imposition of such a substantial increase will result in Water Service Providers being unable to fulfil their own mandate to deliver the human right to water. As an example, picture an actual example from the Ewaso water basin, where a community water project has been paying about Kshs. 80,000 for raw water abstraction. A hundredfold increase implies that they will now have to pay Kshs. 800,000.

50. Another example from Lake Victoria basin; a community water project is currently pumping 360 M3 daily, earning monthly revenues of Kshs. 200,000/- . Under the new regulations, they will now have to pay Water Resource Authority Kshs. 162,000. They still pay KPLC KES 60,000 and Staff wages Kshs.70,000. This community project will not be able to continue operating without demanding that users pay for more, which means affordability will be substantially affected. Most of the utilities have Credit facilities they are servicing of between KES 10,000-30,000 per month. Large utilities will likewise be affected, resulting to a proposal to increase tariffs that will definitely impact on the capacity of the citizen to afford safe water sustainably. These fees will have an impact on the improved water use efficiency and reduction in the pollution of water resources. Reality is that the Water

Resources Authority has not demonstrated collection and utilization efficiency. Only a few water abstractors are levied while the majority do not pay anything.

51. The proposed Regulations pose the risk of reducing the resilience of the population against the current COVID-19 pandemic. Communities that have been demonstrated to be heavily affected from the impact of the COVID-19 will be further burdened by increased costs of basic access. It should be noted that the gazetted regulations also result in an increased abstraction cost for hydropower, irrigation, fish farming and other access costs that will conversely result in increased costs of food and services. Water Resources Regulations 2021 sets stage for increase in water levies. The government has proposed new rules on the use of water resources, setting the stage for high water bills should MPs approve the bid. The new rules drawn by Water CS Sicily Kariuki seek to introduce various levies that water users will pay to the Water Resources Authority, but it is unclear from where the rates that are between one hundredfold and four hundredfold are derived from.

52. There have been efforts to address the aforesaid by civil society and the Council of Governors, and these remain unresolved. The proposed Water Resources Regulations 2019 had been subjected to a series of consultations processes wherein stakeholders have been allowed the opportunity to identify and correct faulty assumptions and reasoning and to provide information and suggestions that have enriched the drafting process. The Council of Governors has raised its concern with Parliament through letter dated 24th August 2021, noting lack of inter-governmental consultations over the gazetted Regulations. The matter has further escalated, with the Council of Governors instructing its service provision agents to disregard the provisions of the gazetted regulations.

53. That to the best of our knowledge none of the issues pointed out above are pending

or unresolved in a court of law, or constitutional or other legal body.

54. Increase in water use fee for the irrigators is quite high and will impact on their cost of operations notwithstanding the already high taxes and double taxation. The regulations are not clear on management and conservation and should propose a specific percentage to be ploughed back to catchment restoration. Article 132 of the Water Act 2016 provides that All income through water permits, and water user fees shall be entirely used for the conservation and management of water resources.

55. There should be no fee for data access from WRA. Particular reference to the Second Schedule, Part 3: fees for data, investigations, laboratory analysis and related services that portends payment for access of water resources data. The Access to Information Act, 2016 defines “information” to include all records held by a public entity or a private body, regardless of the form in which the information is stored, its source or the date of production. This includes information held in any format, such as:

- (a) Written documents, reports, memos, letters, notes, emails and draft documents;
- (b) Non-written documentary information, such as material stored on or generated by computers and databases, video and tape recordings, maps and photographs; and
- (c) Information which is known to an agency, but which has not yet been recorded in writing or otherwise.

56. The Access to Information Act 2016 (WRRP15) requires Government agencies to make official information more freely available, to provide for proper access by each person to official information relating to that person, to protect official information to the extent consistent with the public interest.

2.2. Responses by the Cabinet Secretary, Ministry of Water, Sanitation, and Irrigation

57. The Ministry vide a letter Ref. No. SEN/DCS/LENR/2/2021/(62) dated 14th October, 2021 was invited to make submissions on the Petition and appeared before the Committee on 21st October, 2021 and submitted as follows:-
58. While developing the Water Regulations, the Ministry was very keen in ensuring compliance with all provisions under the Constitution and the existing Water Act 2016. Public consultations were widely held before publication of these regulations and all relevant stakeholders were involved as follows:
59. Between November, 2018 and February, 2019 wide internal consultations were held between the Ministry and its Institutions with a view of gaining preliminary insights into what were viewed by this group of stakeholders as prevailing issues or concerns and also assess the technical requirements for developing the draft rules. The feedback from these stakeholders, communicated in the Regulatory Impact Statement (RIS) informed the finalization of the Regulations.
60. On 25th March, 2019 a public consultations workshop was held at the Kenyatta International Convention Centre in Nairobi, on the Regulations, and the RIS. The purpose of workshop was to present the Draft Regulations and the Regulatory Impact Statement to members of the public. Important feedback was received and has informed and shaped the final Regulations.
61. On 28 March 2019, consultations were held with **Civil Society Organizations** in Nairobi during which the draft regulations and the regulatory impact statement were presented and discussed. Important feedback was received and this informed provisions in the final regulations.

62. On 29 March 2019, consultations were held with the private sector in Nairobi during which the draft regulations and the regulatory impact statement were presented and discussed. Important feedback was received and this informed provisions in the final regulations.
63. On 30th and 31st May, 2019, a stakeholder consultation workshop was held in Naivasha to review the advanced drafts of the regulations, with participants drawn from the water sector. Important feedback was received and this informed provisions in the final regulations.
64. Between 18th September and 18th December, 2019, regional public consultations forums were also held in Nakuru, Eldoret, Kisumu, Nyeri and Mombasa during which presentations were made to participants on the draft regulations, and the draft regulatory impact assessments. Important feedback was received and this informed provisions in the final regulations.
65. Extensive consultations with the Council of Governors were also conducted on 18th December, 2018, where after they presented their memoranda and a matrix of issues was subsequently developed by the Ministry to specifically address issues raised by the CoG. The Ministry considered the reactions from the CoG and incorporated them into the regulations.
66. This was followed by an approval of the amended regulations by the Council of County Governors vide a letter dated 9th February, 2021.
67. The Ministry proceeded with the finalization of the draft regulations in line with the Statutory Instruments Act of 2013, and were presented both houses of parliament for scrutiny in line with the Statutory Instruments Act.
- (a) On 17th December 2020 the pre-publication scrutiny was held in Naivasha with the National Assembly Departmental Committee on Delegated Legislation.

(b) On 15th – 20th June 2021, the pre-publication scrutiny was held in Mombasa with the Senate Committee on Delegated Legislation.

(c) On 15th October, 2021, the post-publication scrutiny session was held in Mombasa with the National Assembly Departmental Committee on Delegated Legislation.

68. Further consultation was held at the NDITC and NDICCC. During this process the Council of Governors vide their letter ref. COG/2/8/vol 8 dated 9th February 2021 recommended the processing of the regulations.

69. In respect to the allegations by the Petitioners, the Ministry submitted as follows-

70. ISSUE 1: That this petition is of national importance and it touches on fundamental rights of Kenyan citizens as provided for and protected by the constitution of Kenya. In particular reference is made to Article 43 (1) (d) that guarantees the right of every Kenyan to clean and safe water in adequate quantities

71. **RESPONSE:** The Ministry acknowledges the fact that water is a human right as encompassed under **Article 43** of the Constitution and the Ministry reiterates its commitment to ensure this right is achieved. Various interventions by the Ministry have seen access to safe water increasing from 52% in 2010 when the Constitution was promulgated to the current 65%. This is expected to grow to 80% by end of the year 2022, with a goal to achieve universal access by 2030.

72. ISSUE 2: That access to water for the most vulnerable citizens still remains unfulfilled, and/or unsustainable. A huge population of Kenya access water from non-regulated service providers or directly from the sources.

The Ministry wishes to state that whereas access to safe water for vulnerable groups remains low, various programs have been implemented through the various water sector institutions to address issues of access to water by disadvantaged groups by providing grants for implementation of projects that would otherwise increase access to water. The Ministry is also providing progressive provision of regulatory services to all citizens to ensure quality water services are provided throughout the country and to ensure protection of water sources for equitable allocation and use by all.

73. ISSUE 3: That affordability in the cost of water is an important factor determining levels of access for millions of citizens in Kenya.

74. RESPONSE: The Ministry takes cognizance of the fact that the cost of water is a determining factor in matters of access to water to majority of Kenyans. Water abstraction which is regulated by Water Resources Authority (WRA), is categorized into classes. *Class A* which is considered as social water use, does not attract any water use charges as the amount of water abstracted is deemed to have very little impact on the water resources (surface or groundwater). However, the actual consumer charges at all levels are determined through consultative engagements with consumers and County Governments as guided by Water Services Regulatory Board (WASREB), to ensure the cost of water to the final consumer is not punitive. The charges so agreed are meant to ensure sustained water service provision.

75. ISSUE 4: That sustained access to water is an important non-pharmaceutical defense and especially important contributor to the resilience of the most vulnerable population to the vagaries of COVID-19 pandemic

76. RESPONSE: In ensuring Covid-19 protocols from the Ministry of Health are adhered to and implemented, the ministry undertook various interventions that saw

sustained access to water especially for vulnerable populations during the pandemic. Notable interventions included implementing projects for access to free water, and installation of hand washing facilities in public places and institutions. During this period also, the Ministry issued grants to Water Service Providers through the Water Sector Trust Fund to ensure uninterrupted water provision and to cushion them against operational costs.

77. ISSUE 5: That during the ongoing pandemic, COVID-19 the already vulnerable population were further disadvantaged with many others entering that category due to increased demand and use of safe water.

78. RESPONSE: Whereas the Covid-19 pandemic continues to impact most Kenyans negatively, and even though most Kenyans have been impacted economically, the Ministry has no intention of introducing any arbitrary regulations that would further burden the Kenyan citizenry. The Ministry has been open to any further dialogues consultations on any issues raised.

79. ISSUE 6: That a big part of the population in what has been categorized as non-commercially viable areas still depend on small scale water service providers for their water services.

80. RESPONSE: In as much as this is the correct position, as stated earlier, the Ministry is implementing programs by issuing grants through the WSTF to ensure access to water even in the non-commercially viable areas.

81. ISSUE 7: That the Water Act 2016 provides for ring-fencing of all incomes derived from water conservation and supply services, for continued conservation and expansion of service bracket.

82. **RESPONSE:** The Water Act, 2016 makes provision for the application of water use fees towards the protection and conservation of water sources and catchment areas. To this end, in reviewing the water use fees for abstraction, the Ministry was guided by the following key considerations:

(a) Cost of regulating use of water resources:

The cost of regulating the management and use of water resources in various aspects have increased. The increased cost has particularly affected the following areas:

- (i) Expansion, rehabilitation and maintenance of water resources monitoring networks;
- (ii) Collection of water resources data for water resources planning and development;
- (iii) Enforcement of water use permit conditions to ensure equity for all members of the public in access to water;
- (iv) Water resources pollution control for protection of water resources
- (v) Riparian protection and rehabilitation.

Water use charges in this case is based on water allocated to abstractors under Category B, C and D.

(b) Inflation: - Since the rates were first determined in 2005, there has been no increase or adjustment despite the increase in the country's inflation rate **(currently at 6.4%)**.

(c) Best Practices: - Internationally, water resources use charges are applied to support the regulation of the use and management of water resources as well as manage the water demand. The fees are charged for abstraction at sources and varies from about 2% and 10% of the final consumer bill (or in absolute terms range from Kshs.6 to Kshs.46) per m³ in South Africa; Kshs.12 to Kshs.13.5 per m³ in France; £0.84 to £1.66 per m³ (Kshs.100.8 to Kshs.199.2) in United Kingdom; US\$ 0.18 to US\$ 0.2 (Kshs.18 to Kshs.20) per m³ in Israel; US\$0.42 (Kshs.420) per m³ in Tanzania for irrigation.

83. ISSUE 8: That due to the linkage between abstraction access and utilization of water, cost of water is an elementary unit of production and impactful to the economy of Kenya.

84. RESPONSE: The Ministry submits that the Water Use fee currently stands at Ksh.0.5/m³ for public, domestic and livestock, and between Ksh.0.5–Ksh.0.75 for irrigation and industrial/commercial for water uses in permit classes B, C and D 50cents/m³.

85. ISSUE 9: That special attention is drawn to the Legal Notice No. 168, in which Cabinet secretary in charge of Water, Sanitation and Irrigation has published proposed Water Resources Regulations, 2021, whose proposals provide significant changes in the obligations of water users, and particularly in increasing the nominal cost of abstraction of water from various sources.

86. RESPONSE: Various considerations as explained above were made prior to reaching the amounts contained in the Water Resources Regulations, 2021, Legal Notice 170 of 2021. In this regard, fees for Water Use is proposed to be reviewed to Ksh.2/m³ (public, domestic and livestock) and between Ksh.0.75–Ksh.1m³ (irrigation and industrial/commercial) for water uses in permit classes B, C and D 50cents/m³. On the flip side, as they seek to review abstraction charges, some of the tariff charges by Water Service Providers and Counties are more than 100-fold. Some sample water tariffs. This scenario is duplicated across all 47 Counties in respect to fees charged by Counties for service provision. Comparatively, the nominal charge of Kshs.2/- proposed under the Legal Notice 170 of 2021 from 50 cents charged for the past 14 years takes into account many factors including affordability and equity for all. Water Service Providers charge Kshs. 93 per cubic metre.

87. ISSUE 10: That costs proposed charges in the regulations have the potential to lock out many small- scale water service providers, who in any event find themselves struggling to bear the current charges.

88. RESPONSE: Kenya is classified as a water scarce country; it is my humble submission that if we, as a Government and legislators fail to protect and conserve our water sources through enabling existing agencies in the regulation of water uses, our already scarce resources will be depleted. Water as an enabler to key development agenda should be preserved and protected for posterity. The Petitioner alleges that the amounts in the published Regulations introduce significant changes without disclosing the nominal amount which would be affordable to all Kenyans. The issue of concern is that the reasons contributing to the very high levels of Non-Revenue Water are largely commercial and governance (corruption and illegal practices). This means that with minimal resources and strict enforcement of guidelines/rules, these losses can be reduced to acceptable levels.

89. ISSUE 11: That the said Water Resources Regulations (2021) will have the effect of substantially altering the cost of water for regulated water service providers, who will pass the cost directly to users who are already bent over from the weight of tax and reduced incomes.

90. RESPONSE: The population in the service area of the regulated utilities is 25.7 million out of the total national population of 48.12 million. This translates to 53% of the population. Taking into account the amounts already charged by Water Service Providers, the amount proposed under the Water Resources Regulations is affordable and manageable.

91. In its Impact Report, the Water Services Regulatory Board (WASREB) notes that

unaccounted for water continues to be the biggest challenge to a majority of counties. In the said report, WASREB points out that the situation has contributed to the significant change in unit cost of water billed from Kshs. 87/cubic metre to Kshs. 93 per cubic metre. The Water Services regulator cautions that if this state of affairs is not mitigated, there is going to be a very great risk, which will undermine the progressive realization of the right to water as is enshrined in the constitution.

92. ISSUE 13: That the proposed regulations pose risk of reducing the resilience of the populations against the current COVID-19 pandemic.

93. RESPONSE: The Ministry once again reiterates its commitment to ensuring its citizen's right to safe and affordable water in adequate quantities in line with the Constitution, and categorically states that it has no intention of introducing any arbitrary charges that would otherwise be a burden to the common Mwananchi.

94. ISSUE 14: That there have been efforts to address the aforesaid by civil society and the Council of Governors, and these remain unresolved.

95. RESPONSE: Following a meeting held on 13th September, 2021 between the Ministry of Water Sanitation and Irrigation, Water Resources Authority, Council of Governors, Water Services Providers' Association and the Water Services Regulatory Board, it was agreed that the water use fees as contained in the Second Schedule, Part B of the Water Resources Regulations, 2021 (Legal Notice Number 170 of 2021) be revised as follows:

Type of Water Use	Criteria	Rate in L.N. 170/2021	New Rate
Domestic	Domestic purposes	5 Kes/m ³	2 Kes/m ³
Public	public purposes	5 Kes/m ³	2 Kes/m ³
Livestock	livestock purposes	5 Kes/m ³	2 Kes/m ³

96. One of the Petitioners' representative, *Mr. Enock S. Kiminta* was in attendance at the said meeting and was in agreement with the amounts agreed upon during the meeting. It is therefore in bad faith and dishonest for the Petitioner to purport that the issues have remained unresolved.

97. ISSUE 16: That section 103 on collaboration with the Water Resources Users Association seems to give Water Resources Authority powers to micromanage the WRUAs.

98. RESPONSE: Regulation 103 (1) provides that the Authority shall, in conjunction with relevant institutions and stakeholders, establish management regulations or plans that shall apply to each protected area or groundwater conservation area. This provision has no bearing whatsoever on the operations of Water Resources Users Associations (WRUAs).

99. ISSUE 17: Increase in water use fee for the irrigators is quite high and will impact on their cost of operations notwithstanding the already high taxes and double taxation.

100. RESPONSE: Although consultations were held during the development of the Regulations, other factors such as crop water requirements were taken into account

in calculating water use fees. Further, during the consultations held on 15th October, 2021 with the National Assembly Committee on Delegated Legislation, it was agreed that the fees be reviewed as follows:

Type of Water Use	Criteria	Rate
Irrigation	First 300 m ³ /day	0.75 Kes/m ³
	Over 300 m ³ /day	1 Kes/m ³

101. **ISSUE 18: The regulations are not clear on catchment management and conservation and should propose a percentage to be ploughed back to catchment restoration.**

102. **RESPONSE:** The whole of Part VII of the Water Act, 2016 makes provisions for the manner in which funds would be applied. Specifically, Section 130 of the Act provides that subject to provisions of the Public Finance Management Act, 2012 the entities may retain in a fund managed by the respective bodies, the revenue from permit charges, water user fees, regulatory levy, licence fees and any other authorized charges and shall use such revenue in meeting the costs incurred in the performance of their functions. Functions of WRA are listed under Section 12 and 13 of the Act.

103. Regulation 84(2) of the Legal Notice 170 of 2021 provides as follows:

“A person in possession of a valid water use permit or who is required to have a valid permit for water use shall pay in addition to the water use charge, a levy amounting to 5 percent of the monthly water use charge as a water conservation levy.”

104. Further, 84(2) of the Legal Notice 170 of 2021 provides that:

“The monies collected by the Authority as a water conservation levy shall be segregated from the water use charges and reported on separately and, on the

basis of agreements entered into between the Authority and county government entities and water resource users associations used to finance part of the costs of the implementation by water resources associations and county government entities of catchment or sub-catchment soil and water conservation plans.”

105. Where it is felt that that the regulations need further clarity on the same, there is room for further consultations and review of the relevant clauses.

106. ISSUE 19: That there should be no fee for data access from WRA

107. **RESPONSE:** Pursuant to Article 35 of the Constitution of Kenya Section 12 of the Access to Information Act, 2016 provides that a public entity or private body from which an application for access to information has been made may charge a prescribed fee for the provision of the information.

108. Further, Section 21 of the Water Act, 2016 provides that subject to Article 35 of the Constitution, a member of the public on payment of the prescribed fee shall-

- (a) have access to any specific information contained in any national information system; and
- (b) be supplied with a copy of any document contained in the information system which is accessible to the public.

109. The provisions regarding payment of fees are therefore anchored on the Constitution and the enabling legislations and are therefore proper. Availability of water in the water resources as a result of efficient and sustainable use will provide an assurance that the investments made in the sector, including water supply and sewerage services, are viable and sustainable to spur economic growth.

CHAPTER 3

COMMITTEE OBSERVATIONS

110. In accordance with the Prayers of the Petitioner and the submissions by the stakeholders, the Committee observed as follows:-

- (1) **Decrease Water User Fees** - The Committee observed that following a meeting between the Ministry of Water, Sanitation, and Irrigation, and other key stakeholders in the water sector such as the Council of Governors, Water Resources Authority, and Water Service Providers' Association on 13th September 2021, it was resolved that water user fees be lowered as follows;

Water Use	Initial Rates	New Rates
Domestic	5 Kes/m3	2Kes/m3
Public	5 Kes/m3	2Kes/m3
Livestock	5 Kes/m3	2Kes/m3

- (2) **Review of Irrigation Water Charges**- The Committee also observed that a consultative meeting between the Ministry of water, Sanitation and Irrigation and the National Assembly Committee on Delegated Legislation was held to review irrigation water charges. However, the Committee observed that consultative meetings by the Ministry of Water, Sanitation and Irrigation to review the charges were only held with the National Assembly Committee on Delegated Legislation and did not involve the Senate or any of its Committees.
- (3) **Failure by the Ministry to transmit the Water Services Regulations, 2021 and the Water Resources Regulations, 2021 to the Senate**- The Committee further observed that records in the Senate indicated that the Water Services Regulations, 2021 and the Water Resources Regulations, 2021 were never

transmitted to the Senate as required by section 11(1) of the Statutory Instruments Act, 2013. The Committee notes that during its meeting with the Ministry of Water, Sanitation and Irrigation held on 21st October, 2021, the Ministry informed the Committee that it had transmitted the published regulations to the Senate. Consequently, the Committee requested the Ministry to furnish it with evidence to confirm that indeed the regulations were transmitted to the Senate.

The Committee observes that the Cabinet Secretary, Ministry of Water, Sanitation and Irrigation did not furnish the Committee with any evidence of the transmission of the Regulations to the Senate leading the Committee to conclude that the Regulations were not transmitted to the Senate. The Committee further observes that the Cabinet Secretary, Ministry of Water, Sanitation and Irrigation finally confirmed the Committee that the Regulations were never transmitted to the Senate as required under section 11(1) of the Statutory Instruments Act, 2013.

- (4) **The Water Services Regulations, 2021 and the Water Resources Regulations, 2021 ceased to have effect and are void-** Committee observed that the Water Services Regulations, 2021 and the Water Resources Regulations, 2021 were transmitted to the Senate on 25th March, 2022, well after the expiry of the timelines provided under the said section 11 (1) of the Statutory Instruments Act, 2013. The enactment of the Water Services Regulations, 2021 and the Water Resources Regulations, 2021 contravened section 11 (1) of the Statutory Instruments Act, 2013. The Committee therefore observed that pursuant to section 11(4) of the Statutory Instruments Act, the Regulations have ceased to have effect and are therefore void.

CHAPTER 4

COMMITTEE RECOMMENDATION

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

Noting that the Water Services Regulations, 2021 and the Water Resources Regulations, 2021 have ceased to have effect and are now void pursuant to section 11(4) of the Statutory Instruments Act (2013), the Committee recommends that the Cabinet Secretary, Ministry of Water, Sanitation and Irrigation conducts a fresh and effective public participation on draft Regulations and thereafter publishes them and transmits them to both Houses of Parliament in accordance with section 11(1) of the Statutory Instruments Act (2013).

APPENDICES

ANNEX I: MINUTES OF THE MEETINGS

MINUTES OF THE 61ST SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 22ND SEPTEMBER, 2021 AT THE MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00 AM.

MEMBERS

1. Sen. Philip Mpaayei, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. (Dr.) Lelegwe Ltumbesi, MP
4. Sen. Mwaruma Johnes, MP

PRESENT

- Vice Chairperson
- Member
- Member
- Member

IN ATTENDANCE

1. Sen. Moses Wetangula, EGH, MP - Senator, Bungoma County

ABSENT WITH APOLOGY

1. Sen. Mwangi Paul Githiomi, MP - Chairperson
2. Sen. Arch. Sylvia Kasanga, MP - Member
3. Sen. Ndwiga Peter Njeru, EGH, MP - Member
4. Sen. Gideon Moi, CBS, MP - Member
5. Sen. Boy Issa Juma, MP - Member

IN ATTENDANCE

A. PETITIONERS

1. Mr. Patrick Sitati Lichuma - Chairperson, Petitioners
2. Hon. Martin Pepela - MCA, Bungoma County Assembly
3. Hon. Violet Makhanu - MCA, Bungoma County Assembly
4. Mr. Mark W. Buyabo - Secretary
5. Mr. Eric L.M. Wambasi - Petitioner
6. Mr. Nelson Kakai Sikanga - Petitioner
7. Dr. Iyaya Wanjala - Petitioner
8. Dr. Geoffrey Chemwa - Petitioner
9. Mr. Kingsley Mutali - Petitioner
10. Mr. Yusuf Kakai - Petitioner
11. Mr. Paul W. Waikhungu - Petitioner

B. SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Clare Kidombo - Research Officer
3. Mr. Mitchell Otoro - Legal Counsel
4. Mr. James Kimiti - Audio Recording

5. Mr. Charles Oyosi - Media Relations
6. Mr. Erick Njogu - Clerk Assistant

MINUTE SEN/SCLNENR/351/2021: PRELIMINARIES

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

MINUTE SEN/SCLNENR/352/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. George Khaniri, MGH, MP as follows

1. Preliminaries
 - *Prayer;*
 - *Introductions*
2. Adoption of the agenda;
3. **Petition regarding the alleged gazettement of Chetambe (Webuye) hill forest, vide legal notice No. 106: Proposed declaration of public Forest Chetambe (Webuye) Hill Forest dated 25th June 2021;**
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLNENR/353/2021: PETITION REGARDING THE ALLEGED GAZETTEMET OF CHETAMBE (WEBUYE) HILL FOREST, VIDE LEGAL NOTICE NO. 106: PROPOSED DECLARATION OF PUBLIC FOREST CHETAMBE (WEBUYE) HILL FOREST DATED 25TH JUNE 2021

The petitioners made their opening remarks by informing the meeting that the Tachoni cultural community were among the 18 sub-communities within the larger Luhya Community and occupied a majority of Webuye East Sub-County and Webuye town, the second biggest town in Bungoma County.

They also informed the Committee that 30,000 families lived in the disputed area which also hosted numerous shrines.

They then took the meeting through the petition as was tabled before the Senate as follows;

We, the UNDERSIGNED, residents of Webuye East Sub County, Bungoma County; DRAW the attention of the House to the following;-

1. **That, the above Legal Notice No. 106 under which Chetambe (Webuye) Hill Forest was gazetted, the gazetted forest is to cover a land mass of 406.22hectares or 1003.36634 acres.**

2. **That**, the residents of the area earmarked for gazettement were and are still gravely concerned and shocked at the notice. for the gazetted area is their ancestral land which they have lived on and used for various socio-economic activities including grazing ground for their livestock since time immemorial (close to a century).
3. **That**, at the advent of colonialism in Kenya, the heroic people of Bungoma put up a gallant resistance fight against the advancing colonialists on their land and their land remained sacred to them with immense historical significance.
4. **That**, within the area earmarked, the *Tachoni community* and the Kalenjin neighbors entered a covenant dubbed (*Okhulia Yimba*) to end inherent acrimony and animosity to achieve peaceful co-existence between the two communities.
5. **That**, in 1925 the local inhabitants were forcefully evicted by the colonial government to pave way for white settlers in **Chepsaita** area currently **Uasin Gishu County, Ndal, Naitiri, Lugari and Kiminini** among others and as a consequence they settled in the area then referred to as **East Kitosi**. the present **Webuye East Sub County**, the gazetted area included.
6. **That**, several forts namely; *Olukova Iwa Sitati, Olukova Iwa Chetambe, Olukova Iwa Kakai and Olukova Iwa Wangusi*, were constructed by the locals and they remain critical and revered shrines to the people of Webuye East Sub County.
7. **That**, the affected residents of **Webuye East Sub County** were never consulted by way of public participation (**a fundamental pillar and requirement under the Constitution of Kenya, 2010**) in arriving at the decision to issue the Gazette Notice.
8. **That**, administrative processes and decisions that affect citizens welfare and wellbeing must strictly adhere to set constitutional and statutory provisions including the right to be heard by citizens who would be affected adversely or otherwise by such a decision.
9. **That**, the gazetted area is home to thousands of people (at an average of 2 to 3 *families per Acre*) with historical attachment including their ancestral final resting places.
10. **That**, the gazettement of the forest has raised enormous anxiety and restlessness
11. among the residents of the affected area leading to uncalled demonstrations and other resistance mechanisms and activities which are likely to escalate due to simmering tension. delicate circumstances that as leaders in the County we wish not to embrace or encourage.
12. **That**, the effect of the gazette notice contravenes the people's rights as enshrined in Article (31) (b), on the privacy of property as well as the right not to have their possession seized. In addition. Article 53 (1) (b) & (c) on basic education. nutrition. shelter and health of children. Article 61 on the security of land rights and Article 64 on registered ownership of private land will be crossly violated if the intended directive is implemented.

13. **That**, we have had this matter addressed by relevant authorities and used all available avenues to have the matter considered, all of which have resulted into unsatisfactory responses.
14. **That**, none of the issues raised in this Petition are pending before any court of law, constitutional or any other legal body.
15. **THEREFORE**, your humble petitioners **PRAY** that the Senate intervenes to have this gazette notice **withdrawn and the status quo maintained to alleviate growing anxiety, forestall potential violent conflicts and avert any tragic risks such as loss of lives and property and related consequences.**

In reference to the differences the petitioners observed between the legal notice 106 of 25th June 2021 and the issues of the pan paper factory establishment, they raised the following questions;

- a. When, where did the government through Ministries of Lands and Physical Planning, and Forestry and Environment do public participation as per our constitution with the people of Ndivisi/Mihuu, landowners within the area covered by boundary plan No. 175/512 Chetambe (Webuye) Hill Forest.
- b. Is this going to be forceful acquisition or voluntary surrender? If voluntary, has the government involved the affected people? If yes, where and who (give names).
- c. If the government wants to acquire this place due to its policy on hills, can government tell us how human settlement/inhabitant/dwelling affected the environment e.g. desertification, dried water catchment etc?
- d. Is the government aware that the forest on Chetambe Hills is not done by the government but rather planted and maintained by individual landowners? A small area of two (2) acres planted by pan paper factory was destroyed by employees of the factory etc, where they had planted pinus trees.

The petitioners informed the Committee that in 1973, there was an alleged reimbursement from the government for the community to vacate the area but wondered why no evictions were effected.

They felt that the gazette ment was meant to defraud them since the government had continued to issue title deeds in the area in as recent as this year.

They informed the meeting that the community was known to conserve the forest as evidenced in their submissions and invited the Committee to visit the area to witness it and interact with the community.

Committee's Interventions and Observations

The Committee thanked the petitioners for presenting their case to the Senate.

Members observed that the government conducted evictions using gazette notices, noting that gazette notices were insufficient to conduct evictions.

After deliberations, the Committee resolved to invite stakeholders for a virtual meeting on 7th October, 2021 to make their submissions and respond to the issues raised by the petitioners. They included;

Ministry of Land and Physical Planning,
Ministry of Forestry and Environment, and
National Land Commission (NLC)

The Committee further resolved to conduct a site visit to verify the facts.

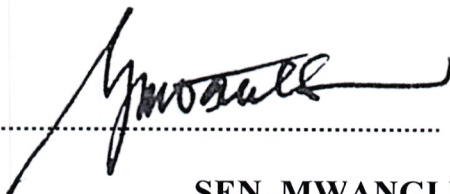
MINUTE SEN/SCLNDR/354/2021: ANY OTHER BUSINESS

The meeting was informed by the secretariat that there was a new Petition to expunge the alleged offending provisions in the Water Services Regulations, 2021 and the Water Resources Regulations, 2021 that was committed to the Committee for its consideration. The meeting resolved to invite the petitioners for a meeting on 6th October 2021 to appraise the Committee on the matters raised in their petition.

MINUTE SEN/SCLNDR/355/2021: DATE OF NEXT MEETING

The meeting was adjourned at 11.37 am and the next meeting was to be held on Thursday 23rd September, 2021 at 11:00 am.

Signed:



Date:18/2/2022.....

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

MINUTES OF THE 65TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 6TH OCTOBER, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS

1. Sen. Philip Mpaayei, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. (Dr.) Lelegwe Ltumbesi, MP
4. Sen. Boy Issa Juma, MP
5. Sen. Arch. Sylvia Kasanga, MP

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Ndwiga Peter Njeru, EGH, MP
3. Sen. Mwaruma Johnes, MP
4. Sen. Gideon Moi, CBS, MP

- **Chairperson**
- Member
- Member
- Member

IN ATTENDANCE

A. KENYA WATER AND SANITATION CIVIL SOCIETY NETWORK (KEWASNET)

1. Mr. Malesi Shivaji - Lead Petitioner
2. Ms. Winnie Lichuma - Petitioner
3. Dr. Leunita Sumba - Petitioner
4. Mr. Vincent Ouma - Petitioner
5. Ms. AShah Shaaban - Petitioner
6. Ms. Catherine Mwangi - Petitioner

B. SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Clare Kidombo - Research Officer
3. Mr. Mitchell Otoro - Legal Counsel
4. Mr. James Kimiti - Audio Recording
5. Mr. Erick Njogu - Clerk Assistant

MINUTE SEN/SCLNDR/370/2021: PRELIMINARIES

The meeting was called to order at 11.19 am by the Chairperson followed by a word of prayer and introductions.

MINUTE SEN/SCLNDR/371/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. George Khaniri, MGH, MP and seconded by Sen. Boy Issa Juma, MP as follows

1. Preliminaries
 - *Prayer;*
 - *Introductions*
2. Adoption of the agenda;
3. **Petition to expunge the alleged offending provisions in the Water Services Regulations, 2021 and the Water Resources Regulations 2021**
 - **Submissions by the Petitioners**
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLNR/372/2021: PETITION TO EXPUNGE THE ALLEGED OFFENDING PROVISIONS IN THE WATER SERVICES REGULATIONS, 2021 AND THE WATER RESOURCES REGULATIONS 2021

Submissions by the Petitioners

The petitioners began by offering their appreciation to the Senate through the Committee for giving them an opportunity to present their case.

They felt that the regulations that had been recently gazetted stood the chance of compromising the right of access to water and sanitation.

They informed the meeting that their petition sought the Senate to intervene to have the alleged offensive provisions expunged from the regulations.

The petitioners took the Committee through their petition as attached (*See attached...*).

Key Highlights

- In their presentation, the petitioners informed the Committee that access to clean and adequate water was a constitutional right and that it remained unfulfilled or unsustainable to most Kenyans especially the vulnerable communities in the informal settlements and rural areas.
- That most Kenyans accessed water through unregulated service providers and that only 14.5 million Kenyans had access to water through regulated water service providers as cited from the WASREB Report 13.
- Affordability remained a challenge to many since 32% of Kenyans depended on unimproved sources of water such as wells, ponds, and rivers. They added that the monthly coping costs for a rural household unconnected to piped water was about 38 USD whereas the same was approximately 4.46 USD for a household connected to

pipled water in Nairobi, highlighting the heavy economic burden the unconnected customers must bear.

- That water was a critical non pharmaceutical ingredient in the fight against Covid-19 pandemic as it improved resilience to the vulnerable communities despite access challenges due to increased demand coupled with increased unemployment. They therefore felt that any further increase in water costs would adversely affect an already impoverished population.
- The Water Act 2016 provided for ring-fencing of all water revenue for expansion and conservation but the regulator did not demonstrate the proportionality and application of incomes. The petitioners felt that the additional revenue could follow the same fate.
- The petitioners indicated that as the country progressed towards Vision 2030, demand for and cost of water would increase. Since cost of water was considered an elementary unit of production, any further additional cost would adversely affect the economy.
- The petitioners felt that the Proposed Water Resources Regulations, 2021 published vide Legal Notice No. 168 by the Cabinet Secretary, ministry of Water, Sanitation, and Irrigation sought to increase nominal abstraction cost of water, which they felt was contrary to public proposals presented during the public consultation exercise for the draft Water Resources Regulation, 2019. They further added that it was unclear how the proposed increase was arrived at.
- Additionally they felt that the proposed increase in cost had the potential to lock out small scale water service providers as well as affect those who obtained water from other sources since some of the charges were at the level of abstraction.
- They noted that the increased costs would force the regulated water service providers to pass the costs to the consumers who are already faced with increased taxation and reduced incomes.
- The petitioners indicated that the Water Resources Authority (WRA) had not demonstrated collection and utilization efficiency.
- That attempts to resolve the matters raised in the petition by civil societies and Council of Governors were unsuccessful.
- The petitioners cited lack of inter-government consultations over the gazetted regulations as was raised by the Council of Governors via a letter dated 24th August 2021 to Parliament.
- They raised concerns with the fees charged to access data by WRA, stating that it contravened the Access to Information Act, 2016.
- The petitioners sought the Committee to consider favourably their petition and expunge the sections that sought to increase the cost of water as proposed in the Water Resources Regulations, 2021.

Interventions and Observations

The Committee thanked the petitioners for having faith in the Senate by presenting their petition to the Committee, and that their matter would be considered.

The Committee resolved to invite the Cabinet Secretary, Ministry of Water, sanitation, and Irrigation within the next three weeks to respond to the issues raised in the petition and that the petitioners would be invited during the meeting.

MINUTE SEN/SCLNR/373/2021: ANY OTHER BUSINESS

There was no other business

MINUTE SEN/SCLNR/374/2021: DATE OF NEXT MEETING

The meeting was adjourned at 12:09 pm and the next meeting was to be held on Wednesday 7th October, 2021 at 11:00 am.

Signed: 

Date: **18/2/2022**

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

MINUTES OF THE 67TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 21ST OCTOBER 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. George Khaniri, MGH, MP
4. Sen. Ndwiga Peter Njeru, EGH, MP
5. Sen. (Dr.) Lilongwe Ltumbesi, MP
6. Sen. Boy Issa Juma, MP

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Mwaruma Johnes, MP - Member
2. Sen. Arch. Sylvia Kasanga, MP - Member
3. Sen. Gideon Moi, CBS, MP - Member

IN ATTENDANCE

A. MINISTRY OF WATER, SANITATION, AND IRRIGATION

1. Mr. Andrew Tuimur - Chief Administrative Secretary
2. Eng. Salim Alima - Water Secretary
3. Derrick Ojuku - Technical Officer
4. Festas Kagunya - Technical Assistant
5. Joan Ogolla - Legal Counsel
6. Janet Olewe - Legal Counsel, WRA
7. John Kinyanjui - Representative, WRA

B. PETITIONERS - KEWASNET

1. Mr. Malesi Shivaji - CEO, KEWASNET

C. SECRETARIAT

1. Ms. Veronicah Kibati - Principal Clerk Assistant
2. Mr. Victor Bett - Clerk Assistant
3. Ms. Clare Kidombo - Research Officer
4. Mr. Mitchell Otoro - Legal Counsel
5. Mr. James Kimiti - Audio Recording
6. Mr. Erick Njogu - Clerk Assistant

MINUTE SEN/SCLENR/380/2021: PRELIMINARIES

The meeting was called to order at 11.14 am by the Chairperson followed by a word of prayer and introductions.

MINUTE SEN/SCLNENR/381/2021: ADOPTION OF AGENDA

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

1. Preliminaries
 - *Prayer;*
 - *Introductions*
2. Adoption of the agenda;
3. **Petition to expunge the alleged offending provisions in the Water Services Regulations, 2021 and Water Resources Regulations, 2021;**

Submissions from:

- **Cabinet Secretary, Ministry of Water, Sanitation, and Irrigation**
4. Any other Business;
 5. Date of the next meeting;
 6. Adjournment.

MINUTE SEN/SCLNENR/382/2021: PETITION TO EXPUNGE THE ALLEGED OFFENDING PROVISIONS IN THE WATER SERVICES REGULATIONS, 2021 AND WATER RESOURCES REGULATIONS, 2021

Submissions from the Cabinet Secretary, Ministry of Water, Sanitation, and Irrigation

I wish to state on the outset that, while developing the Water Regulations, the Ministry was very keen in ensuring compliance with all provisions under the Constitution and the existing Water Act 2016.

Public consultations were widely held before publication of these regulations and all relevant stakeholders were involved as follows:

- a) Between November, 2018 and February, 2019 wide internal consultations were held between the Ministry and its Institutions with a view of gaining preliminary insights into what were viewed by this group of stakeholders as prevailing issues or concerns and also assess the technical requirements for developing the draft rules. The feedback from these stakeholders, communicated in the Regulatory Impact Statement (RIS) informed the finalization of the Regulations.
- b) On 25th March, 2019 a public consultations workshop was held at the Kenyatta International Convention Centre in Nairobi, on the Regulations, and the RIS. The purpose of workshop was to present the Draft Regulations and the Regulatory

Impact Statement to members of the public. Important feedback was received and has informed and shaped the final Regulations.

- c) On 28 March 2019, consultations were held with **Civil Society Organizations** in Nairobi during which the draft regulations and the regulatory impact statement were presented and discussed. Important feedback was received and this informed provisions in the final regulations.
- d) On 29 March 2019, consultations were held with the private sector in Nairobi during which the draft regulations and the regulatory impact statement were presented and discussed. Important feedback was received and this informed provisions in the final regulations.
- e) On 30th and 31st May, 2019, a stakeholder consultation workshop was held in Naivasha to review the advanced drafts of the regulations, with participants drawn from the water sector. Important feedback was received and this informed provisions in the final regulations.
- f) Between 18th September and 18th December, 2019, regional public consultations forums were also held in Nakuru, Eldoret, Kisumu, Nyeri and Mombasa during which presentations were made to participants on the draft regulations, and the draft regulatory impact assessments. Important feedback was received and this informed provisions in the final regulations.
- g) Extensive consultations with the Council of Governors were also conducted on 18th December, 2018, where after they presented their memoranda and a matrix of issues was subsequently developed by the Ministry to specifically address issues raised by the CoG. The Ministry considered the reactions from the CoG and incorporated them into the regulations.
- h) This was followed by an approval of the amended regulations by the Council of County Governors vide a letter dated 9th February, 2021.
- i) The Ministry proceeded with the finalization of the draft regulations in line with the Statutory Instruments Act of 2013, and were presented both houses of parliament for scrutiny in line with the Statutory Instruments Act.
 - On 17th December 2020 the pre-publication scrutiny was held in Naivasha with the National Assembly Departmental Committee on Delegated Legislation.
 - On 15th – 20th June 2021, the pre-publication scrutiny was held in Mombasa with the Senate Committee on Delegated Legislation.
 - On 15th October, 2021, the post-publication scrutiny session was held in Mombasa with the National Assembly Departmental Committee on Delegated Legislation.
- j) Further consultation was held at the NDITC and NDICCC. During this process the Council of Governors vide their letter ref. COG/2/8/vol 8 dated 9th February 2021 recommended the processing of the regulations.

In response to the Petition before you, I wish to state as follows in respect to the allegations by the Petitioners:

ISSUE 1: That this petition is of national importance and it touches on fundamental rights of Kenyan citizens as provided for and protected by the constitution of Kenya. In particular reference is made to Article 43 (1) (d) that guarantees the right of every Kenyan to clean and safe water in adequate quantities

RESPONSE: The Ministry acknowledges the fact that water is a human right as encompassed under **Article 43** of the Constitution and the Ministry reiterates its commitment to ensure this right is achieved. Various interventions by the Ministry have seen access to safe water increasing from 52% in 2010 when the Constitution was promulgated to the current 65%. This is expected to grow to 80% by end of the year 2022, with a goal to achieve universal access by 2030.

ISSUE 2: That access to water for the most vulnerable citizens still remains unfulfilled, and/or unsustainable. A huge population of Kenya access water from non-regulated service providers or directly from the sources.

The Ministry wishes to state that whereas access to safe water for vulnerable groups remains low, various programs have been implemented through the various water sector institutions to address issues of access to water by disadvantaged groups by providing grants for implementation of projects that would otherwise increase access to water.

The Ministry is also providing progressive provision of regulatory services to all citizens to ensure quality water services are provided throughout the country and to ensure protection of water sources for equitable allocation and use by all.

ISSUE 3: That affordability in the cost of water is an important factor determining levels of access for millions of citizens in Kenya.

RESPONSE: The Ministry takes cognizance of the fact that the cost of water is a determining factor in matters of access to water to majority of Kenyans. Water abstraction which is regulated by Water Resources Authority (WRA), is categorized into classes. *Class A* which is considered as social water use, does not attract any water use charges as the amount of water abstracted is deemed to have very little impact on the water resources (surface or groundwater).

However, the actual consumer charges at all levels are determined through consultative engagements with consumers and County Governments as guided by Water Services Regulatory Board (WASREB), to ensure the cost of water to the final consumer is not punitive. The charges so agreed are meant to ensure sustained water service provision.

ISSUE 4: That sustained access to water is an important non-pharmaceutical defense and especially important contributor to the resilience of the most vulnerable population to the vagaries of COVID-19 pandemic

RESPONSE: In ensuring Covid-19 protocols from the Ministry of Health are adhered to and implemented, the ministry undertook various interventions that saw sustained access to water especially for vulnerable populations during the pandemic. Notable interventions

included implementing projects for access to free water, and installation of hand washing facilities in public places and institutions. During this period also, the Ministry issued grants to Water Service Providers through the Water Sector Trust Fund to ensure uninterrupted water provision and to cushion them against operational costs.

ISSUE 5: That during the ongoing pandemic, COVID-19 the already vulnerable population were further disadvantaged with many others entering that category due to increased demand and use of safe water

RESPONSE: Whereas the Covid-19 pandemic continues to impact most Kenyans negatively, and even though most Kenyans have been impacted economically, the Ministry has no intention of introducing any arbitrary regulations that would further burden the Kenyan citizenry. The Ministry has been open to any further dialogues consultations on any issues raised.

ISSUE 7: That the Water Act 2016 provides for ring-fencing of all incomes derived from water conservation and supply services, for continued conservation and expansion of service bracket.

RESPONSE: The Water Act, 2016 makes provision for the application of water use fees towards the protection and conservation of water sources and catchment areas. To this end, in reviewing the water use fees for abstraction, the Ministry was guided by the following key considerations:

i. Cost of regulating use of water resources:

The cost of regulating the management and use of water resources in various aspects have increased. The increased cost has particularly affected the following areas:

- (a) Expansion, rehabilitation and maintenance of water resources monitoring networks;
- (b) Collection of water resources data for water resources planning and development;
- (c) Enforcement of water use permit conditions to ensure equity for all members of the public in access to water;
- (d) Water resources pollution control for protection of water resources
- (e) Riparian protection and rehabilitation.

Water use charges in this case is based on water allocated to abstractors under Category B, C and D.

- ii. Inflation:** - Since the rates were first determined in 2005, there has been no increase or adjustment despite the increase in the country's inflation rate (**currently at 6.4%**).
- iii. Best Practices:** - Internationally, water resources use charges are applied to support the regulation of the use and management of water resources as well as manage the water demand. The fees are charged for abstraction at sources and varies from about 2% and 10% of the final consumer bill (or in absolute

terms range from Kshs.6 to Kshs.46) per m³ in South Africa; Kshs.12 to Kshs.13.5 per m³ in France; £0.84 to £1.66 per m³ (Kshs.100.8 to Kshs.199.2) in United Kingdom; US\$ 0.18 to US\$ 0.2 (Kshs.18 to Kshs.20) per m³ in Israel; US\$0.42 (Kshs.420) per m³ in Tanzania for irrigation.

ISSUE 8: That due to the linkage between abstraction access and utilization of water, cost of water is an elementary unit of production and impactful to the economy of Kenya.

RESPONSE: The Ministry submits that the Water Use fee currently stands at Ksh.0.5/m³ for public, domestic and livestock, and between Ksh.0.5–Ksh.0.75 for irrigation and industrial/commercial for water uses in permit classes B, C and D 50cents/m³.

ISSUE 9: That special attention is drawn to the Legal Notice No. 168, in which Cabinet secretary in charge of Water, Sanitation and Irrigation has published proposed Water Resources Regulations, 2021, whose proposals provide significant changes in the obligations of water users, and particularly in increasing the nominal cost of abstraction of water from various sources.

RESPONSE: Various considerations as explained above were made prior to reaching the amounts contained in the Water Resources Regulations, 2021, Legal Notice 170 of 2021. In this regard, fees for Water Use is proposed to be reviewed to Ksh.2/m³ (public, domestic and livestock) and between Ksh.0.75–Ksh.1m³ (irrigation and industrial/commercial) for water uses in permit classes B, C and D 50cents/m³.

On the flip side, as they seek to review abstraction charges, some of the tariff charges by Water Service Providers and Counties are more than 100-fold. Some sample water tariffs are as illustrated in **appendix 1** annexed to this statement;

This scenario is duplicated across all 47 Counties in respect to fees charged by Counties for service provision. Comparatively, the nominal charge of Kshs.2/- proposed under the Legal Notice 170 of 2021 from *50 cents charged for the past 14 years* takes into account many factors including affordability and equity for all. Water Service Providers charge *Kshs. 93 per cubic metre*.

ISSUE 10: That costs proposed charges in the regulations have the potential to lock out many small- scale water service providers, who in any event find themselves struggling to bear the current charges.

RESPONSE: Kenya is classified as a water scarce country; it is my humble submission that if we, as a Government and legislators fail to protect and conserve our water sources through enabling existing agencies in the regulation of water uses, our already scarce resources will be depleted. Water as an enabler to key development agenda should be preserved and protected for posterity.

The Petitioner alleges that the amounts in the published Regulations introduce significant changes without disclosing the nominal amount which would be affordable to all

Kenyans.

The issue of concern is that the reasons contributing to the very high levels of Non-Revenue Water are largely commercial and governance (corruption and illegal practices). This means that with minimal resources and strict enforcement of guidelines/rules, these losses can be reduced to acceptable levels.¹

ISSUE 11: That the said water resources regulations 2021 will have the effect of substantially altering the cost of water for regulated water service providers, who will pass the cost directly to users who are already bent over from the weight of tax and reduced incomes.

RESPONSE: The population in the service area of the regulated utilities is 25.7 million out of the total national population of 48.12 million. This translates to **53%** of the population. Taking into account the amounts already charged by Water Service Providers, the amount proposed under the Water Resources Regulations is affordable and manageable.

In its Impact Report², the Water Services Regulatory Board (WASREB) notes that unaccounted for water continues to be the biggest challenge to a majority of counties. In the said report, WASREB points out that the situation has contributed to the significant change in unit cost of water billed from Kshs. 87/cubic metre to ***Kshs. 93per cubic metre.***

The Water Services regulator cautions that if this state of affairs is not mitigated, there is going to be a very great risk, which will undermine the progressive realization of the right to water as is enshrined in the constitution.

ISSUE 13: That the proposed regulations pose risk of reducing the resilience of the populations against the current COVID-19 pandemic.

RESPONSE: The Ministry once again reiterates its commitment to ensuring its citizen's right to safe and affordable water in adequate quantities in line with the Constitution, and categorically states that it has no intention of introducing any arbitrary charges that would otherwise be a burden to the common Mwananchi

ISSUE 14: That there have been efforts to address the aforesaid by civil society and the Council of Governors, and these remain unresolved.

RESPONSE: Following a meeting held on 13th September, 2021 between the Ministry of Water Sanitation and Irrigation, Water Resources Authority, Council of Governors, Water Services Providers' Association and the Water Services Regulatory Board, it was agreed that the water use fees as contained in the Second Schedule, Part B of the Water Resources Regulations, 2021 (Legal Notice Number 170 of 2021) be revised as follows:

Type of Water Use	Criteria	Rate in L.N. 170/2021	New Rate

Domestic	Domestic purposes	5 Kes/m ³	2 Kes/m ³
Public	public purposes	5 Kes/m ³	2 Kes/m ³
Livestock	livestock purposes	5 Kes/m ³	2 Kes/m ³

One of the Petitioners' representative, *Mr. Enock S. Kiminta* was in attendance at the said meeting and was in agreement with the amounts agreed upon during the meeting. **(A copy of the meeting attendance form is hereby attached and marked "MWSI-1")**. It is therefore in bad faith and dishonest for the Petitioner to purport that the issues have remained unresolved.

ISSUE 16: That section 103 on collaboration with the Water Resources Users Association seems to give Water Resources Authority powers to micromanage the WRUAs.

RESPONSE: Regulation 103 (1) provides that the Authority shall, in conjunction with relevant institutions and stakeholders, establish management regulations or plans that shall apply to each protected area or groundwater conservation area. This provision has no bearing whatsoever on the operations of Water Resources Users Associations (WRUAs).

ISSUE 17: Increase in water use fee for the irrigators is quite high and will impact on their cost of operations notwithstanding the already high taxes and double taxation.

RESPONSE: Although consultations were held during the development of the Regulations, other factors such as crop water requirements were taken into account in calculating water use fees.

Further, during the consultations held on 15th October, 2021 with the National Assembly Committee on Delegated Legislation, it was agreed that the fees be reviewed as follows:

Type of Water Use	Criteria	Rate
Irrigation	First 300 m ³ /day	0.75 Kes/m ³
	Over 300 m ³ /day	1 Kes/m ³

ISSUE 18: The regulations are not clear on catchment management and conservation and should propose a percentage to be ploughed back to catchment restoration.

RESPONSE: The whole of Part VII of the Water Act, 2016 makes provisions for the manner in which funds would be applied. Specifically, Section 130 of the Act provides that subject to provisions of the Public Finance Management Act, 2012 the entities may retain in a fund managed by the respective bodies, the revenue from permit charges, water user fees, regulatory levy, licence fees and any other authorized charges and shall use such revenue in meeting the costs incurred in the performance of their functions.

Functions of WRA are listed under Section 12 and 13 of the Act.

Regulation 84(2) of the Legal Notice 170 of 2021 provides as follows:

“A person in possession of a valid water use permit or who is required to have a valid permit for water use shall pay in addition to the water use charge, a levy amounting to 5 percent of the monthly water use charge as a water conservation levy.”

Further, 84(2) of the Legal Notice 170 of 2021 provides that:

“The monies collected by the Authority as a water conservation levy shall be segregated from the water use charges and reported on separately and, on the basis of agreements entered into between the Authority and county government entities and water resource users associations used to finance part of the costs of the implementation by water resources associations and county government entities of catchment or sub-catchment soil and water conservation plans.”

Where it is felt that that the regulations need further clarity on the same, there is room for further consultations and review of the relevant clauses.

ISSUE 19: That there should be no fee for data access from WRA

RESPONSE: Pursuant to Article 35 of the Constitution of Kenya Section 12 of the Access to Information Act, 2016 provides that a public entity or private body from which an application for access to information has been made may charge a prescribed fee for the provision of the information.

Further, Section 21 of the Water Act, 2016 provides that subject to Article 35 of the Constitution, a member of the public on payment of the prescribed fee shall-

- a) have access to any specific information contained in any national information system; and
- b) be supplied with a copy of any document contained in the information system which is accessible to the public.

The provisions regarding payment of fees are therefore anchored on the Constitution and the enabling legislations and are therefore proper.

In conclusion,

I wish to emphasize that availability of water in the water resources as a result of efficient and sustainable use will provide an assurance that the investments made in the sector, including water supply and sewerage services, are viable and sustainable to spur economic growth.

Observations and Interventions

- The Committee observed that the responses offered by the Ministry of Water, Sanitation, and Irrigation were satisfactory and that they had captured with detail all

the issues raised by the petitioners. It was however noted that such responses need to be submitted early enough to allow members time to read through beforehand.

- In their submission, the Ministry informed the meeting that the regulations had been submitted to both houses of Parliament. However, the Committee noted that records in Senate that showed the regulations were not transmitted to the Senate as required by the Statutory Instruments Act, 2013, and sought the Ministry give a clarification on the matter since the time to submit them to the Senate had lapsed.
- The Ministry informed the meeting that the regulations were submitted to both houses of parliament, prompting the Committee to request to be furnished with evidence of the same.
- The Committee observed that there was a significant reduction in water costs for both domestic and irrigation uses. However, the petitioners informed the meeting that the reduced charges had not been gazetted.
- The Ministry informed the Committee that a corrigendum had been submitted to the Attorney General's office to capture the reduced charges as agreed by the water sector players.
- Asked by the Committee if the lowered charges as captured in the corrigendum were satisfactory, the petitioners informed the meeting that they were, since they believed that the reduction was done in the best interest of Kenyans. They further thanked the Committee for its indulgence on the matters and stated that they looked forward to the gazetting of the new charges.

The Committee **resolved to have the revised charges gazetted within two weeks, as suggested by the Ministry of Water, Sanitation, and Irrigation to allow Kenyans to start benefitting from the same.**

MINUTE SEN/SCLNR/383/2021: ANY OTHER BUSINESS

There was no other business

MINUTE SEN/SCLNR/384/2021: DATE OF NEXT MEETING

The meeting was adjourned at 12:12 pm and the next meeting was to be held on Wednesday 28th October, 2021 at 11:00 am.

Signed: 

Date: 18/2/2022

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

MINUTES OF THE 1ST SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 9TH FEBRUARY, 2022 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Ndwiga Peter Njeru, EGH, MP
3. Sen. (Dr.) Lelegwe Ltumbesi, MP
4. Sen. Mwaruma Johnes, MP

PRESENT

- **Chairperson**
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Philip Mpaayei, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. Gideon Moi, CBS, MP
4. Sen. Boy Issa Juma, MP
5. Sen. Arch. Sylvia Kasanga, MP

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

IN ATTENDANCE

SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Clare Kidombo - Research Officer
3. Mr. Mitchell Otoro - Legal Counsel
4. Mr. Erick Njogu - Clerk Assistant
5. Mr. John Pere - Serjeant-at-Arms

MINUTE SEN/SCLN/001/2022: PRELIMINARIES

The meeting was called to order at 11.19 am by the Chairperson followed by a word of prayer and introductions.

MINUTE SEN/SCLN/ 002/2022: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Mwaruma Johnes, MP as follows

1. Preliminaries
 - *Prayer*
 - *Introductions*
2. Adoption of the agenda;
3. Confirmation of Minutes;

4. **Consideration of Pending Business; Petitions, Statements, County Visits and Inquiries;**
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNENR/003/2022: CONFIRMATION OF MINUTES;

- The meeting was informed of a set of 20 minutes of the Committee that were yet to be confirmed.
- It was suggested that the minutes be confirmed during the proposed work planning retreat and members acceded.

MINUTE SEN/SCLNENR/004/2022: CONSIDERATION OF PENDING BUSINESS; PETITIONS, STATEMENTS, COUNTY VISITS AND INQUIRIES

The meeting was taken through the pending business as follows;

PENDING MEETINGS

<u>DATE</u>	<u>TIME</u>	<u>AGENDA</u>	<u>INVITED STAKEHOLDERS</u>		<u>REMARKS</u>
WEDNESDAY, 9 TH FEBRUARY, 2022	11.00 AM	Housekeeping	In-house	Join Zoom Meeting https://us02web.zoom.us/j/85484426824?pwd=SWpmNkJTYUZXXK3hSbDZmSy9zcG1HQOT09 Meeting ID: 854 8442 6824 Passcode: 655907	
WEDNESDAY, 16 TH FEBRUARY, 2022	11.00 AM	Petition to the senate on the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta county	<ul style="list-style-type: none"> • Cabinet Secretary Ministry of Interior and Coordination of National Government • Directorate of Criminal Investigation 	Letters Sent. Join Zoom Meeting https://us02web.zoom.us/j/88511893600?pwd=WU5oT01kNnRnaG1XckdXa09JL280QT09 Meeting ID: 885 1189 3600 Passcode: 901595.	<ul style="list-style-type: none"> • Members were informed that the decision to invite the Cabinet Secretary and the Directorate of Criminal Investigation (DCI) was arrived at during the previous meeting of the Committee following failure by DCI to present an investigative report despite numerous requests by the Committee hence delaying conclusion of the matter.
	12.00 NOON	Summons to Cabinet Secretary Ministry of Lands and Physical Planning and Cabinet Secretary Ministry of Education over statements	<ul style="list-style-type: none"> • Cabinet Secretary Ministry of Lands and Physical Planning. • Cabinet Secretary Ministry of Education. 	Summon still being processed. Join Zoom Meeting https://us02web.zoom.us/j/81054549017?pwd=R0lrdFZZK3pISFN6RTRrYm9zY1BuZz09 Meeting ID: 810 5454 9017 Passcode: 559676	<ul style="list-style-type: none"> • The Meeting was informed that the two Cabinet Secretaries were summoned by the committee following failure to honour the Committee's invitations to respond to issues within the mandates of their respective ministries. • Members noted that the summons were to be dispatched over the day.

THURSDAY, 17 TH FEBRUARY, 2022	11.00 AM	Petition on historical injustices against the Samburu Community living in Kirimun area of Laikipia North in Laikipia County	<ul style="list-style-type: none"> • Cabinet Secretary Ministry of Lands and Physical Planning • Chairperson, National Land Commission 	(Letters Sent) Join Zoom Meeting https://us02web.zoom.us/j/84486000530?pwd=bkJWV0s3c0cwQ1ZCNklnaGY3aHp4QT09 Meeting ID: 844 8600 0530 Passcode: 999416	<ul style="list-style-type: none"> • Members were informed that the Cabinet Secretaries were invited to give concrete responses following substandard during a previous meeting over the matter.
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PENDING COUNTY VISITS

AGENDA	PROPOSED DATES	REMARKS
<ul style="list-style-type: none"> • Retreat Work planning (Mombasa/Naivasha) 		<ul style="list-style-type: none"> • The secretariat requested the Committee to propose the dates for the activities. • The secretariat was tasked to formulate the proposed dates and present them before the Committee during the next meeting for ratification.
<ul style="list-style-type: none"> • Visit to Bungoma County and Nandi County – Chetambe Hill Forest Petition and Kimondi Forest Petition 		
<ul style="list-style-type: none"> • Visit to Embu County and Nyandarua County – Embu Diocese Petition and Kwa Muhu Statement 		
<ul style="list-style-type: none"> • Report Writing Retreat (Mombasa/Naivasha) 		

PENDING PETITIONS

The meeting was informed that there were seven (7) pending petitions before the Committee which included;

PETITIONERS	PETITION	REMARKS
Residents of Kericho and Bomet Counties	<ul style="list-style-type: none"> • The status of land owned by multinationals in Kericho and Bomet Counties 	<ul style="list-style-type: none"> • The meeting was informed that the petition was joint between Land, Environment and Natural Resources, and Justice, Legal Affairs and Human Rights Committees. • The meeting was also informed that the Committee resolved to leave the matter Justice and Legal Affairs Committee to conclude it after which there will be a joint sitting to adopt the report.

Residents of Mkamenyi Village in Voi sub-county of Taita Taveta County	<ul style="list-style-type: none"> The alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County. 	<ul style="list-style-type: none"> The meeting was informed that invitations were sent to Cabinet Secretary Ministry of Interior and Coordination of National Government and the Directorate of Criminal Investigation for a meeting with the Committee next week to facilitate conclusion of the matter.
Residents of Webuye East, Bungoma County	<ul style="list-style-type: none"> The gazettement of Chetambe (Webuye) Hill Forest, vide Legal Notice No. 106, dated 25th June 2021 	<ul style="list-style-type: none"> The Committee was informed that the matter awaited a county visit for it to be concluded.
Former Kimondi Forest evictees	<ul style="list-style-type: none"> Resettlement status of former Kimondi Forest evictees 	<ul style="list-style-type: none"> The Committee was informed that the matter awaited a county visit for it to be concluded.
Ms. Linda Munyao and other members of the Environment Institute of Kenya (EIK)	<ul style="list-style-type: none"> Introduction to the Senate of the proposed Environment Institute of Kenya Bill. 	<ul style="list-style-type: none"> The meeting was informed that the petition was concluded and only awaited written responses from the Ministry of Environment and Forestry.
Kenya Water and Sanitation Civil Society Network	<ul style="list-style-type: none"> To expunge offending provisions in the Water Services Regulations, 2021 and the Water Resources Regulations, 2021. 	<ul style="list-style-type: none"> The meeting was informed that the matter was concluded and that a draft report was ready and awaited consideration by the Committee.
Kirimun residents	<ul style="list-style-type: none"> Historical injustices against the Samburu community living in Kirimun area of Laikipia North in Laikipia County. 	<ul style="list-style-type: none"> The Committee was informed that a meeting with the Ministry of Lands and physical Planning and the National Land Commission was scheduled for 17th February 2022, after which a county visit would be conducted to conclude the matter.
Bishop Paul Kariuki Njiru and Sister Alice Wambui	<ul style="list-style-type: none"> Illegal alienation of parcel of land Embu/Municipality/375 (leasehold) by the Child Welfare Society of Kenya. 	<ul style="list-style-type: none"> The Committee was informed that the petitioners and stakeholders had been invited and that it awaited a county visit and analysis of all submissions before a final meeting.

PENDING STATEMENTS

The meeting was informed that 12 statements were pending before the Committee awaiting responses from the relevant Ministries and Agencies.

MINUTE SEN/SCLNDR/005/2022: ANY OTHER BUSINESS

- Senator for Taita Taveta County sought to know the implementation status of the report of the Committee on the Petition on the alleged impending evictions of Msambweni residents by a private company.
- The secretariat informed him that a follow up on the same would be done with the relevant ministry to ascertain the status of implementation of the report and revert with a response in the following week

MINUTE SEN/SCLNDR/006/2021: DATE OF NEXT MEETING

The meeting was adjourned at 11:00 am and the next meeting was to be the next meeting was to be held on Wednesday, 16th February, 2022 at 11:00 am.

Signed: 

Date: 20/5/2022

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

MINUTES OF THE 4TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON FRIDAY, 18TH FEBRUARY, 2022 AT ENGLISH POINT MARINA, MOMBASA COUNTY AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. George Khaniri, MGH, MP
4. Sen. Mwaruma Johnes, MP
5. Sen. Boy Issa Juma, MP

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Ndwiga Peter Njeru, EGH, MP - Member
2. Sen. (Dr.) Lelegwe Ltumbesi, MP - Member
3. Sen. Arch. Sylvia Kasanga, MP - Member
4. Sen. Gideon Moi, CBS, MP - Member

IN ATTENDANCE

SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Clare Kidombo - Research Officer
3. Mr. Mitchell Otoro - Legal Counsel
4. Mr. Erick Njogu - Clerk Assistant
5. Ms. Alice Namaya - Secretary
6. Mr. James Kimiti - Hansard Officer

MINUTE SEN/SCLNENR/017/2022: PRELIMINARIES

The meeting was called to order at 9.00 am by the Chairperson followed by a word of prayer and introductions.

MINUTE SEN/SCLNENR/ 018/2022: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. Boy Issa Juma, MP as follows

1. Preliminaries
 - *Prayer*
 - *Introductions*

2. Adoption of the agenda;
3. Pending Legislative Business;
4. Confirmation of Pending Minutes;
5. Matters Arising;
6. Adoption of the following Petition Report
 - Draft Report of the Committee on the Petition to expunge the alleged the alleged offending provisions in the Water Services Regulations, 2021 and Water Resources Regulations, 2021
7. Any other Business;
8. Date of the next meeting;
9. Adjournment.

MINUTE SEN/SCLNR/019/2022: PENDING LEGISLATIVE BUSINESS;

- The Secretariat briefed the meeting on the pending legislative business as captured in the Statements and Petitions Trackers.
- Members was informed of other items that would be considered during the retreat including confirmation of pending minutes and adoption of three petition reports.
- The Committee was taken through pending legislative business as follows;

1. PETITIONS

The pending Petitions included;

NO	PETITIONER	SUBJECT	REPORTED/ PRESENTED/ BY:	DATE OF REPORTING / PRESENTATION	STANDING COMMITTEE OF COMMITAL	REMARKS
	Residents of Webuye East, Bungoma County	The gazettement of Chetambe (Webuye) Hill Forest, vide Legal Notice No. 106, dated 25th June 2021	Sen. Moses Wetang'ula, EGH, MP	04/08/2021	Land, Environment and Natural Resources	County Visit scheduled 10 th – 13 th March, 2022 Report Writing
	Former Kimondi Forest evictees	Resettlement status of former Kimondi Forest evictees	Sen. George Khaniri, MP	07/09/2021	Land, Environment and Natural Resources	County Visit scheduled 10 th – 13 th March, 2022 Report Writing
	Ms. Linda Munyao and other members of the Environment	Introduction to the Senate of the proposed Environment Institute of Kenya Bill.	The Speaker	08/09/2021	Land, Environment and Natural Resources	Report Writing

Institute of Kenya (EIK)						
Kenya Water and Sanitation Civil Society Network	To expunge offending provisions in the Water Services Regulations, 2021 and the Water Resources Regulations, 2021.	The Speaker	16/9/2021	Land, Environment and Natural Resources	Report Writing	
Kirimum residents	Historical injustices against the Samburu community living in Kirimun area of Laikipia North in Laikipia County.	Sen. (Dr.) Lelegwe Ltumbesi, MP	14/10/2021	Land, Environment and Natural Resources	Report Writing	
Bishop Paul Kariuki Njiru and Sister Alice Wambui	Illegal alienation of parcel of land Embu/Municipality/375 (leashold) by the Child Welfare Society of Kenya.	Sen. Ndwiga Peter Njeru, EGH, MP	17/11/2021	Land, Environment and Natural Resources	County Visit scheduled 28 th February, 2022	

- On the issue Mkamenyi Petition, the meeting was also informed that the Committee had resolved to reinvoke the Cabinet Secretary, Ministry of interior and Coordination of National Government and the Directorate of Criminal Investigations (DCI) over the matter to address the issues raised by the Committee.
- The meeting was also informed that a request had been sent to DCI asking them to do a formal response on the Mkamenyi matter as the one they had sent initially appeared to be an internal document since it lacked the Cabinet Secretary's letter head.
- On the issue of the joint petition regarding the Multinationals in Kericho County, the meeting was informed that the report was ready for consideration. The Committee resolved to engage Senate Committee on Justice and Legal Affairs and schedule a meeting to conclude the matter.

Observations and Interventions

- The meeting observed that recommendations issued in the Committee report on Msambweni issue needed further resolutions such have the matter considered by the Settlement Fund Board of Trustees (SFT Board). Deliberations on the matter ensued and the **Committee resolved to conduct a follow up with the implementing agencies on the matter by inviting them to a meeting of the Committee where it can pronounce itself further by issuing resolutions such as having the matter handled by SFT Board for quicker turnaround times.**
- The Secretariat was tasked to have the invitations done.

2. STATEMENTS

The pending statements included;

NO	STATEMENT BY	SUBJECT	DATE OF REQUEST/ISSUE	STATUS
1.	Sen. Moses Otieno Kajwang', MP	Dredging and sand harvesting activities around Takawiri Island in Lake Victoria	02.03.2021	Awaiting Response from Ministry of Environment
2.	Sen. Mercy Chebeni, MP on behalf of Sen. Abshiro Halake, MP	Status of <i>Kwa Muhu</i> Internally Displaced Persons (IDPs) resettlement farm in Kanjuiri, Olkalou in Nyandarua County	05.08.2021	The Committee has received written responses from the PS Ministry of Lands and Physical Planning and awaits response from the National Land Commission Scheduled a County Visit on Monday 28 th February, 2022
3.	Sen. Johnson Sakaja, MP	Demolition of Martin Luther Primary School in Makadara Constituency, Nairobi City County	13.10.2021	The Committee has requested for written responses from the Ministry of Education and the Ministry of Lands and Physical Planning. Summons sent to the Cabinet Secretaries to appear before the Committee on Tuesday 22 nd February, 2022
4.	Sen. Aaron Cheruiyot, MP	Status of titling of Government Learning Institutions	10.11.2021	The Committee has scheduled a meeting with the Ministry of Lands and Physical Planning and the Ministry of Education to issue their responses. Summons sent to the Cabinet Secretaries to appear before the Committee on Tuesday 22 nd February, 2022
5.	Sen. Aaron Cheruiyot, MP	Land transactions by Multinationals without the involvement of the National or County Governments	11.11.2021	The Committee has requested for written responses from the Ministry of Lands and Physical Planning.
6.	Sen. Millicent Omanga, MP	Alleged irregular ownership and use of land No. LR 336/64, originally land No. LR 336/12 in Babadogo, Nairobi City County	11.11.2021	The Committee has requested for written responses from the Ministry of Lands and Physical Planning.
7.	Sen. Cherarkey Samson, MP	Land leases in Nandi County	01.12.2021	The Committee has requested for written responses from the Ministry of Lands and Physical Planning.
8.	Sen. Paul Githiomi, MP	Rampant destruction of food crops by elephants in Kiriita Ward, Ndaragwa Constituency,	02.12.2021	The Committee has requested for written responses from

		Nyandarua County		the Ministry of Tourism and Wildlife
9.	Sen. Paul Githiomi, MP	Delay in issuance of title deeds to the members of <i>Gwa Kung'u</i> Self-help Group in Ndaragwa Constituency, Nyandarua County	02.12.2021	The Committee has requested for written responses from the Ministry of Lands and Physical Planning.
10	Sen. John Kinyua, MP (Sto 47(3))	Insecurity in Laikipia County and the need to clear land around the Laikipia Nature Conservancy to aid visibility and enhance security operations in the County	02.12.2021	The Committee has requested for written responses from the Ministry of Environment and Forestry and the Ministry of Tourism and Wildlife

Observations and Interventions

- The Committee observed that the issue on Takwiri Island was yet to be concluded despite numerous requests for responses from the Ministry of Environment. **The Committee resolved to have a reminder sent to Ministry and tasked the secretariat on the same.**
- On the issue of Demolition of Martin Luther Primary School, the meeting was informed of an apology from the Cabinet Secretary Ministry of Lands and Physical Planning being she was not able to honour the summon issued by the Committee as she was out of the Country. **The Committee resolved to consider the matter on Tuesday 22nd February, 2022 and thereafter make a determination.**

MINUTE SEN/SCLN/019/2022: CONFIRMATION OF PENDING MINUTES;

- The Minutes of the 58th sitting held on 20th August, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Philip Mpaayei, MP and Sen. Mwaruma Johnes, MP respectively.
- The Minutes of the 60th sitting held on 16th September, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Boy Issa Juma, MP and Sen. Philip Mpaayei, MP respectively.
- The Minutes of the 61st sitting held on 22nd September, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Philip Mpaayei, MP respectively.
- The Minutes of the 62nd sitting held on 23rd September, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Boy Issa Juma, MP and Sen. Mwaruma Johnes, MP respectively.
- The Minutes of the 63rd sitting held on 29th September, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Boy Issa Juma, MP and Sen. Mwaruma Johnes, MP respectively.
- The Minutes of the 64th sitting held on 30th September, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Boy Issa Juma, MP and Sen. Mwaruma Johnes, MP respectively.

- The Minutes of the 65th sitting held on 6th October, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by and Sen. Philip Mpaayei, MP and Sen. Boy Issa Juma, MP respectively.
- The Minutes of the 66th sitting held on 14th October, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Boy Issa Juma, MP and Sen. Mwangi Paul Githiomi, MP respectively.
- The Minutes of the 67th sitting held on 21st October, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Philip Mpaayei, MP, and Sen. Boy Issa Juma, MP respectively.
- The Minutes of the 69th sitting held on 28th October, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Philip Mpaayei, MP and Sen. Mwaruma Johnes, MP respectively.
- The Minutes of the 70th sitting held on 17th November, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Boy Issa Juma, MP and Sen. Philip Mpaayei, MP respectively.
- The Minutes of the 71st sitting held on 18th November, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Philip Mpaayei, MP and Sen. Mwaruma Johnes, MP respectively.
- The Minutes of the 73rd sitting held on 1st December, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Mwangi Paul Githiomi, MP respectively.
- The Minutes of the 75th sitting held on 2nd December, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Philip Mpaayei, MP respectively.
- The Minutes of the 76th sitting held on 7th December, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Boy Issa Juma, MP respectively.
- The Minutes of the 77th sitting held on 8th December, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Boy Issa Juma, MP respectively.
- The Minutes of the 78th sitting held on 8th December, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Boy Issa Juma, MP respectively.
- The Minutes of the 79th sitting held on 9th December, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Mwangi Paul Githiomi, MP respectively.
- The Minutes of the 80th sitting held on 9th December, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Mwangi Paul Githiomi, MP respectively.
- **Confirmation of the minutes of the 59th, 72nd and 74th meetings was deferred to a later date.**

MINUTE SEN/SCLNENR/020/2022: MATTERS ARISING

There were no matters arising.

MINUTE SEN/SCLNENR/021/2022: ADOPTION OF THE FOLLOWING PETITION REPORT

- **Draft Report of the Committee on the Petition to expunge the alleged the alleged offending provisions in the Water Services Regulations,2021 and Water Resources Regulations, 2021**

The Committee considered the draft report and resolved to defer its adoption to allow for further deliberations on the matter with Ministry of Water and Sanitation. The Secretariat was tasked to invite the Cabinet Secretary Ministry of Water and Sanitation to a meeting of the Committee on the Same.

MINUTE SEN/SCLNENR/022/2022: ANY OTHER BUSINESS

- The Committee noted that not all title deeds for the Colonial Village in Nyandarua County had been issued and resolved to conduct a follow up on the same. The Secretariat was tasked to ensure that the implementing agencies are invited to the meeting of the Committee for an update.

MINUTE SEN/SCLNENR/023/2021: DATE OF NEXT MEETING

The meeting was adjourned at 1:00 pm and the next meeting was to be held on Friday, 18th February, 2022 at 2:00 pm.

Signed: 

Date: 20/5/2022

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

MINUTES OF THE 12TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 11TH MAY, 2022 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Ndwiga Peter Njeru, EGH, MP
3. Sen. George Khaniri, MGH, MP
4. Sen. Mwaruma Johnes, MP
5. Sen. Boy Issa Juma, MP

PRESENT

- **Chairperson**
- Member
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Philip Mpaayei, MP
2. Sen. (Dr.) Lelegwe Ltumbesi, MP
3. Sen. Gideon Moi, CBS, MP
4. Sen. Arch. Sylvia Kasanga, MP

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

IN ATTENDANCE

SECRETARIAT

1. Mr. Victor Bett
2. Ms. Clare Kidombo
3. Mr. Mitchell Otoro
4. Mr. Erick Njogu
5. Ms. Florence Waweru

- Clerk Assistant
- Research Officer
- Legal Counsel
- Clerk Assistant
- Clerk Assistant

MINUTE SEN/SCLNDR/061/2022: PRELIMINARIES

The meeting was called to order at 11.19 am by the Chairperson followed by a word of prayer and introductions.

MINUTE SEN/SCLNDR/ 062/2022: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Mwaruma Johnes, MP as follows

1. Preliminaries
 - *Prayer*
 - *Introductions*
2. Adoption of the agenda;
3. **Consideration of Pending Business; Bills, Petitions, Statements, County Visits and Inquiries;**

4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

**MINUTE SEN/SCLNR/063/2022: CONSIDERATION OF PENDING BUSINESS;
BILLS, PETITIONS,**

The meeting was taken through the pending business as follows;

PENDING MEETINGS

<u>DATE</u>	<u>TIME</u>	<u>AGENDA</u>	<u>INVITED STAKEHOLDERS</u>	<u>REMARKS</u>
WEDNESDAY, 11TH MAY, 2022	11.00 AM	Housekeeping	In-house	
THURSDAY, 12TH MAY, 2022	11.00 AM (Physical)	Petition on illegal alienation of parcel of land Embu/ Municipality/375 (leashold) by the Child Welfare Society of Kenya.	<ul style="list-style-type: none"> • Cabinet Secretary Ministry of Lands and Physical Planning • Chairperson National Land Commission • Child Welfare Society of Kenya • Diocese of Embu Trustees 	
Thurs. 11/5/22 – Sat. 14/5/22		Proposed Retreat in Mombasa County with the Ministry of Environment on the Water Towers Bill, 2022		<i>(Members kindly confirm for logistical purposes)</i>
WEDNESDAY, 18TH MAY, 2022	11.00 AM	Petition on resettlement status of former Kimondi Forest evictees.	<ul style="list-style-type: none"> • Cabinet Secretary Ministry of Lands and Physical Planning • National Land Commission • Kimondi Forest Evictees 	
THURSDAY, 19TH MAY, 2022	11.00 AM	Meeting on the Petition to expunge alleged offending provisions in the Water Services Regulations, 2021 and Water Resources Regulations, 2021.	<ul style="list-style-type: none"> • Cabinet Secretary Ministry of Water, Sanitation and Irrigation 	
(Proposed Date)	Time	The alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited	<ul style="list-style-type: none"> • Cabinet Secretary Ministry of Interior and Coordination of National Government 	Committee guidance on way forward after receiving Written

		in Taita Taveta County.	• Directorate of Criminal Investigations – DCI	Responses.
Mon. 23/5/22 – Frid. 27/5/22 (During Recess)		Proposed Report Writing Retreat on Petitions in Mombasa County		<i>(Members kindly confirm for logistical purposes)</i>

- It was noted that there was a budgetary constraint for the Proposed Retreat in Mombasa County with the Ministry of Environment on the Water Towers Bill, 2022, and the Chairperson was requested to engage the Clerk of the Senate on the same and advise on the way forward.
- The Committee was informed that the decision to hold a meeting on the Petition to Expunge the alleged Offending Provisions in the Water Services Regulations, 2021 and Water Resources Regulations, 2021, was arrived at during the Work Planning Retreat in Mombasa between 17th and 20th March, 2022.
- On the matter regarding the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County, the meeting was informed that both the Directorate of Criminal Investigations – DCI and the Ministry of Interior had submitted written response to the Committee and that the matter required a resolution of the Committee on whether to schedule the meeting.
- The Senator Taita Taveta indicated that the matter needed to be concluded as it was long overdue, noting that the responses received from the Ministry of Interior and Coordination of National Government and the DCI were inadequate as they had not fully addressed the issues raised.
- Deliberations on the matter ensued and the **Committee resolved to conclude the report with the information available.**
- The meeting was informed that upon completion of all the scheduled meetings, the Committee would be ready to write all its reports and conclude all its pending business.
- On statements before the Committee, the meeting was informed that all correspondences had been sent out to the relevant agencies and the matters awaited written responses.

- The meeting was informed that the Bill on Sustainable Waste Management was before the Committee and that its consideration would be done in Mombasa County during the scheduled retreat. The Committee noted that an advertisement to Request for Submission of Memoranda from the Public had been published and that any submissions made would be considered during the retreat.
- The Committee noted that there was a funding issue with the proposed retreat to Mombasa and was informed that the Chairperson was in consultation with the office of the Clerk on the way forward.

MINUTE SEN/SCLNDR/064/2022: ANY OTHER BUSINESS

- The Senator for Taita Taveta County sought the Committee to follow up on the issue of compensation of families affected by the construction of Ikanga Airstrip following recommendations by the Committee, noting that the compensation was yet to be effected. He further added that residents of Bura area in Taita Taveta who were affected by the construction of the Voi – Taveta – Holili road were also yet to be compensated.
- The Committee deliberated on the issues and **resolved to invite the National Land Commission (NLC) and Kenya Airports Authority (KAA) to a meeting of the Committee in the one and a half weeks to update the Committee on the same.**

MINUTE SEN/SCLNDR/065/2022: DATE OF THE NEXT MEETING

The meeting was adjourned at 11:35 am and the next meeting was to be held on Thursday, 12th May, 2022 at 9:30 am.

Signed:

Date: 20/5/2022

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

MINUTES OF THE 20TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 19TH MAY, 2022 VIA ZOOM ONLINE PLATFORM AT 12.00 NOON.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. Ndwiga Peter Njeru, EGH, MP
4. Sen. Mwaruma Johnes, MP
5. Sen. Boy Issa Juma, MP

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. George Khaniri, MGH, MP - Member
2. Sen. (Dr.) Lelegwe Ltumbesi, MP - Member
3. Sen. Gideon Moi, CBS, MP - Member
4. Sen. Arch. Sylvia Kasanga, MP - Member

IN ATTENDANCE

SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Clare Kidombo - Research Officer
3. Mr. Mitchell Otoro - Legal Counsel
4. Mr. Erick Njogu - Clerk Assistant
5. Ms. Florence Waweru - Clerk Assistant
6. Mr. James Kimiti - Hansard Officer

MINUTE SEN/SCLNENR/096/2022: PRELIMINARIES

The meeting was called to order at 12.20 am by the Chairperson followed by a word of prayer and introductions.

MINUTE SEN/SCLNENR/ 097/2022: ADOPTION OF AGENDA

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

1. Preliminaries
 - *Prayer*
 - *Introductions*
2. Adoption of the agenda;
3. Confirmation of Minutes;

4. Matters Arising;
5. **Adoption of Petition Reports**
 - **Report on the Petition Regarding historical injustices against the Samburu Community living in Kirimun area of Laikipia North in Laikipia County;**
 - **Report on the Petition Regarding the alleged illegal alienation of parcel of land EMBU/MUNICIPALITY/375 (Leasehold) by Child Welfare Society of Kenya in Embu County;**
 - **Report on the Petition to Approve the Proposed Environment Institute of Kenya (EIK) Bill; and**
 - **Report on Petition to expunge the alleged offending provisions in the Water Services Regulations, 2021 and Water Resources Regulations, 2021**
6. Any other Business;
7. Date of the next meeting;
8. Adjournment.

MINUTE SEN/SCLNR/098/2022: CONFIRMATION OF MINUTES

- The Minutes of the 72nd sitting held on 30th November, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Mwangi Paul Githiomi, MP respectively.
- The Minutes of the 74th sitting held on 2nd Devcember, 2021 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Mwaruma Johnes, MP respectively.
- The Minutes of the 1st sitting held on 9th February, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Mwaruma Johnes, MP respectively.
- The Minutes of the 2nd sitting held on 16th February, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Boy Issa Juma, MP and Sen. Mwaruma Johnes, MP respectively.
- The Minutes of the 3rd sitting held on 17th February, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Boy Issa Juma, MP respectively.
- The Minutes of the 4th sitting held on 18th February, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Boy Issa Juma, MP respectively.
- The Minutes of the 5th sitting held on 18th February, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Boy Issa Juma, MP respectively.

- The Minutes of the 6th sitting held on 22nd February, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Philip Mpaayei, MP respectively.
- The Minutes of the 7th sitting held on 28th February, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Philip Mpaayei, MP respectively.
- The Minutes of the 8th sitting held on 28th February, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Philip Mpaayei, MP and Sen. Ndwiga Peter Njeru, EGH, MP respectively.
- The Minutes of the 9th sitting held on 9th March, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Mwangi Paul Githiomi, MP respectively.
- The Minutes of the 10th sitting held on 16th March, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Philip Mpaayei, MP and Sen. Mwangi Paul Githiomi, MP respectively.
- The Minutes of the 11th sitting held on 17th March, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Philip Mpaayei, MP and Sen. Mwangi Paul Githiomi, MP respectively.
- The Minutes of the 12th sitting held on 11th May, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Boy Issa Juma, MP respectively.
- The Minutes of the 13th sitting held on 12th May, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Boy Issa Juma, MP respectively.
- The Minutes of the 14th sitting held on 13th May, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Mwaruma Johnes, MP respectively .
- The Minutes of the 15th sitting held on 13th May, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Ndwiga Peter Njeru, EGH, MP respectively.
- The Minutes of the 16th sitting held on 14th May, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Mwaruma Johnes, MP and Sen. Ndwiga Peter Njeru, EGH, MP respectively.
- The Minutes of the 17th sitting held on 14th May, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Mwaruma Johnes, MP respectively.
- The Minutes of the 19th sitting held on 19th May, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Philip Mpaayei, MP and Sen. Boy Issa Juma, MP respectively.

MINUTE SEN/SCLNR/099/2022: MATTERS ARISING

There were no matters arising.

MINUTE SEN/SCLNR/100/2022: ADOPTION OF PETITION REPORTS

- **Report on the Petition Regarding historical injustices against the Samburu Community living in Kirimun area of Laikipia North in Laikipia County;**

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby adopted its report with the following recommendations in accordance with the Prayers of the Petitioner—

The Committee recommended as follows –

The National Land Commission, which is investigating the historical land injustices raised in the Petition in accordance with its mandate under Article 67(2)(e) of the Constitution, promptly investigates the same and makes its recommendations within 3 months of the tabling of this report.

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Johnes Mwaruma, MP and Sen. Boy Issa Juma, MP respectively.

- **Report on the Petition Regarding the alleged illegal alienation of parcel of land EMBU/MUNICIPALITY/375 (Leasehold) by Child Welfare Society of Kenya in Embu County;**

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby adopted its report with the following recommendations in accordance with the Prayers of the Petitioner—

The Committee recommended as follows –

The Embu County Government, the Ministry of Lands and Physical Planning and the National Land Commission identifies and procures alternative and appropriate land for the Child Welfare Society of Kenya to use for its activities in Embu County.

Upon the identification and procurement of alternative land as stated above, the Ministry of Lands and Physical Planning registers the subject land in the name of the Catholic Church – Diocese of Embu specifically to continue running the children’s home as it has for the last sixty years.

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Johnes Mwaruma, MP respectively.

- **Report on the Petition to Approve the Proposed Environment Institute of Kenya (EIK) Bill;**

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby adopted its report with the following recommendations in accordance with the Prayers of the Petitioner—

The Committee recommended as follows –

The Senate, in due course, favorably considers and approves the Bill the Committee shall propose to address the regulation of environment professionals.

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Philip Mpaayei, MP respectively.

- **Report on Petition to expunge the alleged offending provisions in the Water Services Regulations, 2021 and Water Resources Regulations, 2021**

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby adopted its report with the following recommendations in accordance with the Prayers of the Petitioner—

The Committee recommended as follows –

noting that the Regulations have ceased to have effect and are now void pursuant to section 11(4) of the Statutory Instruments Act, the Committee recommends that the Cabinet Secretary, Ministry of Water, Sanitation and Irrigation conducts a fresh and effective public participation on draft regulations and thereafter publishes them and transmits them to both Houses of Parliament in accordance with section 11(1) of the Statutory Instruments Act.

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Mwaruma Johnes, MP respectively.

MINUTE SEN/SCLN/101/2022: ANY OTHER BUSINESS

The meeting was informed that the following draft reports would be ready for consideration by the Committee during the next meeting;

- Report on a Petition has been submitted through the Clerk, concerning The alleged gazettement of Chetambe (Webuye) Hill Forest, vide legal Notice No. 106: Proposed Declaration of Public Forest Chetambe (Webuye) Hill Forest Dated 25th June 2021;
- Report on a Petition has been submitted through the Clerk, concerning the resettlement status of the former Kimondi forest evictees;
- Report on a Petition regarding the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County;
- Report on a Petition regarding the status of land owned by multinationals in Kericho and Bomet Counties; and
- Report on the Sustainable Waste Management Bill, 2021 (National Assembly Bill No. 22 of 2021).

The Committee was informed that the National Assembly had rejected the Wildlife Conservation and Management (Amendment) Bill (Senate Bills No. 30 of 2020). Consequently, a ten-member mediation Committee had been constituted with membership from both houses of Parliament and they included;

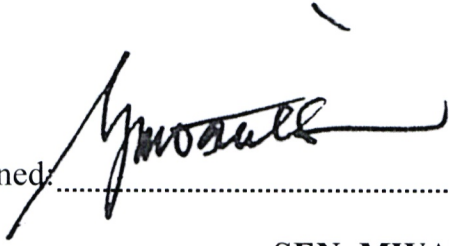
1. Sen. Mwangi Paul Githiomi, MP;
2. Sen. Ndwiga Peter Njeru, EGH, MP;
3. Sen. Johnes Mwauma, MP;
4. Sen. (CPA) Farhiya Haji, MP;
5. Sen (Arch). Sylvia Kasanga, MP;
6. Hon. Eng. Paul Nzengu, MP;
7. Hon. Chachu Ganya, MP;
8. Hon. Rozah Akinyi Buyu, MP;
9. Hon. Shinali Benard Masaka, MP;
10. Hon. Ali Amin Deddy, MP;

The Secretariat requested to have the first meeting of the Mediation Committee on Tuesday, 24th May, 2022 and the Committee acceded to the request.

MINUTE SEN/SCLNR/102/2022: DATE OF THE NEXT MEETING

The meeting was adjourned at 11:54 am and the next meeting was to be held on Wednesday, 25th May, 2022 at 11:00 am.

Signed:



Date: 20/5/2022

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS



REPUBLIC OF KENYA

MINISTRY OF WATER, SANITATION AND IRRIGATION

MINISTERIAL RESPONSE TO A PUBLIC PETITION REGARDING PROVISIONS IN THE WATER SERVICES REGULATIONS 2021 AND WATER RESOURCES REGULATIONS 2021.

Hon. Chair, a petition was placed before the Senate Standing Committee on Land, Environment and Natural Resources by Kenya Water and Sanitation Civil Society Network (KEWASNET).

Being citizens of Kenya, and representing citizen interests in the water sector, the petitioners drew the attention of the Senate to the following:

- i. That this petition is of national importance and it touches on fundamental rights of Kenyan citizens as provided for and protected by the constitution of Kenya. In particular reference is made to Article 43 (1) (d) that guarantees the right of every Kenyan to clean and safe water in adequate quantities;*
- ii. That Access to water for the most vulnerable citizens still remains unfulfilled, and/or unsustainable. A huge population of Kenya access water from non-regulated service providers or directly from sources.*
- iii. That affordability in the cost of water is an important factor determining level of access for millions of citizens in Kenya.*
- iv. That sustained access to water is an important non-pharmaceutical defense and especially important contributor to the resilience of the most vulnerable population to the vagaries of COVID-19 pandemic*

- v. *That during the ongoing pandemic, COVID-19 the already vulnerable population were further disadvantaged with many others entering that category due to increased demand and use of safe water*
- vi. *That a big part of the population in what has been categorized as non-commercially viable areas still depend on small scale water service providers for their water services.*
- vii. *That the water act 2016 provides for ring fencing of all incomes derived from water conservation and supply services for continued conservation and expansion of service bracket.*
- viii. *That due to the linkages between abstraction and access and utilization of water cost of water is an elementary unit of production and impactful to the economy of Kenya.*
- ix. *That special attention is drawn to the Legal Notice No. 168, in which Cabinet Secretary in charge of Water, Sanitation and Irrigation has published proposed Water Resource Regulations, 2021, whose proposals provide significant changes in the obligations of water users and particularly in increasing the nominal cost abstraction of water from various sources.*
- x. *That cost proposed charges in the regulations have the potential to lock out many small-scale water service providers who in any event find themselves struggling to bear the current charges.*
- xi. *That the said water resources regulations 2021 will have the effect of substantially altering the cost of water for regulated water service providers who will pass the cost directly to users who already bent over from the weight of tax and reduced incomes.*
- xii. *That the proposed regulations pose risk of reducing the resilience of the populations against the current COVID-19 pandemic.*

- xiii. *That there have been efforts to address the aforesaid by civil society and the Council of Governors, and these remain unresolved.*
- xiv. *That to the best of our knowledge none of the issues pointed out above are pending or unresolved in a court of law, or constitutional or other legal body.*
- xv. *That section 103 on collaboration with the Water Resources Users Association seems to give water resources authority powers to micromanage the WRUAs.*
- xvi. *Increase in water use fee for the irrigators is quite high and will impact on their cost of operations notwithstanding the already thigh taxes and double taxation.*
- xvii. *The regulations are not clear on catchment management and conservation and should propose a percentage to be ploughed back to catchment restoration.*
- xviii. *That there should be no fee for data access from WRA.*

Hon. Chair, I wish to state on the outset that, while developing the Water Regulations, the Ministry was very keen in ensuring compliance with all provisions under the Constitution and the existing Water Act 2016.

Public consultations were widely held before publication of these regulations and all relevant stakeholders were involved as follows:

- a) Between November, 2018 and February, 2019 wide internal consultations were held between the Ministry and its Institutions with a view of gaining preliminary insights into what were viewed by this group of stakeholders as prevailing issues or concerns and also assess the technical requirements for developing the draft rules. The feedback from these stakeholders, communicated in the Regulatory Impact Statement (RIS) informed the finalization of the Regulations.

- b) On 25th March, 2019 a public consultations workshop was held at the Kenyatta International Convention Centre in Nairobi, on the Regulations, and the RIS. The purpose of workshop was to present the Draft Regulations and the Regulatory Impact Statement to members of the public. Important feedback was received and has informed and shaped the final Regulations.
- c) On 28 March 2019, consultations were held with **Civil Society Organizations** in Nairobi during which the draft regulations and the regulatory impact statement were presented and discussed. Important feedback was received and this informed provisions in the final regulations.
- d) On 29 March 2019, consultations were held with the private sector in Nairobi during which the draft regulations and the regulatory impact statement were presented and discussed. Important feedback was received and this informed provisions in the final regulations.
- e) On 30th and 31st May, 2019, a stakeholder consultation workshop was held in Naivasha to review the advanced drafts of the regulations, with participants drawn from the water sector. Important feedback was received and this informed provisions in the final regulations.
- f) Between 18th September and 18th December, 2019, regional public consultations forums were also held in Nakuru, Eldoret, Kisumu, Nyeri and Mombasa during which presentations were made to participants on the draft regulations, and the draft regulatory impact assessments. Important feedback was received and this informed provisions in the final regulations.
- g) Extensive consultations with the Council of Governors were also conducted on 18th December, 2018, where after they presented their memoranda and a matrix of issues was subsequently developed by the Ministry to specifically address issues raised by the CoG. The Ministry considered the reactions from the CoG and incorporated them into the regulations.
- h) This was followed by an approval of the amended regulations by the Council of County Governors vide a letter dated 9th February, 2021.

- i) The Ministry proceeded with the finalization of the draft regulations in line with the Statutory Instruments Act of 2013, and were presented both houses of parliament for scrutiny in line with the Statutory Instruments Act.
- On 17th December 2020 the pre-publication scrutiny was held in Naivasha with the National Assembly Departmental Committee on Delegated Legislation.
 - On 15th – 20th June 2021, the pre-publication scrutiny was held in Mombasa with the Senate Committee on Delegated Legislation.
 - On 15th October, 2021, the post-publication scrutiny session was held in Mombasa with the National Assembly Departmental Committee on Delegated Legislation.
- j. Further consultation was held at the NDITC and NDICCC. During this process the Council of Governors vide their letter ref. COG/2/8/v01 8 dated 9th February 2021 recommended the processing of the regulations.

Hon Chair, in response to the Petition before you, I wish to state as follows in respect to the allegations by the Petitioners:

ISSUE 1: That this petition is of national importance and it touches on fundamental rights of Kenyan citizens as provided for and protected by the constitution of Kenya. In particular reference is made to Article 43 (1) (d) that guarantees the right of every Kenyan to clean and safe water in adequate quantities

RESPONSE: The Ministry acknowledges the fact that water is a human right as encompassed under **Article 43** of the Constitution and the Ministry reiterates its commitment to ensure this right is achieved. Various interventions by the Ministry have seen access to safe water increasing from 52% in 2010 when the Constitution was promulgated to the current 65%. This is expected to grow to 80% by end of the year 2022, with a goal to achieve universal access by 2030.

ISSUE 2: That access to water for the most vulnerable citizens still remains unfulfilled, and/or unsustainable. A huge population of Kenya access water from non-regulated service providers or directly from the sources.

The Ministry wishes to state that whereas access to safe water for vulnerable groups remains low, various programs have been implemented through the various water sector institutions to address issues of access to water by disadvantaged groups by providing grants for implementation of projects that would otherwise increase access to water.

The Ministry is also providing progressive provision of regulatory services to all citizens to ensure quality water services are provided throughout the country and to ensure protection of water sources for equitable allocation and use by all.

ISSUE 3: That affordability in the cost of water is an important factor determining levels of access for millions of citizens in Kenya.

RESPONSE: The Ministry takes cognizance of the fact that the cost of water is a determining factor in matters of access to water to majority of Kenyans. Water abstraction which is regulated by Water Resources Authority (WRA), is categorized into classes. *Class A* which is considered as social water use, does not attract any water use charges as the amount of water abstracted is deemed to have very little impact on the water resources (surface or groundwater).

However, the actual consumer charges at all levels are determined through consultative engagements with consumers and County Governments as guided by Water Services Regulatory Board (WASREB), to ensure the cost of water to the final consumer is not punitive. The charges so agreed are meant to ensure sustained water service provision.

ISSUE 4: That sustained access to water is an important non-pharmaceutical defense and especially important contributor to the resilience of the most vulnerable population to the vagaries of COVID-19 pandemic

RESPONSE: In ensuring Covid-19 protocols from the Ministry of Health are adhered to and implemented, the ministry undertook various interventions that saw sustained access to water especially for vulnerable populations during the pandemic. Notable interventions included implementing projects for access to free water, and installation of hand washing facilities in public places and institutions. During this period also, the Ministry issued grants to Water Service Providers through the Water Sector Trust Fund to ensure uninterrupted water provision and to cushion them against operational costs.

ISSUE 5: That during the ongoing pandemic, COVID-19 the already vulnerable population were further disadvantaged with many others entering that category due to increased demand and use of safe water

RESPONSE: Whereas the Covid-19 pandemic continues to impact most Kenyans negatively, and even though most Kenyans have been impacted economically, the Ministry has no intention of introducing any arbitrary regulations that would further burden the Kenyan citizenry. The Ministry has been open to any further dialogues consultations on any issues raised.

ISSUE 6: That a big part of the population in what has been categorized as non-commercially viable areas still depend on small scale water service providers for their water services.

RESPONSE: In as much as this is the correct position, as stated earlier, the Ministry is implementing programs by issuing grants through the WSTF to ensure access to water even in the non-commercially viable areas.

ISSUE 7: That the Water Act 2016 provides for ring-fencing of all incomes derived from water conservation and supply services, for continued conservation and expansion of service bracket.

RESPONSE: The Water Act, 2016 makes provision for the application of water use fees towards the protection and conservation of water sources and catchment areas. To this end, in reviewing the water use fees for abstraction, the Ministry was guided by the following key considerations:

i.) Cost of regulating use of water resources:

The cost of regulating the management and use of water resources in various aspects have increased. The increased cost has particularly affected the following areas:

- (a) Expansion, rehabilitation and maintenance of water resources monitoring networks;
- (b) Collection of water resources data for water resources planning and development;
- (c) Enforcement of water use permit conditions to ensure equity for all members of the public in access to water;
- (d) Water resources pollution control for protection of water resources
- (e) Riparian protection and rehabilitation.

Water use charges in this case is based on water allocated to abstractors under Category B, C and D.

ii.) Inflation: - Since the rates were first determined in 2005, there has been no increase or adjustment despite the increase in the country's inflation rate (**currently at 6.4%**).

iii.) Best Practices: - Internationally, water resources use charges are applied to support the regulation of the use and management of water resources as well as manage the water demand. The fees are charged for abstraction at sources and varies from about 2% and 10% of the final consumer bill (or in absolute terms range from Kshs.6 to Kshs.46) per m³ in South Africa; Kshs.12 to Kshs.13.5 per m³ in France; £0.84 to £1.66 per m³ (Kshs.100.8 to Kshs.199.2) in United Kingdom; US\$ 0.18 to US\$ 0.2 (Kshs.18 to Kshs.20) per m³ in Israel; US\$0.42 (Kshs.420) per m³ in Tanzania for irrigation.

ISSUE 8: That due to the linkage between abstraction access and utilization of water, cost of water is an elementary unit of production and impactful to the economy of Kenya.

RESPONSE: The Ministry submits that the Water Use fee currently stands at Ksh.0.5/m³ for public, domestic and livestock, and between Ksh.0.5–Ksh.0.75 for

irrigation and industrial/commercial for water uses in permit classes B, C and D 50cents/m³.

ISSUE 9: That special attention is drawn to the Legal Notice No. 168, in which Cabinet secretary in charge of Water, Sanitation and Irrigation has published proposed Water Resources Regulations, 2021, whose proposals provide significant changes in the obligations of water users, and particularly in increasing the nominal cost of abstraction of water from various sources.

RESPONSE: Various considerations as explained above were made prior to reaching the amounts contained in the Water Resources Regulations, 2021, Legal Notice 170 of 2021. In this regard, fees for Water Use is proposed to be reviewed to Ksh.2/m³ (public, domestic and livestock) and between Ksh.0.75–Ksh.1m³ (irrigation and industrial/commercial) for water uses in permit classes B, C and D 50cents/m³.

On the flip side, as they seek to review abstraction charges, some of the tariff charges by Water Service Providers and Counties are more than 100-fold. Some sample water tariffs are as illustrated in **appendix 1** annexed to this statement;

This scenario is duplicated across all 47 Counties in respect to fees charged by Counties for service provision. Comparatively, the nominal charge of Kshs.2/- proposed under the Legal Notice 170 of 2021 from **50 cents charged for the past 14 years** takes into account many factors including affordability and equity for all. Water Service Providers charge **Kshs. 93 per cubic metre**.

ISSUE 10: That costs proposed charges in the regulations have the potential to lock out many small- scale water service providers, who in any event find themselves struggling to bear the current charges.

RESPONSE: Kenya is classified as a water scarce country; it is my humble submission that if we, as a Government and legislators fail to protect and conserve our water sources through enabling existing agencies in the regulation of water uses, our already scarce resources will be depleted. Water as an enabler to key development agenda should be preserved and protected for posterity.

The Petitioner alleges that the amounts in the published Regulations introduce significant changes without disclosing the nominal amount which would be affordable to all Kenyans.

The issue of concern is that the reasons contributing to the very high levels of Non-Revenue Water are largely commercial and governance (corruption and illegal practices). This means that with minimal resources and strict enforcement of guidelines/rules, these losses can be reduced to acceptable levels.¹

ISSUE 11: That the said water resources regulations 2021 will have the effect of substantially altering the cost of water for regulated water service providers, who will pass the cost directly to users who are already bent over from the weight of tax and reduced incomes.

RESPONSE: The population in the service area of the regulated utilities is 25.7 million out of the total national population of 48.12 million. This translates to **53%** of the population. Taking into account the amounts already charged by Water Service Providers, the amount proposed under the Water Resources Regulations is affordable and manageable.

In its Impact Report², the Water Services Regulatory Board (WASREB) notes that unaccounted for water continues to be the biggest challenge to a majority of counties. In the said report, WASREB points out that the situation has contributed to the significant change in unit cost of water billed from Kshs. 87/cubic metre to ***Kshs. 93 per cubic metre.***

The Water Services regulator cautions that if this state of affairs is not mitigated, there is going to be a very great risk, which will undermine the progressive realization of the right to water as is enshrined in the constitution.

ISSUE 13: That the proposed regulations pose risk of reducing the resilience of the populations against the current COVID-19 pandemic.

¹ https://wasreb.go.ke/downloads/WASREB_Impact_Report13.pdf

² https://wasreb.go.ke/downloads/WASREB_Impact_Report13.pdf

RESPONSE: The Ministry once again reiterates its commitment to ensuring its citizen’s right to safe and affordable water in adequate quantities in line with the Constitution, and categorically states that it has no intention of introducing any arbitrary charges that would otherwise be a burden to the common Mwananchi.

ISSUE 14: That there have been efforts to address the aforesaid by civil society and the Council of Governors, and these remain unresolved.

RESPONSE: Following a meeting held on 13th September, 2021 between the Ministry of Water Sanitation and Irrigation, Water Resources Authority, Council of Governors, Water Services Providers’ Association and the Water Services Regulatory Board, it was agreed that the water use fees as contained in the Second Schedule, Part B of the Water Resources Regulations, 2021 (Legal Notice Number 170 of 2021) be revised as follows:

Type of Water Use	Criteria	Rate in L.N. 170/2021	New Rate
Domestic	Domestic purposes	5 Kes/m ³	2 Kes/m ³
Public	public purposes	5 Kes/m ³	2 Kes/m ³
Livestock	livestock purposes	5 Kes/m ³	2 Kes/m ³

One of the Petitioners’ representative, *Mr. Enock S. Kiminta* was in attendance at the said meeting and was in agreement with the amounts agreed upon during the meeting. (A copy of the meeting attendance form is hereby attached and marked “MWSI-1”). It is therefore in bad faith and dishonest for the Petitioner to purport that the issues have remained unresolved.

ISSUE 16: That section 103 on collaboration with the Water Resources Users Association seems to give Water Resources Authority powers to micromanage the WRUAs.

RESPONSE: Regulation 103 (1) provides that the Authority shall, in conjunction with relevant institutions and stakeholders, establish management regulations or plans that shall apply to each protected area or groundwater conservation area. This

provision has no bearing whatsoever on the operations of Water Resources Users Associations (WRUAs).

ISSUE 17: Increase in water use fee for the irrigators is quite high and will impact on their cost of operations notwithstanding the already high taxes and double taxation.

RESPONSE: Although consultations were held during the development of the Regulations, other factors such as crop water requirements were taken into account in calculating water use fees.

Further, during the consultations held on 15th October, 2021 with the National Assembly Committee on Delegated Legislation, it was agreed that the fees be reviewed as follows:

Type of Water Use	Criteria	Rate
Irrigation	First 300 m ³ /day	0.75 Kes/m ³
	Over 300 m ³ /day	1 Kes/m ³

ISSUE 18: The regulations are not clear on catchment management and conservation and should propose a percentage to be ploughed back to catchment restoration.

RESPONSE: The whole of Part VII of the Water Act, 2016 makes provisions for the manner in which funds would be applied. Specifically, Section 130 of the Act provides that subject to provisions of the Public Finance Management Act, 2012 the entities may retain in a fund managed by the respective bodies, the revenue from permit charges, water user fees, regulatory levy, licence fees and any other authorized charges and shall use such revenue in meeting the costs incurred in the performance of their functions. Functions of WRA are listed under Section 12 and 13 of the Act.

Regulation 84(2) of the Legal Notice 170 of 2021 provides as follows:

“A person in possession of a valid water use permit or who is required to have a valid permit for water use shall pay in addition to the water use charge, a levy

amounting to 5 percent of the monthly water use charge as a water conservation levy.”

Further, 84(2) of the Legal Notice 170 of 2021 provides that:

“The monies collected by the Authority as a water conservation levy shall be segregated from the water use charges and reported on separately and, on the basis of agreements entered into between the Authority and county government entities and water resource users associations used to finance part of the costs of the implementation by water resources associations and county government entities of catchment or sub-catchment soil and water conservation plans.”

Where it is felt that that the regulations need further clarity on the same, there is room for further consultations and review of the relevant clauses.

ISSUE 19: That there should be no fee for data access from WRA

RESPONSE: Pursuant to Article 35 of the Constitution of Kenya Section 12 of the Access to Information Act, 2016 provides that a public entity or private body from which an application for access to information has been made may charge a prescribed fee for the provision of the information.

Further, Section 21 of the Water Act, 2016 provides that subject to Article 35 of the Constitution, a member of the public on payment of the prescribed fee shall-

- (a) have access to any specific information contained in any national information system; and
- (b) be supplied with a copy of any document contained in the information system which is accessible to the public.

The provisions regarding payment of fees are therefore anchored on the Constitution and the enabling legislations and are therefore proper.

Hon. Chair, in conclusion,

I wish to emphasize that availability of water in the water resources as a result of efficient and sustainable use will provide an assurance that the investments made in

the sector, including water supply and sewerage services, are viable and sustainable to spur economic growth.

Hon Chair, I humbly submit.

Sicily K. Kariuki (Mrs.), EGH
Cabinet Secretary

APPENDIX 1

Machakos County Water and Sewerage Company³

Customer Category	Approved/ Justified Tariff (Kshs./m³)
--------------------------	---

Residential Household	
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0-6	Fixed Charge Ksh.450
-----	----------------------

7-20	115
------	-----

21-50	150
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51-100	185
--------	-----

100-300	230
---------	-----

300->	300
-------	-----

Commercial/Industrial	
------------------------------	--

0-6	Fixed Charge Ksh.450
-----	----------------------

7-20	115
------	-----

21-50	150
-------	-----

51-100	185
--------	-----

100-300	230
---------	-----

300->	300
-------	-----

Government Institutions	
--------------------------------	--

0-6	Fixed Charge Ksh.450
-----	----------------------

7-20	115
------	-----

21-50	150
-------	-----

51-100	185
--------	-----

100-300	230
---------	-----

300->	300
-------	-----

Schools and Colleges	
-----------------------------	--

0-600	Fixed Charge Ksh.90
-------	---------------------

³ Gazette Notice No. 6069 of 29th August 2014

601-1200	115
1200->	130

Water Kiosks

Per-M³ Fixed Charge Ksh.35

Resale at Water Kiosk

Per-20 Litres Fixed Charge Ksh.2

Homabay County Water and Sanitation Company Limited (HOMAWASCO)⁴

Customer Category Approved/ Justified Tariff (Ksh/m³)

Residential Household

0-6	Fixed Charge Ksh.260
7-20	65
21-50	84
51-100	104
100-300	130
300->	169

Commercial/Industrial

0-6	Fixed Charge Ksh.260
7-20	65
21-50	84
51-100	104
100-300	130
300->	169

Government Institutions

0-6	Fixed Charge Ksh.260
7-20	65
21-50	84

⁴ GAZETTE NOTICE NO. 9640 of 31st December,2015

51-100	104
100-300	130
300->	169

Schools and Colleges

0-600	Fixed Charge Ksh.40
601-1200	50
1200->	90

Water Kiosks

Per-M ³	Fixed Charge Ksh.35
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Resale at Water Kiosk

Per-20 Litres	Fixed Charge Ksh.2
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60

REPUBLIC OF KENYA
MINISTRY OF WATER, SANITATION AND IRRIGATION

MAJI HOUSE
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Ref.: WD/3/3/1395 Vol. IV

25th March 2022

Mr. Jeremiah M. Nyegenye
Clerk of the Senate
Parliament Building
NAIROBI

Dear

**RE: STATUTORY INSTRUMENTS MADE PURSUANT TO THE WATER
ACT 2016**

We refer to your letter dated 17th March, 2022 Ref. No. SEM/SCDL/CORR/2022/028 addressed to the Cabinet Secretary.

We confirm that we did send the 3 Water Regulations to the Clerk of the National Assembly vide letter Ref. No. WD/3/3/1395 Vol. IV (60) dated 17th August 2021 within 7 days of publication. We anticipated that the Clerk of the National Assembly will then communicate with the Clerk of the Senate on the publication. The Ministry however conducted through consultations with the Senate Committee on delegated legislation and incorporated their comments.

We sincerely apologize for the oversight and herewith forward the three (3) Regulations, letter from National Assembly and the corrigenda for your post publication scrutiny.

Yours

Eng. SAO Alima
WATER SECRETARY

Copy to:

Mr. James Macharia, EGH
Ag. Cabinet Secretary
Ministry of Water, Sanitation and Irrigation
NAIROBI

Dr. (Eng.) Joseph K. Njoroge, CBS
Ag. Principal Secretary
Ministry of Water, Sanitation and Irrigation
NAIROBI

LEGAL NOTICE NO.

THE WATER ACT, 2016

(NO. 43 of 2016)

IN EXERCISE of the powers conferred by section 142 of the Water Act 2016, the Cabinet Secretary for Water, Sanitation and irrigation makes the following Regulations-

**THE WATER RESOURCES (AMENDMENT)
REGULATIONS 2022**

1. These Regulations may be cited as the Water Services (Amendment) Regulations 2022.
2. The Water Services Regulations are amended in the Thirteenth Schedule by deleting Form No. WRA015 and substituting therefor the following new form.

Form WRA015

The Chief Executive Officer, Water Resources Authority, P.O. Box 45250 - 00100 NAIROBI	Grid Reference for Works (UTM Arc 1960) Easting: _____ Northing: _____ Zone: _____	Form: WRA 015 Catchment: _____ WRA ID: _____ File No: _____
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**CALCULATION OF WATER USE CHARGES AND
CURRENT STATEMENT**

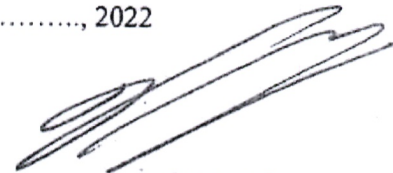
		Units	Quantit	Rates	Charges	Instructions
a	b	c	y	Kshs	Kshs	g
1	Total Consumption	m ³	d	e	f	
2	Number of Days in Accounting Period	Days				
3	DOMESTIC/PUBLIC/LIVESTOCK WATER USE					

4	Amount Allocated on Permit	m ³ /day				
5	Total amount allocated for accounting period	m ³				Col d (Row 4 x row 2)
6	Total amount lawfully used	m ³		1	+	Not to exceed col d row 5
7	IRRIGATION WATER USE					
8	Amount Allocated on Permit	m ³ /day				
9	Total amount allocated for accounting period	m ³				Col d (Row 8 x row 2)
10	Total amount lawfully used	m ³ /day				Not to exceed col d row 9
11	Volume of water charged at lower rate	m ³		75 Cents	+	Max. vol.= col d row 2 x 300
12	Volume of water charged at higher rate	m ³		1	+	Col d Row 10 - row 11
13	INDUSTRIAL/COMMERCIAL WATER USE					
14	Amount Allocated on Permit	m ³ /day				
15	Total amount allocated for accounting period	m ³				Col d (Row 14 x row 2)
16	Total amount lawfully used	m ³				Not to exceed col d row 15
17	Volume of water charged at lower rate	m ³		75 Cents	+	Max. vol.= col d row 2 x 300
18	Volume of water charged at higher rate	m ³		1	+	Col d Row 10 - row 11
19	FISH FARMING WATER USE					
20	Amount Allocated on Permit	m ³ /day				
21	Total amount allocated for accounting period	m ³				Col d (Row 20 x row 2)
22	Total amount lawfully used	m ³		1	+	Not to exceed col d row 21
23	HYDROPOWER					
24	Total amount hydropower generated	Kw.hr				
25	Total amount hydropower charged	Kw.hr		2	+	If (Row 24 - 1) > 1, then Row 24 - 1
26	Sub-Total Water Use Charges				+	Sum Col f Rows 6, 11, 12, 17, 18, 22, 25
27	EXTRAS					
28	Water Resource Conservation charge for abstraction or effluent within a GWCA or protected area			0.05	+	Col f Row 26 x 0.05

29	Penalty for lack of flow measuring device			0.1	+	Col f Row 26 x 0.1
30	Incentive for flood water conservation			0.1	-	Col f Row 26 x 0.1 (note negative sign)
31	Penalty for Over abstraction			0.5		
32	Total water used	m ³				Col d Row 1
33	Total water lawfully used	m ³				Sum Col d Rows 6,10,16,22
34	Total water used in excess of permit	m ³		1.0	+	Col d (Row 32 - row 33)
35	TOTAL WATER USE CHARGES THIS PERIOD				+	Sum Col f Rows 26, 28, 29, 30, 34
36						
37	STATEMENT					
38	Previous balance				+	
39	Payments within last period				-	
40	Outstanding balance				+	Col f (Row 38-row39)
41	Interest Charges				+	Col f Row 40 x 0.02 x 3 months
42	TOTAL AMOUNT DUE					Sum Col f Rows 35, 40,41

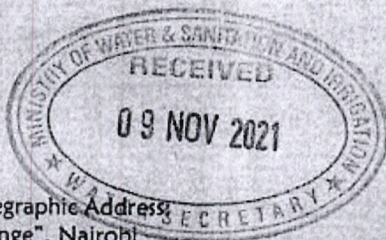
I certify that the information presented in this form provides an accurate estimate of the quantity of water used and the water use charges due.

Dated the 28TH MARCH, 2022



Cabinet Secretary,
Ministry Of Water, Sanitation And Irrigation





REPUBLIC OF KENYA



NATIONAL ASSEMBLY

CLERK'S CHAMBERS
National Assembly
Parliament Buildings
P. O. Box 41842-00100
NAIROBI, Kenya

W.S.
Jeb Park
JP
18/11

Telegraphic Address:
"Bunge", Nairobi
Telephone: 284800/221291
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote

Ref: NA/DCS/CDL/CORR/2020/068

4th November, 2021

Mr. Joseph W. Irungu, CBS.
Principal Secretary
Ministry of Water, Sanitation and Irrigation
P.O. Box 30025-00100
Maji House
NAIROBI



Dear Sir,

RE: WATER SECTOR REGULATIONS

We refer to your letter Ref: WD/3/3/1395 Vol. IV (60) dated 17th August, 2021, submitting the above-mentioned regulations for consideration by the National Assembly.

The purpose of this letter is to inform you that the Committee on Delegated Legislation at its sitting held on 16th October, 2021, satisfied itself that the statutory instruments listed hereunder, are in accord with the Constitution, the Statutory Instruments Act (No. 23 of 2013), the Interpretation and the General Provisions Act (Cap 2), and the Water Act (No. 43 of 2016), pursuant to which they are made: -

- (i) Water Services Regulations, 2021 (Legal Notice No. 168 of 2021),
- (ii) Water Harvesting and Regulations, 2021 (Legal Notice No. 169 of 2021), and
- (iii) Water Resources Regulations, 2021 (Legal Notice No. 170 of 2021).

This is, therefore, to convey the resolutions of the Committee, in accordance with Standing Order 210(4) (a) of the National Assembly Standing Orders and the Statutory Instruments Act, 2013 that the aforementioned instrument as published in the *gazette*, be and are hereby acceded to.

Yours Sincerely,

SERAH M. KIOKO

For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: Sicily K. Kariuki, EGH
Cabinet Secretary
Ministry of Water, Sanitation and Irrigation
Maji House
NAIROBI

ANNEX III: SUBMISSIONS BY THE PETITIONER

② Mr. Mogler (AD LPS)
PS Process
2/2/21



Kenya Water and Sanitation Civil Society Network

4th Floor, Mango Court
Suite A403
Wood Avenue, KILIMANI
P.O Box 46163-00100 GPO, NAIROBI, Kenya

Tel. +254-20-26 56 281
Office Cellphones: +254 705 530 499
email: info@kewasnet.co.ke
website: www.kewasnet.co.ke

The Clerk of the National Senate
Parliament buildings
P.O. Box 41842 -00100
NAIROBI
Email: cSenate@parliament.go.ke

03 SEP 2021

① DLPS
Please deal-
[Signature]
1/9/21

RE: PETITION TO THE SENATE FOR THE EXPUNGE OF OFFENDING PROVISIONS IN THE WATER SERVICES REGULATIONS 2021 AND THE WATER RESOURCES REGULATIONS 2021

We, the undersigned,

Being citizens of Kenya, and representing citizen interests in the water sector through our individual and collective organizational beings as civil society organizations;

Draw the attention of the Senate to the following;

1. **That** this petition is of national importance, and it touches on fundamental rights of Kenyan citizens as provided for and protected by the Constitution of Kenya. In particular, reference is made to Article 43 (1) (d) that guarantees the right of every Kenyan to clean and safe water in adequate quantities;
2. **That** Access to water for the most vulnerable citizens still remains unfulfilled, and/or unsustainable. A huge population of Kenya access water from non-regulated service providers or directly from the sources.
3. **That** affordability in the cost of water is an important factor determining levels of access for millions of citizens in Kenya.
4. **That** sustained access to water is an important non pharmaceutical defence and especially important contributor to the resilience of the most vulnerable population to the vagaries of COVID-19 pandemic

③ Mr. Chania
Please process
201
07-09-21

④ Mr. Abdurrahman
Please review the Petition
and facilitate-
D. Chania
08/09/2021

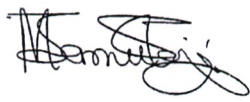


PETITION TO THE SENATE FOR THE EXPUNGE OF OFFENDING PROVISIONS IN THE WATER SERVICES REGULATIONS 2021 AND THE WATER RESOURCES REGULATIONS 2021

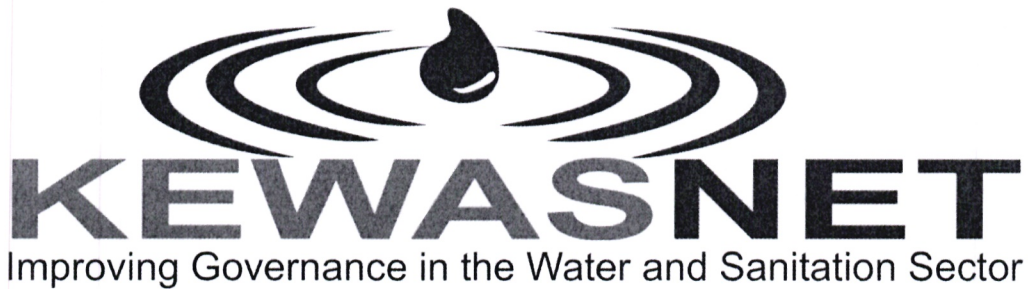
5. **That** during the ongoing pandemic, COVID-19, the already vulnerable population were further disadvantaged, with many others entering that category due to increased demand and use of safe water.
- * 6. **That** a big part of the population in what has been categorized as non commercially viable areas still depend on small scale water service providers for their water services
7. **That** the water Act 2016 provides for ring-fencing of all incomes derived from water conservation and supply services, for continued conservation and expansion of service bracket
8. **That** due to the linkage between abstraction and access and utilization of water, cost of water is an elementary unit of production and impactful to the economy of Kenya
9. **That** special attention is drawn to the Legal Notice No.168, in which Cabinet Secretary in charge of Water, Sanitation and Irrigation has published proposed Water Resources Regulations, 2021, whose proposals provide significant changes in the obligations of water users, and particularly in increasing the nominal cost of abstraction of water from various sources.
10. **That** costs proposed charges in the regulations have the potential to lock out many small scale water service providers, who in any event find themselves struggling to bear the current charges.
11. **That** the said water resources regulations 2021 will have the effect of substantially altering the cost of water for regulated water service providers, who will pass the cost directly to users who are already bent over from the weight of tax and reduced incomes.
- X 12. **That** the overall impact of the new regulations would be deepening a failure to observe, protect and fulfil the right to water as provided for in the Constitution of Kenya.
13. **That** the proposed regulations pose the risk of reducing the resilience of the population against the current COVID-19 pandemic
- | 14. **That** there have been efforts to address the aforesaid by civil society and the Council of Governors, and these remain unresolved.
15. **That** to the best of our knowledge none of the issues pointed out above are pending or unresolved in a court of law, or constitutional or other legal body.
16. **That** section 103 on collaboration with the Water Resources Users Association seems to give water resources authority powers to micromanage the WRUAs.

PETITION TO THE SENATE FOR THE EXPUNGE OF OFFENDING PROVISIONS IN THE WATER SERVICES REGULATIONS 2021 AND THE WATER RESOURCES REGULATIONS 2021

17. Increase in water use fee for the irrigators is quite high and will impact on their cost of operations notwithstanding the already high taxes and double taxation.
18. The regulations are not clear on catchment management and conservation and should propose a percentage to be ploughed back to catchment restoration.
19. That there should be no fee for data access from WRA.

HEREFORE your humble petitioners pray that the Senate expunge and reinstate the otherwise amended charges as expressed in Part 2 of Schedule B in the impugned regulations.

NAME	ADDRESS	ID NO.	Signature
Malesi Shivaji	Kenya Water & Sanitation Civil Society Network (KEWASNET) P.O. Box 46163 00100 - Nairobi s.shivaji@kewasnet.co.ke 0726834088	20821906	
Enock S Kiminta.	National Water Resources Users Association (NAWRUAK) P.O BOX 2117 NAIVASHA umbrellawrua@gmail.com 0720125948.	22189599	
Jane Nyamwamu	Neighbours Initiative Alliance (NIA) P.O. Box 366,01100, Kajiado jane@niakenya.org 0721563295	14558597	



This oral submission is made pursuant to a petition made with regards to Petition to expunge the offending provisions in the Water Services Regulations, 2021 and the Water Resources Regulations, 2021, and the associated invitation by the Senate Standing Committee on Land, Environment and Natural Resources for the oral submission on 6th October 2021.

1. That this petition is of national importance, and it touches on fundamental rights of Kenyan citizens as provided for and protected by the Constitution of Kenya. In particular, reference is made to Article 43 (1) (d) that guarantees the right of every Kenyan to clean and safe water in adequate quantities;

(Refer to Article 43 (1) (d) the Constitution of Kenya, attached as WRRP1

2. That Access to water for the most vulnerable citizens still remains unfulfilled, and/or unsustainable. A huge population of Kenya access water from non-regulated service providers or directly from the sources.

According to WASREB Impact Report 13, 40% of the urban population in Kenya lives in low-income informal settlements. Of this population, only 53% are served by WSPs. (WRR2, pg 17)

The current population served by the regulated Water Service Providers within their licenced service area is at 57% implying that the rest of the population is still dependent on services that are not regulated. (WRR2, pg 21)

3. That affordability in the cost of water is an important factor determining levels of access for millions of citizens in Kenya.

With a population of 50 million, 32 percent of Kenyans rely on unimproved water sources, such as ponds, shallow wells and rivers, while 48 percent of Kenyans lack access to basic sanitation solutions. These challenges are especially evident in rural areas and urban slums where people are often unable to connect to piped water infrastructure.

In rural Kenya, the average total coping costs for an unreliable or distant water supply are approximately \$38 per month. In comparison, the average water bill of a typical household in Nairobi that is connected to a piped system is only \$4.46 per month. This comparison highlights

the economic burdens that often fall more heavily on unconnected rural customers than on households with piped connections. (WRRP8 Pg 1)

According to Statement by Cabinet Secretary, ministry of water, sanitation and irrigation, Sicily K. Kariuki (Mrs), EGH, during world water day 2021; The current level of access in Kenya is estimated at a national average of 64% for water, 26% for sanitation in urban areas with non-revenue water at 41% and the annual water per capita is less than 500 cubic metres, making the country a severe water stress according to the UN global scale on water security which stipulates minimum of 1000 cubic metres per person per year. (WRRP6, Pg 1)

4. That sustained access to water is an important non pharmaceutical defence and especially important contributor to the resilience of the most vulnerable population to the vagaries of COVID-19 pandemic

In cognizant of the impact posed by COVID-19 pandemic in the provision of water and sanitation services across the country, the Government invested **Ksh 1.62 billion** to drill and equipped **193** boreholes and construct **193** elevated steel water tanks to supply 33 million litres per day of water to enable **1,600,000 residents** access free water in the informal settlements in Nairobi. According to Statement by Cabinet Secretary, ministry of water, sanitation and irrigation, Sicily K. Kariuki (Mrs), EGH, during world water day 2021 (WRRP 6, Pg 3)

5. That during the ongoing pandemic, COVID-19, the already vulnerable population were further disadvantaged, with many others entering that category due to increased demand and use of safe water.

The negative impact of COVID-19 on the private sector has trickled down to household welfare via reduced job opportunities and lower earnings. Unemployment has almost doubled compared to its pre-COVID level. Wage workers—and especially women—who are still employed face a reduction in working hours and earnings. Almost 1 in 3 household-run businesses are not operating currently, with revenues decreasing across all sectors. Remittances have fallen, and few households have benefitted from direct cash assistance. Youth are also negatively affected by the pandemic, with revenues and profits strongly reduced - World Bank (WRRP9 Pg 2&3)

“Kenya has made considerable progress with poverty reduction over the last years, but COVID-19 has destroyed the livelihoods of many Kenyans, pushing an estimated two million people into poverty,” said Utz Pape, World Bank Senior Economist in the Poverty & Equity Global Practice of the World Bank. “A swift and well-targeted response is needed to protect livelihoods and avoid trapping more people in long-term poverty.” - World Bank report (WRRP9 Pg 3)

6. That a big part of the population in what has been categorized as non commercially viable areas still depend on small scale water service providers for their water services

Parameter	2018/19	2019/20
Total Population in Service Area, No.	23,430,887	25,660,154
Total Population Served - Water, No	13,823,455	14,677,969
Population Served - Sewer, No.	3,909,335	3,921,094
Population Served - Sanitation, No.	19,081,584	22,345,399
Production, M ³ /year	272,092,927	449,572,682
Turnover, Kshs/year	22,634,589,875	22,796,171,562
Per Capita Production, l/c/d	90	84
Per Capita Consumption, l/c/d	32	31

Regulated service providers only cover a population of 25.6million people, leaving a half of the population of Kenya serviced by small scale water service providers. Further, of the 25.6m, only 14.6m are getting served. This means 11m population not getting service in regulated water service provider areas. A total of approximately 30m population depend on service from alternative service providers. (WRR2, pg 28)

7. That the water Act 2016 provides for ring-fencing of all incomes derived from water conservation and supply services, for continued conservation and expansion of service bracket All income through water permits, abstraction and water user fees shall be entirely used for the conservation and management of water resources. (Water Act 2016 Section 132. - WRR2)

All funds collected for water services by the licensed water services providers holding county or national public assets on behalf of the public through water services bills and other sources, shall be used entirely for the purpose of covering costs for the provision of water services and asset development according to Regulations made by the Regulatory Board. (Water Act 2016 Section 131 (1) WRR2).

The regulations fail to clearly outline the proportionality and application of the incomes. As currently stands, conservation efforts are largely financed outside the framework of financing support of levies collected by the regulator.

8. That due to the linkage between abstraction and access and utilization of water, cost of water is an elementary unit of production and impactful to the economy of Kenya **Projected domestic water demand** is based on an assumed population increase of 75 percent between 2010 and 2030. About 67.8 percent of the total population will live in urban areas, while the remaining 32.2 percent will live in rural areas.

Projected industrial water demand is based on the assumption set out in Kenya's Vision 2030: Industrial water use will increase in line with the growth of urban water demand.

Projected irrigation water demand: Building on Kenya's Vision 2030, the government aims to increase the area under irrigation to 1.2 million ha by 2030.² To achieve this, the land under irrigation and drainage will be expanded by 40,000 ha annually, of which 8,000 ha shall be rehabilitated per year. Achieving this target will result in irrigation water demands of 18,048 MCM/year by 2030.

Projected inland fisheries demand is also assumed to increase with population growth. The development of fish ponds is expected to increase by 176 percent between 2010 and 2030. (Kenya Hydro economy briefing; WRR10 Pg 10)

9. That special attention is drawn to the Legal Notice No.168, in which Cabinet Secretary in charge of Water, Sanitation and Irrigation has published proposed Water Resources Regulations, 2021, whose proposals provide significant changes in the obligations of water users, and particularly in increasing the nominal cost of abstraction of water from various sources.

The proposals on fees and water use charges proposed in the Water Resources Regulations 2021 (WRRP5) are significantly different from proposals presented during the public consultation for the draft Water Resources Regulations 2019 (WRRP4). It is unclear at what point the Cabinet Secretary derived the alternative rates included in the regulations 2021.

The Regulatory Impact Statement for the Water resources regulations 2019 (WRRP 12) was published to enable the Cabinet Secretary, Members of Parliament, and the Kenyan Community to be informed of the environmental, social and economic implications of the implementation of the proposed Water Resources Regulations 2019, and document issues upcoming from public consultation of the same.

The Regulatory Impact Statement clearly reports the Stakeholder Exploratory Consultation held on 20th November 2018(Pg 37), and Stakeholder Consultation Technical Requirements for Developing Draft Rules held on 31st January – 1st February 2019 (Pg 38). Regional consultations were held in Eldoret, Kisumu, Nyeri and Mombasa between 18th September and 18th December 2019. On 28-29th March 2019 consultations were held with Civil society and the private sector. A final stakeholder consultation was held on 30-31 May 2021 (WRRP13 Pg 19,20).

In all of these reported consultations, there isn't listed a proposal to adjust the suggested fees and water use charges, nor a record of a plenary proposal, or consensus for such adjustment.

10. That costs proposed charges in the regulations have the potential to lock out many small scale water service providers, who in any event find themselves struggling to bear the current charges.

Particular reference to the Second Schedule, part B on Domestic, Public and Livestock water use charges, that proposes a rise from 50cts to 5 KES per cubic meter of abstracted water. (Water Resources Regulations 2021)

11. That the said water resources regulations 2021 will have the effect of substantially altering the cost of water for regulated water service providers, who will pass the cost directly to users who are already bent over from the weight of tax and reduced incomes.

12. That the overall impact of the new regulations would be deepening a failure to observe, protect and fulfil the right to water as provided for in the Constitution of Kenya.

Water Resources Regulations 2021 sets stage for high water bills as services providers that are non-profit making institutions seek to transfer the costs.

That said, the water service providers do not have the liberty to directly transfer water resources charges onto their tariffs since they are limited within a 3-yr cycle of tariff approval. Imposition of such a substantial increase will result in Water Service Providers being unable to fulfil their own mandate to deliver the human right to water.

As an example, picture an actual example from the Ewaso water basin, where a Community water project has been paying about KES 80,000 for raw water abstraction. A hundredfold increase implies that they will now have to pay KES 800,000.

Another example from Lake victoria basin; a community water project is currently pumping 360 M³ daily, earning monthly revenues of KES 200,000/-. Under the new regulations, they will now have to pay Water Resource Authority KES 162,000. They still pay KPLC KES 60,000 and Staff wages KES 70,000. This community project will not be able to continue operating without demanding that users pay for more, which means affordability will be substantially affected.

Most of the utilities have Credit facilities they are servicing of between KES 10,000-30,000 per month.

Large utilities will likewise be affected, resulting to a proposal to increase tariffs that will definitely impact on the capacity of the citizen to afford safe water sustainably.

These fees will have an impact on the improved water use efficiency and reduction in the pollution of water resources. Reality is that the Water Resources Authority has not demonstrated collection and utilization efficiency. Only a few water abstractors are levied while the majority do not pay anything.

13. That the proposed regulations pose the risk of reducing the resilience of the population against the current COVID-19 pandemic

Communities that have been demonstrated to be heavily affected from the impact of the COVID-19 will be further burdened by increased costs of basic access.

It should be noted that the gazetted regulations also result in an increased abstraction cost for hydropower, irrigation, fish farming and other access costs that will conversely result in increased costs of food and services.

Water Resources Regulations 2021 sets stage for increase in water levies. The government has proposed new rules on the use of water resources, setting the stage for high water bills should MPs approve the bid. The new rules drawn by Water CS Sicily Kariuki seek to introduce various levies that water users will pay to the Water Resources Authority, but it is unclear from where the rates that are between one hundredfold and four hundredfold are derived from.

14. That there have been efforts to address the aforesaid by civil society and the Council of Governors, and these remain unresolved.

The proposed Water Resources Regulations 2019 (WRRP12) had been subjected to a series of consultations processes (Pg 37,38) wherein stakeholders have been allowed the opportunity to identify and correct faulty assumptions and reasoning and to provide information and suggestions that have enriched the drafting process.

The Council of Governors has raised its concern with Parliament through letter dated 24th August 2021, noting lack of inter-governmental consultations over the gazetted regulations (WRRP11, Pg 1)

The matter has further escalated, with the Council of Governors instructing its service provision agents to disregard the provisions of the gazetted regulations. (WRRP16)

15. That to the best of our knowledge none of the issues pointed out above are pending or unresolved in a court of law, or constitutional or other legal body.

17. Increase in water use fee for the irrigators is quite high and will impact on their cost of operations notwithstanding the already high taxes and double taxation.

18. The regulations are not clear on management and conservation and should propose a specific percentage to be ploughed back to catchment restoration.

Article 132 of the Water Act 2016 provides that All income through water permits, and water user fees shall be entirely used for the conservation and management of water resources.

19. That there should be no fee for data access from WRA.

Particular reference to the Second Schedule, Part 3: fees for data, investigations, laboratory analysis and related services that portends payment for access of water resources data.

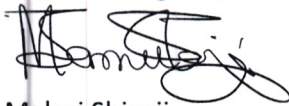
(WRRP5)

The Access to Information Act, 2016 defines "information" to include all records held by a public entity or a private body, regardless of the form in which the information is stored, its source or the date of production. This includes information held in any format, such as:

- Written documents, reports, memos, letters, notes, emails and draft documents;
- Non-written documentary information, such as material stored on or generated by computers and databases, video and tape recordings, maps and photographs; and
- Information which is known to an agency but which has not yet been recorded in writing or otherwise.

The Access to Information Act 2016 (WRRP15) requires Government agencies to make official information more freely available, to provide for proper access by each person to official information relating to that person, to protect official information to the extent consistent with the public interest. (WRRP14)

With best regards,



Malesi Shivaji

Chief Executive Officer, KEWASNET

