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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY


THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

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REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO.31 OF 2023 REGARDING A REVIEW OF
BOUNDARIES OF THE TANA DELTA IRRIGATION PROJECT BY HON. ALI WARIO, MP

NOVEMBER 2024

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 NOV 2024	
DAY: Wednesday	
TABLED BY:	Hon. Nimrod Mbai (chairperson)
CLERK-AT THE-TABLE:	Lomale

Directorate of Legislative and Procedural Services
Clerk's Chambers
Parliament Buildings
NAIROBI

TABLE OF CONTENTS

CHAIRPERSON'S FORWARD	2
PART ONE	3
PREFACE	3
1.1 Establishment and Mandate of the Committee.....	3
1.2 Committee Membership	4
1.3 Committee Secretariat.....	5
PART TWO	6
2. BACKGROUND OF THE PETITION.....	6
2.1. Introduction	6
2.2. Prayers	6
PART THREE	8
3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION	8
3.1. Petitioner	8
3.2. County Government of Tana River	9
3.2.1. Background	9
3.2.2. Concerns by the County Government.....	9
3.2.3. Proposals by the County Government	10
3.3. Tana and Athi Rivers Development Authority	11
3.4. Ministry of EAC, Asals and Regional Development	13
PART FOUR	16
4. COMMITTEE OBSERVATIONS	16
PART FIVE.....	17
5. ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION	17
PART SIX	21
6. COMMITTEE RECOMMENDATIONS	21
ANNEXURES	22

CHAIRPERSON'S FORWARD

On behalf of the Public Petitions Committee and pursuant to provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the consideration of Public Petition No.31 Of 2023 regarding Review of Boundaries of the Tana Delta Irrigation Project. The Petition was presented on Tuesday, 13th June 2023 by the Hon. Ali Wario, MP on behalf of the residents of Garsen Constituency in accordance with Standing Order 225(2)(a).

The Petitioners prayed that the National Assembly, through the Public Petitions Committee engages the Tana and Athi Rivers Development Authority (TARDA) to review the boundaries of the land managed by the Tana Delta Irrigation Project and ensure the residents are comprehensively involved in the process.

In considering the Petition, the Committee engaged the Petitioner, the County Government of Tana River, and Ministry of EAC and ASAL. Upon considering the petition, the Committee noted the public and national interest of the project and observed that such a review will be economically unsustainable as TARDA has invested Kshs 6 billion on the project.

In response to the prayers sought by the Petitioners, the Committee recommends that the National Land Commission undertakes a survey of any community land within the Tana Delta and if there were any historical injustices occasioned to the community upon the issuance of allotment in 1987 and grant of LR No. 152049 to TARDA. Further, TARDA undertakes an extensive periodic and continuous public participation exercise on the project design and implementation to sensitize the community on the phases of the project and its impact to the community and the county.

The Committee expresses appreciation to the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support during the discharge of its duties. The Chairperson extends gratitude to the Committee Members for their devotion and commitment to duty throughout the consideration of the petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.


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

Date.....20/11/2024.....

PART ONE

PREFACE

1.1 Establishment and Mandate of the Committee

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

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

1.2 Committee Membership

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

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.

Kitui East Constituency

United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.

Turbo Constituency

United Democratic Alliance (UDA)

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

Mavoko Constituency

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

Hon. Edith Vethi Nyenze, M.P.

Kitui West Constituency

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

Hon. Ernest Kivai Ogesi Kagesi, M.P.

Vihiga Constituency

Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.

Kuria East Constituency

United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.

Baringo Central Constituency

United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.

Awendo Constituency

Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.

Mbeere South Constituency

Independent

Hon. Bidu Mohamed Tubi, M.P.

Isiolo South

Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.

Machakos Town Constituency

Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.

Taveta Constituency

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

Hon. Peter Mbogho Shake, M.P.

Mwatate Constituency

Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.

Sabatia Constituency

United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.

Makueni Constituency

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

1.3 Committee Secretariat

The Public Petitions Committee is facilitated by the following secretariat:

Lead Clerk
Mr. Ahmed Kadhi
Principal Clerk Assistant II

Ms. Anne Shibuko
First Clerk Assistant

Ms. Miriam Mudo
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Ms. Patricia Gichane
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Ms. Roselyne Njuki
Senior Serjeant-at-Arms

Mr. Paul Shana
Serjeant-at-Arms

Mr. Calvin Karungo
Media Relations Officer III

Mr. Peter Mutethia
Audio Officer

PART TWO

2. BACKGROUND OF THE PETITION

2.1. Introduction

1. Public Petition No. 31 of 2023 regarding a Review of Boundaries of the Tana Delta was presented on 13th June 2023 by Hon. Ali Wario, MP on behalf of the residents of Garsen Constituency.
2. The Petitioner averred that the Tana Delta Irrigation Project was initiated by Tana and Athi Rivers Development Authority (TARDA) to enhance quality of life through sustainable utilization, environmental protection, food security and revenue generation in the Lower Tana River Basin. The project was estimated to cover eight locations in Garsen Constituency namely, Mwina, Salama, Galili, Kipao, Wachuoda, Konemamsa, Handaraku, and Didewarede.
3. The Hon. Wario stated that the project as was designed would lead to great displacement of residents of the said locations, destabilize their livelihoods economically, socially and politically and further interfere with the environmental ecosystems composed of protected forest areas that are ecological habitat for marine and terrestrial wildlife.
4. The Petitioner indicated that part of the area covered by the project was the Tana River Delta which was Kenya's Sixth Ramsar Site and the only Ramsar wetland outside the Rift as declared by the United Nations Educational, Scientific and Cultural Organization (UNESCO).
5. Further, the Petitioner averred that efforts by the residents to engage TARDA to review the boundaries before implementation of the project were unsuccessful. That the alleged reluctance by TARDA to conduct public participation on the project violated the national values and principles of governance stipulated in Article 10 of the Constitution.

2.2. Prayers

6. The Petitioner prayed that the National Assembly through the Public Petitions Committee—
 - (i) Engages the Tana and Athi Rivers Development Authority (TARDA) for review the boundaries of land managed by the Tana Delta Irrigation Project in order to, among other interventions, ensure that the Tana Delta Irrigation Project does not extend beyond the southern parts of Garsen-Lamu Road and should instead

be extended eastwards towards the border of Boni Forest to create a security buffer zone.

- (ii) Facilitates clear demarcation of boundaries of TARDA land from the general community land.
- (iii) Compels TARDA to comprehensively engage residents of Tana River in all aspects of the project's design and implementation.
- (iv) Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

PART THREE

3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1. Petitioner

On Thursday, 3rd August 2023, Member for Garsen Constituency, the Hon. Ali Wario, MP, on behalf of the Petitioners appeared before the Committee and submitted as follows—

7. The Tana Delta Irrigation Project, initiated by the Tana and Athi Rivers Development Authority (TARDA), aimed to improve the quality of life in the Lower Tana River Basin. The project focused on sustainable utilization, environmental protection, food security, and revenue generation.
8. The project encompassed the Tana River Delta, designated as Kenya's Sixth Ramsar Site. It was the only Ramsar wetland outside the Rift, as declared by the United Nations Educational, Scientific and Cultural Organization (UNESCO) which was a migratory route for birds.
9. That a sizeable population had settled on the land by 1953 as evidenced by established amenities such as Kipao Primary School in the 1950s. The area had human settlements with the communities organized into a clan system and hosted established public amenities such as schools and hospitals.
10. The only compensation issued was to the residents of Gamba village whose land was used to set up offices of the irrigation project.
11. While the Petitioners did not oppose the project, they expressed concerns about its impact on the wetland extending southwards. The area serves as a crucial reservoir for grazing land during the dry season, despite having no human settlements and being a flood zone.
12. On the boundaries of the land and existence of a clear demarcation, the Petitioner clarified that the boundary was not clear because demarcation was done long time ago.
13. On the court case regarding the land, the Petitioner submitted that the matter had been considered by the court and ruled that the land be reverted to the community and TARDA was directed to cede farms to local community.

3.2. County Government of Tana River

On Wednesday, 25th October, 2023 the County Executive Committee Member (CECM) in charge of Lands and Physical Planning, Agriculture & Cooperative Development, Livestock, Fisheries & Veterinary Services, Ms. Mwanajuma Hiribae appeared before the Committee together with a Community Representative, Mr. Joel Ruhu and submitted as follows—

3.2.1. Background

14. The Community Representative Mr. Joel Ruhu submitted that the community was in support of the Petition. TARDA engaged the locals to acquire land for rice farming. Upon research on best rice seeds in 1986, TARDA acquired over 35,000 acres and built a protective band in form of a dyke which later became the boundary. However, the residents were left without farming lands despite the need hence the complaint for recognition as original owners of the land.
15. The Tana Delta Irrigation Scheme was completed in 1997 to develop irrigated fields and make effective use of the fertile soil and water resources of the delta area on the lower reaches of Tana River, an area highly suitable for paddy rice cultivation. The idea was to meet the demand for rice and contribute to food sufficiency thus benefit communities by improving their livelihoods and ensuring their economic wellbeing was guaranteed.
16. However, that has not been the case over the many years the project was in existence. Many communities viewed the project as a curse, leading to numerous cases of resource-based conflicts, human displacements, irreversible denial of livelihood options, underdevelopment among other violations.
17. Therefore, the County Government on behalf of its people filed Petition No. 2 of 2015 in the Environment and Land Court at Malindi to reverse the land ownership back to its people in 2015.
18. However, the County Government was not opposed to any development in Tana River County and had deliberately developed an investment policy that encouraged and provided adequate and conducive environment for both local and foreign investors. To protect the interests of the people, the County Government was in support for the petition.

3.2.2. Concerns by the County Government

19. *Public Participation:* As key stakeholders, the Tana Delta residents' concerns were not adequately sought in the decision regarding the allocation of their communal and ancestral land. Therefore, there was need for an effective public participation involving all affected communities and stakeholders even as the project starts.

The County Government should also be consulted as the primary custodians of land in Tana to ensure that any use of the land does not infringe on the rights and development aspirations of the local communities.

20. *Benefit of the project on the communities:* Such largescale developments across the country could contribute to the socio-economic development of communities but many of these including the Galana Kulalu project which was predominantly in Tana River County did not contribute anything significant to the development of the county and local communities.
21. *Rationale of owning the entire land:* TARDA owned 25,875 hectares of land in Tana River County yet since its inception in 1997, it managed to use only 4,700 acres at best even with the huge funding it received from Government and other development partners. Therefore, it had only used about 39 per cent of its land, yet most of the communities have no farming spaces.
22. *Water availability concerns:* The region experienced reduced water flows in River Tana leading to the inability of the canals to have any water flow leading to the death of the project. Further, the challenge of sea water intrusion continued to affect crop farming, livestock production and fishing activities.
23. *Protection of Tana Deltaic Ecosystem:* The Delta was a key biodiversity hotspot, an important bird area and a UNESCO designated Ramsar Site. Tana Delta was a critical dry season grazing area for majority of the pastoralists within and outside Tana River County. Effectively, the ecosystem was pivotal in reducing conflicts between pastoralists and farmers.
24. *Consideration for Tana River County Greenheart Initiative:* The initiative visualised a Green Heartland covering the entire Delta. The model would allow growers to practice environmentally friendly means to boost production of fish, livestock, and other produces. Therefore, the project by TARDA needed to consider such kind of projects.

3.2.3. Proposals by the County Government

25. The project boundary be reviewed to ensure no communities are displaced and that critical ecosystems especially the core Delta which is a Ramsar Site, a key biodiversity area and a dry season grazing refuge for pastoralists be excluded from the TARDA land.
26. Effective public participation, including consultations with the County Government, elected and opinion leaders and other stakeholders be conducted to jointly agree on the new boundaries.

27. TARDA and any developer should consider the role by the communities on production as opposed to just the large-scale privately-owned enterprise.
28. The boundaries be restricted and altered towards the insecure Boni Forest to serve as a buffer zone and for security reasons where practical.
29. On the state of ownership of the land before TARDA was allocated the land and how TARDA acquired the land, the community representative stated that the land was registered under the defunct County Council on behalf of the people as a trust land while there was a part owned by the national government.

3.3. Tana and Athi Rivers Development Authority

The Managing Director, TARDA deposited a written submissions vide a letter Ref. TARDA/CONF/1b Vol. XXIV (48) and dated 9th October 2023 to the Committee as highlighted below—

Review of the boundaries of the land managed by TDIP

30. TARDA opposed the proposed review of boundaries for the Tana Delta Irrigation Project (TDIP) citing that the review would have detrimental consequences for the people, particularly if the boundaries were revised to exclude the southern part of the Garsen-Lamu road for the following reasons:
 - (i) The project was in a strategic position allowing access to water from the Tana River vital for its sustainability.
 - (ii) Extensive feasibility studies conducted in the area confirmed that the project was suitable for irrigating various crops like rice and sugar.
 - (iii) The government had made significant investments amounting to billions of Kenyan Shillings as the first phase was completed in October 1997 under the funding by the Overseas Economic Corporation Fund of Japan (OECF) and a local component, with a total cost of six billion Kenya shilling.
 - (iv) The project was a Vision 2030 flagship, and a medium-term plan IV aimed at improving irrigation and creating employment opportunities and contributing to food security.
 - (v) The 46 km delivery channel from Kitere Intake Bell Mouth to Sailoni Rubber Dam serves around 17 villages, supporting a population of approximately 35,000 people covering 300 acres along the channel by provision of water for domestic, livestock and farming purposes thus enhancing their livelihoods.
31. TARDA had undertaken conservation activities to mitigate potential adverse effects on the environment within TDIP. Further, the 1982 Haskoning feasibility

study pointed out that the project had negligible adverse effects on the environment ecosystem composed of protected forest area.

Demarcation of boundaries of TARDA land

32. The TDIP land area boundaries were demarcated and were widely recognised and TARDA lawfully granted a title deed LR No. 28026 measuring 28,875 Ha.
33. The project covered an area of 77,500 acres with the rice scheme taking up 4,000 acres expandable up to 30,000 acres. The proposed plan aimed to develop about 12,000 hectares of land sourcing irrigation from the river water.
34. The land had four common features including being an expansive area teeming with wildlife, an ideal refuge for banditry as it was secluded by nature, prone to heavy flooding. Only ten per cent of the area was occupied by the locals including Kulesa, Wema and Ngao communities.
35. The Authority was given mandate to utilise the land for purposes of development by the Commissioner of Lands on 3rd February 1987. Further upon meeting the necessary requirements, TARDA was issued with the grant No. IR 152049 LR No. 28026 by the Ministry of Lands.
36. That at no time did the TDIP displace residents of the said locations, destabilizing their livelihoods economically, socially or politically as alleged by the Petitioner.
37. The 46 km Water Delivery Channel from Kitere Intake to Sailoni Rubber Dam is a vital resource that serves 17 villages along its stretch, providing water for domestic, livestock and farming purposes. This channel is a collaborative effort between TARDA and the local communities. The population of these 17 villages, including *Kitere, Mnazini, Bubesa, Vinyalu, Mavueni, Mwina, Mikameni, Nguumo, Sailoni, Vumbue, Kulesa, Tawakal, Wema, Hewani, Bandi, Ndumi, and Danisa*, stands at approximately 35,000 inhabitants, consisting of both farmers and pastoralists.
38. None of the locations mentioned in the Petition were within the titled area of TDIP.

Community engagement

39. TARDA had engaged the community since inception of the TDIP with extensive consultations and public discussions in carrying out its activities. The Authority was continuously conducting community engagements.
40. On 14th to 17th September 2023, the Authority embarked on a three-day intensive community engagement program in the heart of Tana Delta for dialogue

collaboration and progress with communities on issues of water resource management for sustainable development.

3.4. Ministry of EAC, Asals and Regional Development

On Wednesday, 25th October 2023, the Cabinet Secretary, Ministry of EAC, ASALs and Regional Development Hon. Penninah Malonza, OGW accompanied by the Managing Director, TARDA appeared before the Committee and submitted as follows—

Background

41. The Petitioner claimed that the Tana Delta Irrigation Project (TDIP) would lead to great displacement of residents of the said locations, destabilize their livelihoods economically, socially, and politically and further interfere with environmental ecosystem composed of protected forest road.
42. The strategic position of the project to the River Tana allowed access to water hence vital for the project's sustainability.
43. Extensive feasibility studies were conducted in the area, confirming that TDIP was suitable for irrigating various crops like rice and sugar.
44. The Government made significant investments in the project completing the first phase in October 1997 supported by the Overseas Economic Corporation Fund of Japan (OECF) with a total cost of Kshs6 billion.
45. The TDIP was a Vision 2030 flagship project, with the goal of increasing rice production and achieving self-sufficiency. Additionally, it was part of the Medium-Term Plan (MTP) IV, aiming to develop 12,000 hectares of land for rice irrigation and produce 84,000 metric tons of milled rice annually. The project further aimed at creating employment opportunities to contribute to the Bottom-Up Economic Transformation Agenda (BETA) on food security.
46. The 46 kilometres delivery channel from Kitere Intake Bell Mouth to Sailoni Rubber Dam served around 17 Villages, supporting a population of approximately 35,000 living along the Channel covering about 300 acres. The Channel provided water for domestic use and in areas that were an ecological habitat, for marine terrestrial wildlife.

Response to the Petition

47. TARDA was opposed the proposed review of boundaries for the Tana Delta Irrigation Project (TDIP) as the review would have detrimental consequences for the people, particularly if the boundaries were revised to exclude the southern