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REPUBLIC OF KENYA



THE SENATE

TWELVETH PARLIAMENT

Approved  
H. M. Nyegenye  
11/12/2020

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

ON

THE PETITION ON ENVIRONMENTAL DEGRADATION AND  
IRREGULAR DUMPING AT LANDFILL IN KAJULU, KISUMU EAST  
CONSTITUENCY

BY

HON. SHAKEEL SHABBIR AHMED, THE MEMBER OF PARLIAMENT  
(MP) FOR KISUMU EAST CONSTITUENCY.

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| DATE               | Dec 1 2020   |
| TABLED BY          | Sen. Khaniri |
| COMMITTEE          | lands        |
| CLERK AT THE TABLE | M. Adyabodoy |

NOVEMBER, 2020

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## ABBREVIATIONS

|      |   |                                               |
|------|---|-----------------------------------------------|
| EIA  | – | Environmental Impact Assessment               |
| EMCA | – | Environmental Management and Coordination Act |
| KAA  | – | Kenya Airports Authority                      |
| KCAA | – | Kenya Civil Aviation Authority                |
| KCPL | – | Kisumu Concrete Products Limited              |
| NEMA | – | National Environment Management Authority     |

## **PREFACE**

### **Mr. Speaker sir,**

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

### **Committee Membership**

The Committee comprises of the following Members.

1. Sen. Paul Mwangi Githiomi, MP
2. Sen. Philip Mpaayei, MP
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

**Chairperson**

**Vice-Chairperson**

At the sitting of the Senate held on 4<sup>th</sup> December, 2018, the Honourable Deputy Speaker of the Senate, reported to the Senate that a Petition has been submitted through the Clerk, by Hon. Shakeel Shabbir Ahmed, the Member of Parliament (MP) for Kisumu East Constituency. The Petition related to environmental degradation and irregular dumping at a landfill in Kajulu in Kisumu East Constituency.

The salient issues raised in the said petition are as follows-

- (a) That in early 2018, an environmental impact assessment licence was issued for the rehabilitation of the Kisumu Concrete Products Limited (KCPL) quarry at Kajulu in Kisumu East Constituency, Kisumu County by filling the quarry pit with semi-inert waste from the Kachok dumpsite.
- (b) That no meaningful public participation was undertaken before issuance of the said licence as required under the law.
- (c) That the dumping of this waste in quarry pits in Kajulu has breached the underground aquifers in the area, thus, compromising the safety and quality of underground water.

- (d) That the establishment of a landfill for waste in a private site has drastically dropped the value of property in the area.
- (e) That the landfill site is directly in the flight path leading to Kisumu Airport.
- (f) That the County Government of Kisumu irregularly awarded the tender for transportation of the semi-inert waste from Kachok dumpsite to the Kajulu landfill and at an excessive price above market rates.

The Petitioner, therefore, prays that the Senate investigates this matter with a view to ensuring that the pollution and environmental degradation arising from the Kajulu landfill is halted.

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

Pursuant to the above provisions of the Constitution, the Petition to Parliament (Procedure) Act and the Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within the prescribed period.

To enable a judicious disposal of the Petition, the Committee, at its meeting held on 17<sup>th</sup> June, 2020, resolved to conduct an inquiry into 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 and supporting evidence on the issues raised. As the waste disposal is a devolved function under paragraph 2(g) of the Part 2 of the Fourth Schedule to the Constitution, the Committee also wrote to the County Government of Kisumu to request for its response to the issues raised in the Petition. The Committee also sought the response of the Cabinet Secretary for Environment and the National Environment Management Authority and the Kenya Civil Aviation Authority.

The Petitioner appeared before the Committee on, 1<sup>st</sup> July, 2020, 7<sup>th</sup> July, 2020 and 15<sup>th</sup> July, 2020 while the County Government of Kisumu submitted its response to the Petition via a letter dated 12<sup>th</sup> June, 2020. The Kenya Civil Aviation Authority appeared before the Committee on 7<sup>th</sup> July, 2020 and 15<sup>th</sup> July, 2020 and the Cabinet Secretary for Environment and the Director General of the National Environment Management Authority appeared before the Committee on 15<sup>th</sup> July, 2020.

After analyzing the submission from all the parties who appeared before it in respect of this matter, the Committee now presents its Response to the Petitioner pursuant to section 5(3) of the Petition to Parliament (Procedure) Act and standing order 232 (2) of the Senate Standing Orders.



## 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 parties to the matter; namely, Hon. Shakeer Shabir, the County Government of Kisumu, The Kenya Civil Aviation Authority, the Cabinet Secretary for Environment and the Director General of the National Environment Management Authority for their submissions and participation in this matter.

**Mr. Speaker Sir,**

It is now my pleasant duty and privilege, on behalf of the Committee, to present to the Senate Report of the Standing Committee on Lands, Environment and Natural Resources on the Petition on Environmental Degradation and Irregular Dumping at Landfill in Kajulu, Kisumu East Constituency by Hon. Shakeel Shabbir Ahmed, the Member of Parliament (MP) for Kisumu East Constituency.

Signed:  Date: 14/11/2020

**SEN. PHILIP MPAAYEI, M.P.**

**VICE CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND,  
ENVIRONMENT AND NATURAL RESOURCES**

## LEGAL BASIS FOR PETITIONS

1. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.
  2. 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.*”
  3. 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.*
  4. 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.*
  5. Standing order 233 then 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.
-

## **BACKGROUND OF THE PETITION**

6. At the plenary sitting of the Senate held on 4<sup>th</sup> December, 2018, the Honourable Deputy Speaker of the Senate, reported to the Senate that a Petition has been submitted through the Clerk, by Hon. Shakeel Shabbir Ahmed, the Member of Parliament (MP) for Kisumu East Constituency. The Petition related to environmental degradation and irregular dumping at a landfill in Kajulu in Kisumu East Constituency.
  7. The salient issues raised in the Petition are as follows-
    - (a) That in early 2018, an environmental impact assessment licence was issued for the rehabilitation of the Kisumu Concrete Products Limited (KCPL) quarry at Kajulu in Kisumu East Constituency, Kisumu County by filling the quarry pit with semi-inert waste from the Kachok dumpsite.
    - (b) That no meaningful public participation was undertaken before issuance of the said licence as required under the law.
    - (c) That the dumping of this waste in quarry pits in Kajulu has breached the underground aquifers in the area, thus, compromising the safety and quality of underground water.
    - (d) That the establishment of a landfill for waste in a private site has drastically dropped the value of property in the area.
    - (e) That the landfill site is directly in the flight path leading to Kisumu Airport.
    - (f) That the County Government of Kisumu irregularly awarded the tender for transportation of the semi-inert waste from Kachok dumpsite to the Kajulu landfill and at an excessive price above market rates.
  8. The Petitioner, therefore, prayed that the Senate investigates the matter with a view to ensuring that the pollution and environmental degradation arising from the Kajulu landfill is halted.

*The full Petition is annexed to this Report as Appendix 1*
  9. Pursuant to standing order 232(1) of the Standing Orders of the Senate, the Petition was committed to the Land, Environment and Natural Resources Committee.
-



## CONSIDERATION OF THE PETITION

10. In considering the Petition, the Committee at its meeting held on 17<sup>th</sup> June, 2020, resolved to conduct an inquiry into the issues raised in the Petition. In this regard the Committee invited the Petitioner for a meeting to give the Petitioner opportunity to elaborate further on the issues raised in the Petition and to supply and supporting evidence on the issues raised.
11. As the waste disposal is a devolved function under paragraph 2(g) of the Part 2 of the Fourth Schedule to the Constitution, the Committee also wrote to the County Government of Kisumu to request for its response to the issues raised in the Petition. The Committee also sought the response of the Cabinet Secretary for Environment, the National Environment Management Authority and the Kenya Civil Aviation Authority.
12. The Petitioner met the Committee on, 1<sup>st</sup> July, 2020, 7<sup>th</sup> July, 2020 and 15<sup>th</sup> July, 2020 while the County Government of Kisumu submitted its response to the Petition via a letter dated 12<sup>th</sup> June, 2020. The Kenya Civil Aviation Authority appeared before the Committee on 7<sup>th</sup> July, 2020 and 15<sup>th</sup> July, 2020 and the Cabinet Secretary for Environment and the Director General of the National Environment Management Authority appeared before the Committee on 15<sup>th</sup> July, 2020.
13. The following documents were presented to the Committee by all the parties-
  - (a) A response to the Petition by the County Government of Kisumu dated 12<sup>th</sup> June, 2020, containing eleven annexures; (*Appendix 2 of this Report*)
  - (b) Response to the Petition by the Kenya Civil Aviation Authority ; (*Appendix 3 of this Report*)
  - (c) Response to the Petition by the Cabinet Secretary responsible for environment and the National Environment Management Authority; (*Appendix 4 of this Report*)
  - (d) A Report of the Kenya Civil Aviation Authority on its findings after conducting a site visit of the dumpsite in issues as directed by the Committee; (*Appendix 5 of this Report*)
14. The County Government of Kisumu also brought to the attention of the Committee, the Judgement of the Environmental and Land matters Court in the case of ***Rose Juma Nyanjom & 3 others v County Government of Kisumu & 2 others [2020] eKLR***, in which a Petition that had been instituted against the County Government of Kisumu and Naya Holdings in respect of the matters that were the subject matter of the Petition before the Committee (Annexed to the Response of the Kisumu County Government).

### **ISSUES FOR CONSIDERATION**

15. The Committee identified the following as the key issues arising from the Petition-
  - (a) Whether public participation was undertaken prior to the issuance the licence for the rehabilitation of the Kisumu Concrete Products Limited (KCPL) quarry at Kajulu in Kisumu East Constituency;
  - (b) Whether there have been any negative consequences resulting from the dumping of semi-inert waste in quarry pits in Kajulu;
  - (c) Whether the County Government of Kisumu irregularly awarded the tender for transportation of the semi-inert waste from Kachok dumpsite to the Kajulu landfill and at an excessive price above market rates.
- (1) **Whether public participation was undertaken prior to the issuance the licence for the rehabilitation of the Kisumu Concrete Products Limited (KCPL) quarry at Kajulu in Kisumu East Constituency**
16. The Petitioner alleged that in early 2018, an Environmental Impact Assessment licence was issued for the rehabilitation of the Kisumu Concrete Products Limited (KCPL) quarry at Kajulu in Kisumu East Constituency, Kisumu County by filling the quarry pit with semi-inert waste from the Kachok dumpsite but no meaningful public participation was undertaken before issuance of the said licence as required under the law.
17. The Petitioner further alleged that as the Member of Parliament for Kisumu East Constituency, he had not been engaged or advised in any way and other leaders were similarly in the dark.
18. The County Government of Kisumu, in its response to the Petition, attached the following documents to demonstrate that meaningful public participation took place-
  - (a) Minutes dated 27/11/2017, of a meeting of Kajulu Community Members on Election of Members of an *ad hoc* Committee to oversee the implementation of Kisumu Concrete Landfill project;
  - (b) An attendance register dated 23/11/2017 on *Public Participation on Land Refill* in Kajulu;
  - (c) A photo capturing a public participation forum at Lango Primary School with both the Local area MP Hon Shakeel Shabbir Ahmed and the area Senator Sen. Fred Outa together with several Members of the County Assembly of Kisumu



participating over the land fill debate.

19. The County Government of Kisumu also observed that on the question of public participation, in *Rose Juma Nyanjom & 3 others v County Government of Kisumu & 2 others [2020] eKLR* the Court held as follows-

*The EIA study of the proposed project attached to the affidavits of the 1st and 2nd Respondents also contains a section titled "Public Participation List" containing an Attendance Register for what appears to be a public participation forum on the project on 23rd November 2017, and which appears to have been attended by various stakeholders concern. ... **There is also evidence that public participation was conducted in the course of the EIA study. The upshot is that the Respondents complied with Section 58 of EMCA and conformed to Article 69 (1) of the Constitution.***

20. The National Environment Management Authority (NEMA) in its response to the Petition stated that-

- (a) the Ministry, through NEMA received an Environmental Impact Assessment (EIA) report for the proposed rehabilitation of Kisumu concrete quarry in Mamboleo using inert waste from Kachok Dumpsite on 11<sup>th</sup> December, 2017 and assigned reference No. NEMA/PR/5/2/18,573;
- (b) the report was processed in line with the provisions of the Environmental Management and Coordination Act, (EMCA) 1999 and Environmental (Impact Assessment and Audit) Regulations 2003;
- (c) NEMA in its decision making took into consideration the public recognition, institutional recognition, technical recognition, public disclosure and the EIA decision making principles;
- (d) NEMA approved the project and issued an EIA license No. NEMA/EIA/PSL/5701 (Annex I) to the project proponent, Kisumu Concrete Products Ltd. (KCPL) on 30<sup>th</sup> January, 2018. The EIA license was granted with conditions which are to be strictly adhered to by the proponent to ensure the project is implemented in an environmentally sustainable manner;
- (e) Condition No. 3.4 of the license clearly states that the proponent shall incorporate in the site a HSE committee, members of the public, the local administration and community leaders to ensure environmental concerns are addressed for effective Grievance Redress Mechanism (GRM) and peaceful co-existence.
- (f) the HSE committee was already established before the issuance of the EIA



license through a public Baraza held on the 27<sup>th</sup> of November, 2017 at the Alongo Football Field where one hundred and four community members and leaders including the Honorable Member of Parliament were in attendance as evidenced in the minutes of the meeting (Annexed to the response).

- (g) The EIA process was participatory and involved all interested stakeholders as evidenced in Annex II to the response and the area leaders are represented in the ad hoc committee that has been monitoring implementation of the project. The EIA document is a public document available for perusal at the NEMA offices.
- (h) The Ministry through NEMA responded to the concerns raised by the Petitioner through a letter Ref. No. NEMA/PR/5/2/18,573 dated 6<sup>th</sup> March, 2018. Further, the Hon. MP was engaged during a site visit in the area by the Chief Administrative Secretary Ministry of Environment and Forestry in Kisumu on 1st July 2019 regarding the matter (Annex IX to the response).

#### **Observations of the Committee**

- 21. Having reviewed the documents presented by the respondents, and notes that evidence was presented to demonstrate that the Petitioner was engaged in the process. The Committee also notes that NEMA also engaged the Petitioner when he expressed concern over the propriety of the project.
- 22. The Committee observes that the issue of public participation prior to the licensing of the landfill was canvassed in *Rose Juma Nyanjom & 3 others v County Government of Kisumu & 2 others [2020] eKLR* where the Court found that adequate public participation had taken place.
- 23. In the circumstances, the Committee is satisfied that public participation was undertaken prior to the commencement of rehabilitation of Kisumu Concrete Quarry using inert waste from Kachok Dumpsite.
- 24. The Committee also observes that waste management in any city is a legitimate concern of its residents as poor waste disposal practices pose a serious threat to the health and the overall wellbeing of the community. It is therefore important that county governments are intentional about creating public awareness on their waste management policies and are responsive to residents who may express concern of any aspect of waste disposal within the county.
- 25. Going forward therefore, the Committee recommends that the County Government of

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

(2) **Whether there have been any negative consequences resulting from the dumping of semi-inert waste in quarry pits in Kajulu**

i) *Allegations of Environmental Degradation*

26. The Petitioner alleged that the dumping of waste in the quarry pits in Kajulu has breached the underground aquifers in the area, thus, compromising the safety and quality of underground water.
27. In response to this allegation, the County Government submitted that the Environmental Impact Assessment Licence, Licence No: NEMA/EIA/PS/5701, Application Ref No NEMA/EAI/PSR/9730 was issued on the basis of a certification of an Environmental Impact Assessment Project Report which was submitted in accordance with the Environmental Impact Assessment and Audit Regulations, 2003.
28. The County Government of Kisumu also observed that in ***Rose Juma Nyanjom & 3 others v County Government of Kisumu & 2 others [2020] eKLR*** the Court found that the Petitioners had not demonstrated that the project would violate residents' rights to a clean and healthy environment under Article 42 of the Constitution.
29. NEMA also submitted that a hydrological assessment study (attached as Annex III to NEMA's Response) was undertaken in November, 2017. The assessment covered the geological and hydrological status of the project site and it was undertaken to allay any fears on the potential for ground water and soil contamination through disposal of the semi inert waste. The report highlighted that water rest levels in the area range between 20 to 40m indicating confined aquifer conditions and hence the semi-inert waste would not be in contact with the initial water table since the water struck levels are much deeper than the base of the quarry pit. The borehole at KCPL has the aquifer material for the top 40m being composed of rocks which are not water bearing implying less permeability.
30. In addition, The EIA license conditions provided that the proponent was to ensure that the pit was lined appropriately with an impervious Geo-membrane PVC base, a



leachate collection system and monitoring wells installed to ensure that monitoring of the ground water was done periodically.

31. NEMA further indicated that it had been undertaking continuous monitoring to ensure compliance with the EIA license during implementation and provided correspondence and improvement notice (Annex IV and V respectively of the Response) to illustrate the continuous monitoring.
32. NEMA also provided a water quality analysis of neighboring boreholes as per annex VII of its response.

*ii) Allegation of devaluation of property*

33. The Petitioner alleged that the establishment of a landfill for waste in a private site has drastically dropped the value of property in the area.
34. In response to this allegation, the County Government of Kisumu submitted that the waste was moved from Kachok dumpsite following a decommissioning audit report delivered in March 2015 citing hazardous and injurious component of it being in the site it was originally. It further indicated that the movement of the waste to the landfill was done within the parameters of law, and the area where the waste was buried was also found to be environmentally friendly, being an abandoned quarry.
35. NEMA, in its response stated that-
  - (a) The abandoned open quarries in the Kajulu area posed a major security, health and environmental risks to the neighboring community.
  - (b) Continuous rehabilitation of quarry sites is the recommended environmental and social management practice. Use of inert materials to rehabilitate quarry pits has been documented as a best practice across the globe.
  - (c) The proponent in collaboration with the County Government of Kisumu demarcated the areas at the Kachok dumpsite that contain waste which had been dumped years back and no fresh waste had been deposited in these areas. This is the section of the dumpsite that contains semi-inert waste which is currently being used for rehabilitation.
  - (d) The waste that is no longer reactive and decomposing poses no significant environmental and social risks.
  - (e) The quarry is not a waste dumpsite but rather it is a rehabilitation site that shall be a forest park once restored.



- (f) The proponent shall not use fresh waste from Kachok dumpsite to rehabilitate the quarries.
- (g) The Kachok dumpsite still remains Kisumu's designated waste disposal site until a new Integrated Waste Treatment Facility is setup.
- (h) The continuous monitoring of the same by the Ministry through NEMA and the ad hoc committee is ongoing.
- (i) Comparing the status quo of abandoned open quarries at Kajulu vis-à-vis the rehabilitated ones with a forest park the value of the property in the area is expected to be enhanced instead of dropping.

iii) *Allegations of endangerment of flights*

- 36. The Petitioner submitted that the landfill site is directly in the flight path leading to Kisumu Airport and attracts scavenger birds which a risk to aircrafts flying over the area.
- 37. In response to this allegation, the County Government of Kisumu responded as follows-
  - (a) That the Kenya Airport Authority was fully involved in the approval of use of the Kajulu quarries;
  - (b) That by a letter dated 24<sup>th</sup> November ,2017 and referenced KAA/8/1 VOL.II (63) addressed to the Director Naya Holdings Limited by the CEO of Kenya Airport Authority (KAA) provided to Naya Holdings, the company that was contracted to and that by a subsequent document referenced KAA/9/10 VOL.III (12) KAA advised that decayed garbage dump at Kachok could be buried at the quarry without attracting scavengers and that the Kenya Airport Authority would monitor the progress of implementation.
- 38. The Kenya Civil Aviation Authority was also invited to provide its response to the matter and, by way of a letter dated 7<sup>th</sup> July, 2020, it submitted that that Kenya Civil Aviation Authority carried out an inspection to determine safety implication on flight operations on the proposed landfill. KCAA noted that the site was within a radius of 13km from the Kisumu International Airport Aerodrome Reference Point and within flight path on the final approach to landing and therefore recommended that an aeronautical study be conducted.
- 39. A joint risk assessment was therefore conducted and a Report was sent to the Kisumu County Government by way of a letter dated 24<sup>th</sup> November, 2020. The Report advised that no fresh waste should be dumped at the Kajulu site but decomposed excavated

material could be moved to the dumpsite for burial and immediate usage of waste quarry dust to reduce wildlife hazard.

40. NEMA also informed the Committee that the Environment Impact Assessment process took into consideration the position of Kenya Airports Authority (KAA) as a relevant lead agency in the aviation sector. An aviation safety and risk assessment of the Kisumu International Airport (KIA) was done before commencement and during implementation of the project and that an assessment by KAA dated 6<sup>th</sup> June, 2018 *Ref. No. KAA/9/10 Vol. I TY (12)* found that the project did not result to bird risk to aircraft operating at KIA since it was using inert waste material that was not attracting birds (Annex VI).
41. In addition, at its meeting held on 7<sup>th</sup> July, 2020, the Committee directed the Kenya Civil Aviation Authority to visit the site of the landfill and to present a status report when the Committee next met to consider the matter.
42. Subsequently, at the meeting of the Committee held on 15<sup>th</sup> July, 2020, KCAA reported as follows in respect of the visit to the site-
  - (a) That a team of Inspectors from the Kenya Civil Aviation Authority accompanied by Kenya Airports Authority's Safety Officer paid a courtesy call on the CEC Member in Charge of Water, Environment, Irrigation and Natural resources-Kisumu County on 10th July, 2020 to establish the procedures established for Waste Management in the County.
  - (b) The team conducted site visits to Kachok dumpsite, Kajulu landfill and the proposed Waste Management Plant site at Kasese for fact-finding after meeting the County Government of Kisumu officials.
  - (c) In respect of the Kajulu Landfill, they observed that there are deep excavations on the said sites because of quarrying activities and that solid wastes generated by Kisumu City and environs had been used to fill up part of deep excavations. However, the solid waste had been compacted and covered with murram/quarry chips after treatment. Hence, the landfill does not act as bird attractants, and thus having minimal risk to Aircraft Operations. At the time of inspection, there was no solid waste at the said site and the County Government of Kisumu indicated that they do not intend to dump waste at Kajulu as they have identified a site in Kasese where they will have a waste management Plant.
43. The KCAA also visited the dumpsite in Kachok, from which the inert material had been



relocated to the Kajulu site and noted that the dump site had been largely reclaimed but birds were seen on the site. They also visited the proposed waste management plant in Kasese and were informed that twenty-five acres had been earmarked for waste management. They were also informed that the County Government of Kisumu had tendered for the Stabilization of Waste plant (Daily Nation, Thursday May 21, 2020)

44. In view of the above findings, KCAA recommended as follows-
- (a) There is need for the County Government of Kisumu to fast-track closure of Kachok dumpsite to mitigate aviation risks as it falls within 13 km radius from Kisumu International Airport Aerodrome reference point.
  - (b) The Kajulu landfill site has since been decommissioned and does not act as bird attractants and therefore does not present any risk to aircraft operations.
  - (c) There is need to fast track the necessary risk assessment with regard to the proposed Waste Management Site as Kasese ensuring involvement of all pertinent stakeholders as required by law.
  - (d) Although the site lies beyond the 13 km radius, KCAA recommends a site visit to the proposed site by all relevant stakeholders to ensure it meets all the requirement of the law. This should include community participation and an environmental impact assessment.

#### **Observations of the Committee**

45. In respect of this issue, the Committee observed that the Petitioner did not present any evidence to demonstrate that the Kajulu site poses a threat to the environment or to flights while the evidence from NEMA, KCAA and the County Government of Kisumu shows that the site was inspected and approved for purposes of the landfill. NEMA and KCAA further affirmed that to-date, the site has not posed any threat to the environment or the aircrafts flying over the site.
46. Due to the COVID-19 situation, the Committee was not able to visit the site of the landfill during the inquiry but undertakes to do so when the Committee next travels to Kisumu County. The Committee however took note of the comprehensive report by the Kenya Civil Aviation Authority which set out the situation on the ground, with sufficient clarity.
47. The Committee therefore recommends regular monitoring of the Kajulu site by NEMA and KCAA and requests that any violations or threats to the environment that may be identified by the authorities be brought to the urgent attention of the Committee.

48. The Committee particularly notes NEMA's undertaking to continually supervise the Kajulu site in respect of its underground water and therefore recommends that the Petitioner and other local leaders be notified of any concern or breach that may be observed in the future.

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

(3) *Whether the County Government of Kisumu irregularly awarded the tender for transportation of the semi-inert waste from Kachok dumpsite to the Kajulu landfill and at an excessive price above market rates.*

50. The Petitioner alleged that That the County Government of Kisumu irregularly awarded the tender for transportation of the semi-inert waste from Kachok dumpsite to the Kajulu landfill and at an excessive price above market rates.

51. In response to this allegation, the County Government of Kisumu submitted as follows-

- (a) That the services were well procured.
- (b) That a company by the name of Naya Holdings Ltd was notified of a contract award on the 17th November 2017 with subsequent signing of a contract agreement done on the 1<sup>st</sup> of December 2017.
- (c) The process was competitively bid for and emanating from newspaper advertisement extracts dated 4<sup>th</sup>
- (d) July 2018. There are no records in the Public Procurement Regulation Authority challenging process for any incompetent award.
- (e) The process was not just the movement of waste from point A to B. The cost involved de-odourising chemicals spread on the waste after loading to the tippers, hence the cost of the chemical, the covering of the inert waste to avoid spillage with tupik along the transportation corridors, provisions and linings to prevent pilferages along the road side, fuel cost, labour loading cost and cost of hired transportation.



52. On this, The National Solid Waste Management Strategy, 2015 and the Best Practice Guidelines on Rehabilitation of disused/abandoned Quarries using Semi-Inert Wastes have been published to guide County Governments towards sound waste management and disposal.

**Observations of the Committee**

53. The Committee notes that it was not presented with any evidence to support this allegation. The Committee therefore recommends that this report be submitted the Ethics and Anti-Corruption Commission for investigation.

## **FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE**

### **Findings**

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



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

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

### **Recommendations**

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

#### **Public participation**

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

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

**Kajulu landfill site**

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

**The Kachok Dumping Site**

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

**Allegations of impropriety in award of the Kajulu landfill tender**

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



**Waste Management in the Counties**

63. The county governments, which are vested with the mandate of waste management, including the Kisumu County Government, should adhere to the National Solid Waste Management Strategy, 2015 and the Best Practice Guidelines on Rehabilitation of disused/abandoned Quarries using Semi-Inert Wastes have been published to guide County Governments towards sound waste management and disposal that were developed by the National Environment Management Authority.
64. Further the Committee gives an overall recommendation that, it will be organizing a National Conference on Waste Management in collaboration with the National Environment Management Authority (NEMA) so as to sensitize County Governments on the proper handling and management of Waste. This is necessitated by the fact that, the Committee has been consistently receiving waste management complaints from various counties. Being a devolved function the Committee will also involve the Council of Governors and all the CEC's who are charged with dealing with waste management in their respective counties.

## **APPENDICES**

### **A. ANNEX I: MINUTES OF THE MEETINGS**



**MINUTES OF THE 21<sup>ST</sup> SITTING OF THE SENATE STANDING COMMITTEE  
ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON  
WEDNESDAY, 1<sup>ST</sup> JULY, 2020 VIA ZOOM ONLINE PLATFORM AT 10.00 AM.**

**MEMBERS**

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. Ndwiga Peter Njeru, EGH, MP
4. Sen. George Khaniri, MGH, MP
5. Sen. Mwaruma Johnes, MP
6. Sen. (Dr.) Lelegwe Ltumbesi, MP

**PRESENT**

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

**ABSENT WITH APOLOGY**

1. Sen. Gideon Moi, CBS, MP
  2. Sen. Sylvia Kasanga, MP
  3. Sen. Boy Issa Juma, MP
- Member
  - Member
  - Member

**IN ATTENDANCE**

1. Hon. Shakeel Shabir

**PETITIONERS**

- MP, Kisumu East Constituency

**KEPSA**

1. Mr. Tyson Mwendwa
2. Ms. Emily Njeru
3. Dr. Mwenda Makathimo
4. Ms. Joyner Okonjo
5. Mr. Jesse Kihoro
6. Ms. Judy
7. Mr. Eric Nyadimo
8. Ms. Martha Cheruto
9. Mr. Lenise Wanakai
10. Mr. Gikonyo Gitonga
11. Mr. Robert Koech
12. Mr. Peter S. Kariuki
13. Mr. Charles Wamae
14. Mr. Charles Wamae
15. Ms. Wanjiru Mathenge
16. Ms. Carole Karuga
17. Mr. Abraham Samoei
18. Ms. Irene Keino
19. Mr. Mageka Mageka

- KEPSA-ISK
- LDGI
- KEPSA Consultant (Policy Advisory)
- ISK

- Chair/ KEPSA Land & Physical Sector Board

20. Mr. John Kabuye
  21. Ms. Janeirene Maina
  22. Mr. Allen Gichuhi
  23. Mr. Eric Nyadimo
  24. Ms. Carol Wanjeri
  25. Mr. Maina Kiambigi
  26. Ms. Irene Kiwool
  27. Mr. Peter S. Kariuki
  28. Ms. Cynthia Wakio
  29. Mr. Mairura Omwenga
  30. Mr. Apollo Kiarrii
  31. Mr. Maina Kiambigi
  32. Mr. Stanley Maina-
  33. Mr. Apollo Kiarrii
  34. Mr. Peter Thairu
  35. Mr. Robert Koech
  36. Ms. Hellen Wanjohi
  37. Ms. Emily Njeru
- KPDA (Membership)  
- Chair, Town and County Planners Association
- KIP Wanjiku - KEPSA  
-KEPSA-ISK

#### **SECRETARIAT**

- |                      |                           |
|----------------------|---------------------------|
| 1. Mr. Victor Bett   | - Clerk Assistant         |
| 2. Ms. Judy Ndegwa   | - Legal Counsel           |
| 3. Mr. John Nganga   | - Audio Recording         |
| 4. Mr. Otiato Andayi | - Media Relations Officer |

#### **MINUTE SEN/SCLENR/116/2020: PRELIMINARIES**

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

#### **MINUTE SEN/SCLENR/117/2020: ADOPTION OF AGENDA**

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

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes of Previous Sittings;
4. **Petition on the alleged environmental degradation and irregular dumping at a landfill in Kajulu, Kisumu East Constituency.**
  - **Meeting the Petitioner, Hon. Shakeel A. Shabbir, MP**
5. **Petition on behalf of the Kenya Private Sector Alliance (KEPSA) regarding the Lands Registry processes;**



- Meeting the Petitioner, Ms. Carole Karuga, MBS, HSC,
- 6. Any other Business;
- 7. Date of the next meeting;
- 8. Adjournment.

**MINUTE SEN/SCLENR/118/2020: PETITION ON THE ALLEGED ENVIRONMENTAL DEGRADATION AND IRREGULAR DUMPING AT A LANDFILL IN KAJULU, KISUMU EAST CONSTITUENCY.**

- Meeting the Petitioner, Hon. Shakeel A. Shabbir, MP

The Petitioner took the Committee through his presentation as tabled. *(Copy attached)*

**The Committee resolved as follows:**

- Invitation be done to the CS, Environment and Forestry and NEMA,
- Invitation be done to KCAA
- Conduct a site visit to Kisumu County

**MINUTE SEN/SCLENR/119/2020: PETITION ON BEHALF OF THE KENYA PRIVATE SECTOR ALLIANCE (KEPSA) REGARDING THE LANDS REGISTRY PROCESSES;**

- Meeting the Petitioner, Ms. Carole Karuga, MBS, HSC,

KEPSA is the apex body of the private sector in Kenya to drive economic development through year on year improvements in the business environment by addressing cross cutting business issues, driving investments and addressing socio-economic issues with partners. It brings together business associations, corporate bodies, SMEs and start-ups to speak in one voice, working closely with Government and other stakeholders through structured public – private dialogue platforms and other engagement mechanisms.

In line with KEPSA's core mandate to conduct high-level advocacy on cross-cutting policy-related issues that help Kenya be globally competitive in doing business, KEPSA takes cognizance of the fact that clearly defined legislation, a high-quality land administration system and equal access to property rights is essential for enabling businesses to expand their operations. If a country does not put in place adequate land ownership protections and leave investors open to land disputes or property seizures, stakeholders would be dis-inclined to put money into land and property development projects.

Further, pursuant to Article 119 & 37 of the Constitution of Kenya; The Petition to Parliament (Procedure) Act; Standing Orders No 225 & 226 of The Senate Standing Orders; The Land Registration Act, Act No. 3 Of 2012; The Land Registration (Electronic

Land Transactions) Regulations 2019; Legal Notice No. 101 Of 2019; and The Statutory Instruments Act, Act No. 23 Of 2013:

We humbly table this petition on the following issues:

**A. Closure of the Central and Nairobi Registries;**

**B. Annulment of the Land Registration (Electronic Land Transactions) Regulations 2019 (“the Regulations”) & the continued unlawful implementation of the Land Information Management System (LIMS); and**

**C. Poor administration of Land Registries Countrywide.**

### **CLOSURE OF THE CENTRAL AND NAIROBI REGISTRIES**

On the 12<sup>th</sup> February 2020 the Ministry of Lands and Physical Planning published a public notice in the newspapers dubbed, “**TEMPORARY CLOSURE OF NAIROBI AND CENTRAL REGISTRIES (AT ARDHI HOUSE) FOR AUDITING RECORDS**” to the effect that from Monday February 24<sup>th</sup> 2020 till Friday March 13<sup>th</sup> 2020 the Nairobi and Central Registries, including the Records Registries and Banking Hall will be closed to the public in order for them to conduct an audit of all land records in Nairobi City County.

Whilst the Law Society of Kenya moved to court and obtained interim orders against implementation of said notice, there is no full compliance with the court orders as the Registry is not running normal operations.

Our concerns are as follows:

#### **A. Economic Impact of the Closure of the Registries**

- i. It may affect our overall ranking in the global ease of doing business index as the property acquisition regime is a key component of ease of doing business.
- ii. It will have an impact on access to credit as financial institutions will not be able to advance credit based on unreliable data from the Central and Nairobi registries. This uncertainty will also mean financiers take longer to make lending decisions.
- iii. If the records are not properly maintained or interfered with leading to forgeries and irregular acquisition of land, more court matters will be filed in the already over-burdened Environment and Land Court for determination. This will tie up a lot of assets in litigation for several years.

The closure of the registries will not only have an enormous impact on the economy due to the many transactions and processes that will be delayed, but if done in an arbitrary manner it will undo the profound progress we have made in this country on matters land reforms whose ripple effect will be far reaching as enumerated above.



## **B. Arbitrary manner of Conducting the Audits**

The audits are being done without involving the relevant stakeholders with key expertise on matters Land Information Management Systems. It should be an elaborate process that is all inclusive involving digitization of both the cadaster and the land registers(s). Consultation and prior planning are key here.

Our East African Community member states- Uganda, Rwanda, Tanzania and Ghana (West Africa) have used members of the ISK to develop their Land Information Management Systems, which not only speaks to the competence of our local professionals but also points to the need to have this exercise done in a manner that incorporates the key stakeholders. Should Kenya lag behind on matters digitization, we will equally lag behind when it comes to investor confidence if we rely on a manual system or adopt a digital system that is interference prone.

Particulars of arbitrariness of the process include:

- i. The Ministry of Lands & Physical Planning constituted a task force on electronic land transactions, registration, conveyancing and other related activities in August 2018. The Report was subsequently handed over to the Ministry in February 2019 and has never been made public despite the Taskforce having spent PUBLIC resources to engage stakeholders in the sector that would guide the development of a Land Information Management System, which would solve the current issues faced by the manual system.
- ii. There is rife concern among some of our BMOs and partners that part of the recommendations that stakeholders made to the Taskforce are already being implemented yet the Taskforce Report has never been made public. A good example is the Business Laws (Amendment) Bill 2019, which seeks to introduce the use of electronic signatures, electronic documents, filing of documents either in physical or electronic form in the lands Registry. It also calls for maintenance of the Principal and Coast registries in both physical and electronic form.
- iii. Land registries are central to land administration in Kenya and are created and administered by the Cabinet Secretary in accordance with section 7 of the Land Registration Act (Act No. 3 of 2012). We are concerned that certain government agencies such as the National Youth Service (NYS) and the Defence Forces are being used in the management and administration of land records, contrary to law.

## **ANNULMENT OF THE LAND REGISTRATION (ELECTRONIC LAND TRANSACTIONS) REGULATIONS 2019 & THE CONTINUED UNLAWFUL IMPLEMENTATION OF THE LAND INFORMATION MANAGEMENT SYSTEM (LIMS)**



The Ministry of Land and physical Planning (“the **Ministry**”) issued a public notice on 4<sup>th</sup> April 2018 in relation to preparation of online services and online processing of land transactions at the lands registry to digitize the lands registry. The online services commenced on 3<sup>rd</sup> April 2018 through the Lands Information Management System (LIMS) which is accessible through the Government Service Portal [www.ecitizen.go.ke](http://www.ecitizen.go.ke).

On 5<sup>th</sup> April 2018, the Law Society of Kenya (“LSK”), who are members of KEPSCA, wrote to the Cabinet Secretary for the Ministry (“the **CS** or **Cabinet Secretary**”) regarding legal issues affecting the new online services and requested immediate suspension of the online services and online processing of land transactions. Key among the issues was the illegality of the e-conveyancing platform as it contravened other laws such as the Law of Contract Act, the Evidence Act and the Land Acts.

LSK further challenged the Ministry’s move via Nairobi High Court Petition 144 of 2018, LSK v AG & 3 Others, resulting in a consent agreement signed between the Ministry and LSK. The terms of the aforesaid agreement were that LSK would stay the suit whereas the Ministry would come up with a taskforce to develop guidelines for the implementation of an electronic registration and conveyancing system.

Consequently, a Taskforce on Electronic Land Transactions, Registration, Conveyancing and other related activities under the Land Registration Act, 2012, the Land Act, 2012 and the Community Land Act, 2016 (“the Taskforce”) was appointed via Gazette Notice No. 7859 of 2018 on 3<sup>rd</sup> August 2018. The Taskforce constituted among others, two LSK representatives, and was mandated to study and review the Land Registration Act, 2012 and the Land Registration (General) Regulations, 2017 and land sector related laws with a view to formulate guidelines for electronic registration transactions and conveyancing system; perform any other task as may be assigned by the Cabinet Secretary; and submit the draft guidelines and final report to the Cabinet secretary within two (2) months of its formation. The mandate of the Taskforce was extended on 3<sup>rd</sup> December 2016 by a further two (2) months to 2<sup>nd</sup> February 2019 via Gazette No. 12622 of 2018.

The Taskforce conducted extensive public consultations between 2<sup>nd</sup> and 11<sup>th</sup> October 2018 in Mombasa, Nakuru, Uasin Gishu, Nairobi, Embu, Kakamega, Kisumu, Machakos, Garissa, Nyeri, Kisii and Marsabit counties. The said consultations were carried out with the National Land Commission, the Council of Governors, the Law Society of Kenya, the Institution of Surveyors of Kenya, the Kenya Institute of Planners, the Town and County Planners Association of Kenya, the Kenya Property Developers Association, the Kenya Bankers Association and the Land Development Governance Institute.

On the culmination of the Taskforce’s mandate, it published a Report (“the Taskforce Report”) and presented it to the Cabinet Secretary. Specifically, the Taskforce Report *inter alia* recommended guidelines for the implementation of an electronic registration and conveyancing system which formed the basis of the Regulations.

The Regulations were then published on the 28<sup>th</sup> June 2019, submitted to the clerk of the National Assembly on 1<sup>st</sup> August 2019 and tabled before Parliament on 6<sup>th</sup> August 2019.

Following the tabling of the said regulations, the Committee on Delegated Legislation (“the **Committee**”) began an analysis of the Regulations culminating in the Report on the consideration of the Land Registration (Electronic Land Transactions) Regulations, November 2019 (“the **Committee Report**”) tabled before Parliament on 13<sup>th</sup> November 2019 recommending annulment of the Regulations. Parliament then adopted the Report in entirety and annulled the Regulations on 25<sup>th</sup> November 2019.

Notably, the key reasons for the annulment of the Regulations in the Report were:

- a. The Regulations were contrary to Article 259 (11) of the Constitution as consultation with the National Land Commission was not adequately demonstrated and neither was it stated in the enabling clause.
- b. The Regulations making authority, the Ministry in this case, failed to demonstrate that it conducted enough public participation in the development of the Regulations contrary to section 5 & 5A of the Statutory Instruments Act.
- c. The regulation making authority failed to submit a regulatory impact assessment as required by section 6,7 & 8 of the Statutory Instruments Act.
- d. The Regulations were not submitted to the National Assembly within the statutory timeline contemplated by section 11(1) of the Statutory Instruments Act

The Committee further considered the following in reaching its decision:

- e. The Regulations failed to provide prescribed forms under Regulation 5.
- f. The Regulations gave the Chief Registrar very broad powers under the following provisions:
  - i. Regulation 6 gives the Chief Registrar power to approve or refuse to approve a person as a user. The Committee suggested that the provision should have included circumstances that lead to approval or otherwise.
  - ii. Further Regulation 6 (5) allows the Chief Land Registrar to impose additional conditions for approval as a user without providing the parameters of such conditions.
- g. Regulation 10 providing for constitution of a committee to hear and determine appeals against the Chief Registrar was impractical as there are currently more than 10 Million users thus tedious to compose a committee within 14 days of receipt of each appeal. The Committee suggested creation of a permanent appeal’s body.



- h. Regulation 15 required that payment is done through the existing government payment platforms. However, there are no express government payment platforms.

***Particulars of the Ministry's negligence in relation to the annulment of the Regulations and unlawful implementation of LIMS***

The Ministry failed to follow the proper procedure for the approval of the Regulations by the National Assembly as more specifically detailed in the subsequent paragraphs.

***On failure to submit a regulatory Impact assessment***

The Ministry failed to present before Parliament, the Taskforce Report that provided in its chapter two, the review of the legal framework and the necessary changes needed to ensure synchrony between the Regulations and the existent legal framework.

Notably, the contents of the legal analysis of the Taskforce Report are similar to the most contents of a regulatory impact statement, a requirement that the Ministry did not comply with resulting in the annulment of the Regulations.

***On the Explanatory memorandum***

The Ministry submitted an explanatory memorandum but failed to attach the proof that sufficient public participation was conducted, a brief statement of all the consultations and the manner in which consultations were undertaken, an outline of the results of the consultations and a brief explanation of any changes made to legislation as a result of the consultations. Resultantly, the Committee quotes failure to demonstrate enough public consultations as one of the reasons for annulment of the Regulations.

***On the statutory timeline for presenting of the Regulations***

The Ministry was negligent in failing to adhere to the statutory timeline set to present the Regulations before National Assembly, 7 sitting days within publishing of the Regulations, as provided under the Statutory Instruments Act without demonstrating any reason for the delay. Notably, the Committee annulled the Regulations due to the said Ministry's failure to adhere to statutory timelines.

***On unlawful implementation of the LIMS***

Following the annulment of the Regulations, the Ministry continues to unlawfully implement LIMS without the proper statutory backing.

**POOR ADMINISTRATION OF LAND REGISTRIES COUNTRYWIDE**

Land registries are central to land administration in Kenya and are created and administered by the Cabinet Secretary in accordance with Section 7 of the Land Registration Act (Act No. 3 of 2012). However, the Land Registry is poorly administered resulting in the challenges elaborated below.

Due to inadequate and poorly trained staff at the Lands Registry There is an unprecedented rise in the number of cases of misplacement of records at the Lands Registry due to lack of a file tracking system at the Lands Registry and automation of the A-Book.

Due to inadequate and poorly trained staff at the Lands Registry to ensure instruments are stamped with the correct value of stamp duty, there are some cases where wrong stamp duty values are embossed on instruments.

There is an unprecedented rise in the number of cases of misplacement of records at the Lands Registry due to lack of a file tracking system at the Lands Registry and automation of the A-Book.

There is a huge challenge in getting access to Registrars resulting in inefficient and slow resolution of issues and long transactional periods.

There are instances where the Lands Registrar requires the production of court proceedings in order to recognize court orders leading to delays in some transactions which have already been settled by the Court.

Despite, all the efforts and constant engagement by LSK who are members of KEPSA, there seems to be unwillingness on the part of the Cabinet Secretary to work towards efficient and effective land administration and land administration processes.

#### **THAT**

The issues in respect to which this petition is submitted are not pending in any court of law or constitutional or legal body, save for:

1. Constitutional Petition No. 58 of 2020 against the closure of the registries, which orders are not being complied with.
2. Law Society of Kenya's Petition to the National Assembly received in January 2020 touching on Issues Number 2 and 3 raised above.

#### **HEREFORE your humble Petitioners pray THAT: -**

2. This petition be dealt with immediately in view of the urgency and the gravity of the issues raised.
3. The Senate investigates the conduct of the Ministry of Lands & Physical Planning in relation to the issues submitted.

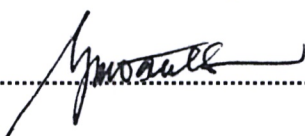
#### **The Committee resolved as follows:**

- Invitation be done to the CS, Lands and Physical Planning,
- Invitation is done to KEPSA as well.



**MINUTE SEN/SCLNR/120/2020: ANY OTHER BUSINESS;**  
There was no other business discussed.

**MINUTE SEN/SCLNR/121/2020: DATE OF NEXT MEETING;**  
The time being 1.00 pm the meeting was adjourned. The next meeting was scheduled for Tuesday, 7<sup>th</sup> July, 2020 at 10.00 am via zoom platform.

Signed:  .....

Date: 4/08/2020

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL  
RESOURCES**

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**MINUTES OF THE 22<sup>ND</sup> SITTING OF THE SENATE STANDING COMMITTEE  
ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON  
TUESDAY, 7<sup>TH</sup> JULY, 2020 VIA ZOOM ONLINE PLATFORM AT 10.00 AM.**

**MEMBERS**

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. George Khaniri, MGH, MP
4. Sen. Gideon Moi, CBS, MP
5. Sen. (Dr.) Lelegwe Ltumbesi, MP
6. Sen. Sylvia Kasanga, MP

**PRESENT**

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

**ABSENT WITH APOLOGY**

1. Sen. Ndwiga Peter Njeru, EGH, MP
  2. Sen. Mwaruma Johnes, MP
  3. Sen. Boy Issa Juma, MP
- Member
  - Member
  - Member

**IN ATTENDANCE**

Sen. Johnson Sakaja, CBS, MP

**FRIEND TO THE COMMITTEE**

- Nairobi City County Senator

**PETITIONER**

Hon. Shakeel A. Shabbir, MP

- Kisumu East Constituency – MP

**KENYA CIVIL AVIATION AUTHORITY**

1. Mr. Josphat K. Chebungei
  2. Capt. Tom Ogenche
  3. Ms. Charity M Musila
- Director Corporate Services
  - Director Aviation Safety Security Standards
  - Director Air Navigation Services

**SECRETARIAT**

1. Mr. Victor Bett
  2. Ms. Judy Ndegwa
  3. Ms. Joyce Chelang'at
- Clerk Assistant
  - Legal Counsel
  - Audio Recording

**MINUTE SEN/SCLENR/122/2020: PRELIMINARIES**

The meeting was called to order at 10.25 am by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLENR/123/2020: ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. George Khaniri, MGH, M.P. and seconded by Sen. (Dr.) Lelegwe Ltumbesi, M.P. as follows –



1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes of Previous Sittings;
4. **Meeting on the Statement by Sen. Johnson Sakaja regarding proposed demolition of houses in some areas within Langata Constituency;**  
**Stakeholders:**
  - CS Environment & Natural Resources
  - CS Lands & Physical Planning
  - Residents leaving in those areas
  - Senator, Nairobi County
5. **Petition by Hon.Shakeer Shabir regarding a disposing of waste in Kisumu East Constituency;**  
**Stakeholders:**
  - CS Environment and Natural Resources, NEMA
  - Kenya Civil Aviation Authority (KCAA)
  - Petitioner
6. Any other Business;
7. Date of the next meeting;
8. Adjournment.

**MINUTE SEN/SCLNR/124/2020: STATEMENT BY SEN. JOHNSON SAKAJA REGARDING PROPOSED DEMOLITION OF HOUSES IN SOME AREAS WITHIN LANGATA CONSTITUENCY;**

The Committee was scheduled to meet the Cabinet Secretary (CS) Environment & Natural Resources together with the CS Lands & Physical Planning in the presence of Senator, Nairobi County and the Chairpersons of the Estates where the alleged demolitions were set to take place.

The Committee however received apologies from the CS Environment and Natural Resources. *(Copy of the letter is attached for future reference)*

The Committee however maintained that sanctity of titles has to be maintained and that innocent citizens made investments in the said properties and they out to be protected. The CS Environment and Natural Resources being the main respondent the Committee was unable to proceed with the aforementioned agenda and resolved as follows:

1. As per the request in his letter, he be invited again to appear before the Committee on the 15<sup>th</sup> July, 2020;
2. In the letter it be stated clearly that; until final completion of the matter by the Senate and resolution made, no nature of demolitions or threats to the persons leaving in the said estates should be witnessed; and
3. Chairpersons of the Estates affected be invited to the meeting scheduled for 15<sup>th</sup> July, 2020.

**MINUTE SEN/SCLENR/125/2020: PETITION ON THE ALLEGED ENVIRONMENTAL DEGRADATION AND IRREGULAR DUMPING AT A LANDFILL IN KAJULU, KISUMU EAST CONSTITUENCY.**

The Committee intended to also discuss the Petition presented by Hon. Shakeel A. Shabbir, MP with the CS, Ministry of Environment and Natural Resources but since he failed to attend the same agenda be scheduled for 15<sup>th</sup> July, 2020.

The Committee however proceeded with the Presentation by the Kenya Civil Aviation Authority (KCAA) who presented as attached. (*Presentation attached*)

**The Committee resolved as follows:**

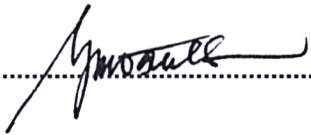
- That KCAA conduct a site visit to the Dump Site and reports back to the Committee during its meeting next week with the CS, Environment and Forestry on the current status and the way forward.

**MINUTE SEN/SCLENR/126/2020: ANY OTHER BUSINESS;**

There was no other business discussed.

**MINUTE SEN/SCLENR/127/2020: DATE OF NEXT MEETING;**

The time being 11.18 am the meeting was adjourned. The next meeting was scheduled for Wednesday, 8<sup>th</sup> July, 2020 at 10.00 am via zoom platform.

Signed:.....

Date:.....4/08/2020

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL  
RESOURCES**



**MINUTES OF THE 25<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE  
ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON  
WEDNESDAY, 15<sup>TH</sup> JULY, 2020 VIA ZOOM ONLINE PLATFORM AT 1.30 PM.**

**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. Sylvia Kasanga, MP
6. Sen. Boy Issa Juma, MP
7. Sen. Ndwiga Peter Njeru, EGH, MP

**PRESENT**

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

**ABSENT WITH APOLOGY**

1. Sen. (Dr.) Lelegwe Ltumbesi, MP
2. Sen. Gideon Moi, CBS, MP

- Member
- Member

**IN ATTENDANCE**

1. Sen. Johnson Sakaja, CBS, MP

**SENATORS**

- Senator, Nairobi County

**PETITIONER**

2. Hon. Shakeel Shabir

- Kisumu East, MP

**MINISTRY OF ENVIRONEMNT  
AND NATURAL RESOURCES**

1. Mr. Keriako Tobiko, CBS, SC,
2. Mr. Mamo Boru Mamo
3. Dr. Chris K. Kiptoo, CBS,
4. Mr. Patrick Kariuki
5. Mr. Rodney Omari
6. Mr. Lemakoko
7. Ms. Laura Yego
8. Mr. Evans Kedode
9. Ms. Rose Nyanani

- CS, Ministry of Environment and Forestry
- Ag. DG, NEMA
- PS, Environment and Forestry
- Chief Conservator of Forests, KFS
- KFS
- 

**MINISTRY OF LANDS AND  
PHYSICAL PLANNING**

1. Hon. Gedion Mung'aro

- CAS, Lands and Physical Planning

**KENYA CIVIL AVIATION  
AUTHORITY (KCAA)**

1. Capt. Gilbert Kibe

**SECRETARIAT**

1. Mr. Victor Bett
  2. Ms. Judy Ndegwa
- Clerk Assistant  
- Legal Counsel

**MINUTE SEN/SCLENR/138/2020: PRELIMINARIES**

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

**MINUTE SEN/SCLENR/139/2020: ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. George Khaniri, MGH, M.P. and seconded by Sen. Sylvia Kasanga, M.P. as follows –

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes of Previous Sitzings;
4. **Petition by Hon. Shakeer Shabir regarding disposing of waste in Kisumu East Constituency;**  
**Stakeholders:**
  - CS Environment and Forestry, NEMA
  - Kenya Civil Aviation Authority (KCAA)
  - Petitioner
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

**MINUTE SEN/SCLENR/140/2020: PETITION BY HON. SHAKEER SHABIR  
REGARDING DISPOSING OF WASTE IN KISUMU EAST CONSTITUENCY;**

**- Cabinet Secretary, Environment and Forestry**

The Committee received submissions from the Cabinet Secretary and the Director General National Environment Management Authority as follows:



- 1. That there was no meaningful public participation process conducted despite the fact that this exercise is going to affect the environment of Kajulu in that the pits in which the waste is being dumped has already breached the second aquifer of underground water.**

The Committee was informed that, the Ministry through National Environment Management Authority (NEMA) received an Environmental Impact Assessment (EIA) report for the proposed rehabilitation of Kisumu concrete quarry in Mamboleo using inert waste from Kachok Dumpsite on 11th December, 2017 and assigned reference No. NEMA/PR/5/2/18,573.

The report was processed in line with the provisions of the Environmental Management and Coordination Act, (EMCA) 1999 and Environmental (Impact Assessment and Audit) Regulations 2003. NEMA in its decision making took into consideration the public Recognition, institutional recognition, technical recognition, public disclosure and the EIA decision making principles.

NEMA approved the project and issued an EIA license No. NEMA/EIA/PSL/5701 (Annex I) to the project proponent, Kisumu Concrete Products Ltd. (KCPL) on 30th January, 2018. The EIA license was granted with conditions which are to be strictly adhered to by the proponent to ensure the project is implemented in an environmentally sustainable manner.

Condition No. 3.4 of the license clearly states that ‘the proponent shall incorporate in the site a HSE committee, members of the public, the local Administration and Community Leaders to ensure environmental concerns are addressed for effective Grievance Redress Mechanism (GRM) and peaceful co-existence. It is important to note that this committee was already established before the issuance of the EIA license through a public Baraza held on the 27th of November, 2017 at the Alongo Football Field where 104 community members and leaders including the Honorable Member of Parliament were in attendance as evidenced in the minutes of the meeting (Annex II).

Breach of the second aquifer of underground water:

A hydrological assessment study (Annex III) was undertaken in November, 2017. The assessment covered the geological and hydrological status of the project site and it was undertaken to allay any fears on the potential for ground water and soil contamination through disposal of the semi inert waste. The report highlighted that water rest levels in the area range between 20 to 40m indicating confined aquifer conditions and hence the semi-inert waste will not be in contact with the initial water table since the water struck levels are much deeper than the base of the quarry pit. The borehole at KCPL has the aquifer material for the top 40m being composed of rocks which are not water bearing implying less permeability.

The EIA license conditions provide that the proponent shall ensure the pit is lined appropriately with an impervious Geo-membrane PVC base, a leachate collection system and monitoring wells installed to ensure that monitoring of the ground water is done periodically. The Authority has been undertaking continuous monitoring to ensure compliance with the EIA license during implementation as evidenced in the annexed correspondence and improvement notice (Annex IV and V respectively)

**2. The dumping of waste in a private site in Kajulu has drastically dropped the value of the property in the area.**

The Committee was informed that, the abandoned open quarries in the Kajulu area posed a major security, health and environmental risks to the neighboring community. Continuous rehabilitation of quarry sites is the recommended environmental and social management practice.

Use of inert materials to rehabilitate quarry pits has been documented as a best practice across the globe. The proponent in collaboration with the County Government of Kisumu demarcated the areas at the Kachok dumpsite that contain waste which had been dumped years back and no fresh waste had been deposited in these areas. This is the section of the dumpsite that contains semi-inert waste which is currently being used for rehabilitation. This waste that is no longer reactive and decomposing poses no significant environmental and social risks.

The quarry is not a waste dumpsite but rather it is a rehabilitation site that shall be a forest park once restored. The proponent shall not use fresh waste from Kachok dumpsite to rehabilitate the quarries. The Kachok dumpsite still remains Kisumu's designated waste disposal site until a new Integrated Waste Treatment Facility is setup. The Continuous monitoring of the same by the Ministry through NEMA and the Adhoc committee is ongoing.

Comparing the status quo of abandoned open quarries at Kajulu vis-à-vis the rehabilitated ones with a forest park the value of the property in the area is expected to be enhanced instead of dropping.

**3. The landfill site is directly in the flight plan leading to Kisumu Airport**

The Committee was informed that, the EIA process took into consideration the position of Kenya Airports Authority (KAA) as a relevant lead agency in the aviation sector. An aviation safety and risk assessment of the Kisumu International Airport (KIA) was done before commencement and during implementation of the project. The assessment by KAA dated 6th June, 2018 Ref. No. KAA/9/10 Vol. I TY (12) found out that the project did not result to bird risk to aircraft operating at KIA since it was using inert waste material that was not attracting birds (Annex VI).



**4. Despite various requests, no Environmental analysis has been shared with leaders.**

**Response**

The EIA process is participatory and it has involved all interested stakeholders as evidenced in Annex II, furthermore, the area leaders are represented in the Adhoc committee that has been monitoring implementation of the project. The EIA document is a public document available for perusal at the NEMA offices.

NEMA wishes to share water quality analysis of neighboring bore holes as per annex VII.

**5. As the Hon. Member of Parliament of Kisumu East, I have not been engaged or advised in any way. Other leaders of Kisumu East are likewise in the dark.**

The Committee was informed that, the Member of Parliament of Kisumu East participated in the EIA public Baraza held on the 27th of November, 2017 at the Alongo Football ground. (Annex II)

The Hon. Member of Parliament was engaged during a site visit by the Chief Administrative Secretary Ministry of Environment and Forestry in Kisumu on 1st July 2019 regarding several environmental issues in the area. (Annex VIII).

**6. All my request to be informed of the plans and to be engaged in the process have been ignored, instead the Governor's team have engaged in negative attacks on my person.**

The Committee was informed that, the Hon. Member of Parliament has been engaged throughout the EIA process.

**7. The County has irregularly paid approximately KShs 95 million irregularly to a group of businessmen who are not specialist in the matter of Integrated Garbage Management.**

The Committee was informed that, refuse removal, refuse dumps and solid waste disposal is a devolved function for the County Governments as stipulated in the Fourth Schedule of the Constitution of Kenya, 2010. The above matter is solely the mandate of County Government of Kisumu; however, the Ministry offers policy guidelines and standards.

To this end, The National Solid Waste Management Strategy, 2015 and the Best Practice Guidelines on Rehabilitation of disused/abandoned Quarries using Semi-Inert Wastes have been published to guide County Governments towards sound waste management and disposal.

**8. No tender was floated but a letter of award of tender for transportation of rubbish was given to Naya & Co. which quotes the amount of 18,950/- + VAT per trip with**

**the total amount not to exceed KShs 100 million. Yet the distance is less than 3 Kilometers and the going rate for transport is only KShs 300/- to KShs 5000/- per 20ton Lorry. The rate of KShs 18,950/- + VAT is grossly overstated.**

The Committee was informed that, this is a matter of procurement and finance management of the County Government of Kisumu.

**9. We have raised other questions in respect of what happens to the daily garbage output of Kisumu still apparently this landfill was to cover only some of the bio degradable waste from Kachok dumpsite.**

The Committee was informed that, the County Government in collaboration with National Government Agencies is in the process of acquiring a suitable site for new Integrated Waste Treatment Facility. The Ministry through NEMA shall supervise and coordinate the set-up of the facility through the EIA process and environmental audits to ensure sustainable waste management in the City.

**10. We have raised these concerns with the Director General of NEMA and also asked the Cabinet Secretary of Environment to investigate the issue but no action has been taken.**

The Committee was informed that, the Ministry through NEMA responded to the concerns raised by the Hon. MP through a letter Ref. No. NEMA/PR/5/2/18,573 dated 6th March, 2018. Further, the Hon. MP was engaged during a site visit in the area by the Chief Administrative Secretary Ministry of Environment and Forestry in Kisumu on 1st July 2019 regarding this matter (Annex IX).

The Authority issued an Improvement Notice to the proponent on 18th July, 2019 (Annex V).

**- Kenya Civil Aviation Authority (KCAA)**

Kenya Civil Aviation Authority is mandated to conduct safety oversight of Aerodromes and structures within and around aerodromes. This includes but not limited to Aerodrome facilities and operations, aerial masts, buildings, power-lines and wind turbines, and other land uses among other functions not listed herein.

Following the petition to the Senate committee on Land, Environment and Natural Resources by the Hon. Shakeel A. Shabir Ahmed, MP. for Kisumu East Constituency to investigate environmental degradation and irregular dumping of landfill in Kajulu, Kisumu East dated 28 August 2018 on the above matter, the Senate Committee on Land, Environment and Natural Resources through their letter ref: SEN/DCS/LENR/2/2020/ (33) dated 1 July 2020 invited KCAA to a meeting to discuss the matter which was held on Tuesday, 7th July, 2020

Informed by the resolutions of the meeting, a team of Inspectors from Kenya Civil Aviation Authority accompanied by Kenya Airports Authority's Safety Officer paid



courtesy call to the CEC Member in Charge of Water, Environment, Irrigation and Natural resources-Kisumu County on 10 July 2020 to establish the procedures established for Waste Management in the County.

#### **Remarks by Representative from Kisumu County Government (CES)**

The CES welcomed the team from KCAA and KAA for the fact finding mission to establish the status of Kisumu County Dumpsite, citing that the situation as it is on ground in NOT reflective of the sentiments raised by the Member of Parliament for Kisumu East Constituency Hon. Shakeel A. Shabir Ahmed in his petition to the Senate.

He informed the team that the County Government has started de-commissioning Kachok Dumpsite and has converted it to a recreational park/garden (Prof. Anyang Nyongo Tich Tire Botanical Garden). The decomposed waste at Kachok has been relocated and buried at Kajulu to refill the quarry and rehabilitate the landfill.

The County Government reported to the team that they were moving from having a dumpsite to having a waste management plant in the county in line with the Government policy on environmental protection. In this respect, the County Government of Kisumu has procured a piece of land of 85 acres at Kases, about 17 KM from the Kisumu City, where 25 acres is earmarked for the waste management. He also indicated that the various stakeholders, including the local community has been involved in the process and the infrastructure development for the site in underway.

#### **KCAA Remarks**

The team was briefed on the KCAA mandate with emphasis to protect the safety of flight operation and air navigation in the country. The team were also inform and encouraged in partnering with Authority on matters environment, physical planning, and approval of structures and installation of masts in the vicinity of airports are stipulated in the Aerodromes Regulations.

#### **KAA Remarks**

The KAA being the Airport Operator is required to maintain a good infrastructure to facilitate the movement of air traffic and the flying public. Thus, the engagement with its stakeholders including the County Government is key in the growth of the aviation industry.

#### **Site Visits**

The team conducted site visits to Kachok dumpsite, Kajulu landfill and the proposed Waste Management Plant site at Kasese for fact-finding after meeting the County Government of Kisumu officials.

#### **1. Kachok Dumpsite ( Prof. Anyang Nyongo Tich Tire Botanical Garden)**

Kachok Dumpsite is located approximately 5 km South East of Kisumu International Airport Aerodrome Reference Point. The site coordinates in WGS-84 are South 00°6'19.33" East 34°46'10.94". Kisumu County Government manages the dumpsite.

The following were the observations:-

- i). The dumpsite has been reclaimed to a large extent and converted into a garden namely;- Prof. Anyang Nyong'o Botanical Garden
- ii). Fresh solid waste occupies approximately one-fifth of the area with the rest reclaimed.
- iii). The solid waste had built up to approximately two (2) metres at the time of inspection.
- iv). A number of birds were observed flying near the dumpsite

## **2. Kajulu Landfill.**

Kajulu landfill is located approximately 8.5 km North East of Kisumu International Airport Aerodrome Reference Point. Kisumu Concrete Products, an affiliate of Bamburi Cement Company operates the site. The site coordinates in WGS-84 are South 00° 03'14.90" East 34°47'57.10".

The following observations resulted from the inspection carried out.

- i). There are deep excavations on the said sites because of quarrying activities.
- ii). Solid wastes generated by Kisumu City and environs had been used to fill up part of deep excavations. However, the solid waste had been compacted and covered with murrum/quarry chips after treatment. Hence, the landfill does not act as bird attractants, and thus having minimal risk to Aircraft Operations.
- iii). At the time of inspection, there was no solid waste at the said site.
- iv). The County Government of Kisumu indicated that they do not intend to dump waste at Kajulu as they have identify a site in Kasese where they will have a waste management Plant.

## **3. Proposed Waste Management Plant at Kasese**

The proposed site is located approximately 16.7 km East of Kisumu International Airport Aerodrome Reference Point. The approximate site coordinates in WGS-84 are South 00° 06'10.62" East 34°52'41.00"

The CEC member in Charge of Water, Environment, Irrigation and Natural resources at the County Government of Kisumu reported that plans are underway for relocation of Kachok dumpsite to the Kasese necessitating a Site visit.

The following were the findings:-

- i). Sugar cane plantation occupies the proposed site, which is approximately 85 acres in size.
- ii). Out of the 85 acres, 25 acres is earmarked for waste management.
- iii). The road network to the site can only support dry weather movements. However, a contractor was on site during the time of inspection.



- iv). The county Government of Kisumu had tendered for the Stabilization of Waste plant (Daily Nation, Thursday May 21, 2020)

### **Conclusions and Recommendations**

In view of the above findings, the following are the conclusions and recommendations

- i. There is need for the County Government of Kisumu to fast-track closure of Kachok dumpsite to mitigate aviation risks as it falls within 13 km radius from Kisumu International Airport Aerodrome reference point.
- ii. The Kajulu landfill site has since been decommissioned and does not act as bird attractants and therefore does not present any risk to aircraft operations.
- iii. There is need to fast track the necessary risk assessment with regard to the proposed Waste Management Site as Kasese ensuring involvement of all pertinent stakeholders as required by law.
- iv. Although the site lies beyond the 13 km radius, KCAA recommends a site visit to the proposed site by all relevant stakeholders to ensure it meets all the requirement of the law. This should include community participation and an environmental impact assessment.

**The Committee resolved to conduct a site visit to Kisumu County together with the National Environment Management Authority and the Kenya Civil Aviation Authority**

**MINUTE SEN/SCLENR/141/2020: ANY OTHER BUSINESS;**

There was no any other business discussed.

**MINUTE SEN/SCLENR/142/2020: DATE OF NEXT MEETING;**

The meeting was adjourned at 4.00 pm and the next meeting was to be called on notice.

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

Date: 4/08/2020

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL  
RESOURCES

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

**MEMBERS**

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

**PRESENT**

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

**ABSENT WITH APOLOGY**

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

- Chairperson
- Member
- Member

**IN ATTENDANCE**

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

**SECRETARIAT**

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

**MINUTE SEN/SCLENR/297/2020: PRELIMINARIES**

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

**MINUTE SEN/SCLENR/298/2020: ADOPTION OF AGENDA**

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

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



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

**MINUTE SEN/SCLENR/299/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

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

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

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

The Committee adopted its report with the following recommendations;

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

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

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

The Committee adopted its report with the following recommendations;

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

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



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

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

### **Recommendations**

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

#### **Public participation**

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

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

#### **Kajulu landfill site**

In respect of this issue, while the Petitioner did not present any evidence to demonstrate that the Kajulu site poses a threat to the environment or to flights over the area, the Committee recommends regular monitoring of the site by the National Environment Management Authority and the Kenya Civil Aviation Authority and requests that any violations or threats to the environment that may be identified by the said Authorities be brought to the urgent attention of the Committee.

The Committee particularly notes the National Environment Management Authority's undertaking to continually supervise the Kajulu site in respect of its underground water and therefore recommends that the Petitioner and other local leaders be notified of any concern or breach that may be observed in the future.

Due to the COVID-19 situation, the Committee was not able to visit the Kajulu landfill and the Kachok Dumping Site during the inquiry, but the Committee undertakes to do so when the Committee next travels to Kisumu County.

#### **The Kachok Dumping Site**

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

#### **Allegations of impropriety in award of the Kajulu landfill tender**

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



### **Waste Management in the Counties**

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

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

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

The Committee adopted its report with the following recommendations;

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

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

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

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

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

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

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

The Committee adopted its report with the following recommendations;

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

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

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

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

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

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

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

**The Committee recommends that the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works surveys infrastructure projects undertaken by the National Executive and submit to the Committee a report on the measures it has taken to dispose of debris, excavated**



and other remains from the projects within six months of the tabling of this Report, and in any case not later than 30<sup>th</sup> June, 2021.

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

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

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

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

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

**MINUTE SEN/SCLNR/301/2020: ANY OTHER BUSINESS;**

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

- i). Request for a Breakfast Dialogue with the Kenya Land Alliance(KLA) on land matters under the Land Sector and registration of Communally held Lands on Wednesday, 18<sup>th</sup> November, 2020 7.00am – 10.00am;
- ii). Working Retreat on the Consideration of the Intended Nationally Determined Contribution (INDC) to the United Nations Framework Convention on Climate Change, UNFCCC hosted by the Ministry of Environment and Forestry in Naivasha, on 20<sup>th</sup> and 21<sup>st</sup> November, 2020; and
- iii). Stakeholder consultations on the Water Sector Regulations and National Water Policy hosted by the Ministry of Water, Sanitation and Irrigation on 27<sup>th</sup> and 28<sup>th</sup> November, 2020.

**MINUTE SEN/SCLENR/302/2020: DATE OF NEXT MEETING;**

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

Signed:.....



Date: **19 /11/2020**.....

**SEN. PHILIP MPAAYEI, MP**

**VICE CHAIRPERSON**

**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL  
RESOURCES**



**ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS**

*(Attached separately)*