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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

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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 Modo
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

part of the Garsen-Lamu as the livestock and farming purposes benefited the community by enhancing their livelihoods.

48. While TARDA has undertaken conservation activities to mitigate potential adverse effects on the environment within TDIP, the 1982 Haskoning feasibility study pointed out that the Project had negligible adverse effects on the environmental ecosystem composed of protected forest area.
49. The TDIP land area boundaries were demarcated and were widely recognized. TARDA was lawfully granted a title deed LR No. 28026 measuring 28,875 Ha by the Government for the said area.
50. TARDA had engaged the community since inception of the TDIP. There were extensive consultations and public discussions in carrying out various activities within the project as well as continuous community engagements.
51. From the 14th to 17th September 2023, TARDA undertook a comprehensive three-day program in the Tana Delta region aimed to foster community engagement, promote dialogue, and facilitate progress in water resource management for sustainable development. The initiative was a testament to TARDA's commitment to collaborating with the local communities in the heart of Tana Delta to ensure the effective and sustainable management of water resources.
52. The review of the boundaries was not within TARDA's mandate but NLC. Further, the project was a flagship project for Vision 2030 meant to realize benefits for both the local community and the entire country.
53. Public private partnership was being considered for the community to be involved in the project.
54. As a national food security project, the project was started in 1997 but stalled due to the impact of the 1998 *El-nino* rains. The project was revived in 2009 and redesigned with four water intakes throughout the 31,000 acres both in Tana and Lamu.
55. Contrary to the submissions by the County Government of Tana River that adequate public participation was not done for the projects, the county government was not opposed to community engagement. The county government was engaged regarding revival of the project with physical visits to the county seeking engagement of the county government as well as ongoing stakeholder engagement.
56. The project was undergoing feasibility studies and various trials, and the results were pointing towards numerous benefits. Further the project was different from many other such projects across the country. The topography was most suitable

for the project for the rice farming and the benefits were for all citizens including Tana River residents.

57. The community begun enjoying the benefits of the project with over 200 locals accessing gainful employment on the farm. Further, medical facilities, schools, and other amenities were being constructed for the locals. The local farmers were benefiting from subsidies on seeds, pesticides, and other farm inputs to ensure they maximally benefit.
58. There was a cordial relationship between TARDA and local community. Further, previous public participation meetings were conducted since 1997 with the last one conducted between 14th September, 2023 and 17th October, 2023. That in the engagements, the locals had not objected to the activities, irrigation, and rice production in the area.
59. There were no plans to displace the community by the government and the Ministry was willing to engage elected leaders from the region together with other stakeholders for them to understand the project better as the project would immensely improve the food security by boosting rice farming in the area which would consequently benefit the entire country.
60. The Ministry was following up on the presidential directive made on 7th July, 2023 that the areas be resurveyed and demarcated to begin its implementation. The presidential directive was that the community within the boundaries should not be disrupted. TARDA would engage the community to demarcate the land. The Community Representative indicated that implementation of the directive was welcome if it was conducted in a structured manner.
61. The community had petitioned against the ownership of the land by TARDA and the court ruled that the actions of TARDA were in contravention of public participation. However, TARDA appealed the case, and the Court of Appeal set aside the ruling delivered on 14th September, 2016 and dismissed the petition.

PART FOUR

4. COMMITTEE OBSERVATIONS

62. Following the submissions by the Petitioners, County Government, Community Representative, TARDA, and the Ministry of EAC, ASALs and Regional Development, the Committee made the following observations—

- (i) The Tana Delta Irrigation Project initiated by TARDA had covered an area of about 77,500 acres with the Authority undertaking a rice scheme project in about 4,000 acres with a possibility of extension by 30,000 acres. The proposed project plan aims to develop about 12,000 hectares of land
- (ii) The southern parts of the TDIP land referred by the Petitioner is occupied by local communities while the eastward side towards Boni Forest is expansive and secluded by nature making it a potential security threat.
- (iii) On 3rd February 1987 the Commissioner of Lands gave authority to TARDA to utilise the land for purposes of development. TARDA was later lawfully issued with the grant No. IR 152049 LR No. 28026 by the Ministry of Land on 20th November 2013.
- (iv) The public participation and community engagement undertaken by TARDA during the implementation of TDIP was not extensive.

PART FIVE

5. ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION

Upon hearing from the Petitioners and other witnesses, the Committee makes determination on prayers sought in the Petition as follows—

Prayer 1: **Engage 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.**

63. The issue for determination in prayer one and two requires the transfer of public land from national government to county government in trust for the residents of Tana river. Therefore, the Committee notes that—

- (i) The prayers seek the allocation of public land vested in the national government to the county government of Tana River and its residents.
- (ii) Public land may be converted to community land or private land in accordance with the provisions of section 12 of the Land Act. The National Land Commission has the mandate to allocate public land.
- (iii) The Land Act section 12(2) outlines the nature of public land that cannot be allocated. This includes public land that falls within wetlands, environmentally sensitive areas, along watersheds, rivers, public land reserved for strategic public uses.
- (iv) With the consent of the national government, the National Land Commission that administers all public land, can transfer the public land from TARDA to the County Government as provided for in the National Land Commission Act section 5(2)(a).
- (v) In this case TARDA is opposed to such transfer, as the land under TDIP is a Vision 2030 flagship project set out for 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.
- (vi) In *Malindi ELC Constitutional Petition No. 2 of 2015*, the County Government of Tana River instituted suit against TARDA and the National Land Commission seeking revocation of TARDA's title to LR No. 28026, IR No. 152049. The judgment was delivered by Angote J, on 14 September 2016, which led to the revocation of this title.
- (vii) However, in the appeal *Tana and Athi Development Authority v National Land Commission & another [2023] KECA 1207(KLR)* The Court of Appeal

set aside the High Court Judgement and dismissed the petition for the County of Tana River. The appellate court held that the County of Tana River failed to prove their allegation that there was no public participation on the land when it was acquired by TARDA. Further on the issue of whether the whole of LR No 28026 was trust land, the appellate court relied on the case of Abdalla Rhova Hibirae & Others v AG & 6 Others High Court Petition No 14 of 2010, in which it was acknowledged that only 350 ha of the land within LR No 28026 was part of trust land. The Court of appeal therefore held that the learned trial Judge erred in nullifying the allocation of the whole land when there was no evidence that it was all trust land. Petition No 14 of 2010 gave reference to a letter by the County Council of Tana River dated 3rd February, 1995.

- (viii) The appellate court also held that the trial court ought to have considered the public interest or national interest in determining disputes before them where there is a conflict between public interest and private interest by balancing the two. Therefore, based on public interest it could not uphold the judgement to revoke the title to TARDA.
- (ix) The matter has been litigated and the land in question was acquired in accordance with the law. Any proposed review of the boundaries by NLC will require the consent of TARDA.
- (x) TARDA has opposed this petition citing the large investment by Government and International donors in the project of about six billion and that it would be unsustainable to shift the project east ward as proposed by the petitioner.

Prayer 2: Facilitates clear demarcation of boundaries of TARDA land from the general community land.

- (i) On the issue of the review of boundaries to shift the project to the eastern side towards the border of the Boni Forest as opposed to the southern side of the Garsen-Lamu Road is not economically feasible.
- (ii) Therefore, the prayer for review of boundaries in the petition are not tenable as they will affect national and public interest of the TDIP project in enhancing food security and creation of employment.
- (iii) On the issue of demarcation of TARDA land from community land, the petition has not specified which area within TARDA land is claimed as community land.
- (iv) Further from the court case it was established that only 350 Ha was identified as community land and was duly compensated by TARDA.
- (v) However, noting that this grant was issued in 2013 the NLC has the mandate to investigate any historical injustice occasioned on the

community and propose appropriate redress as at the time the grant was issued in accordance with the NLC Act section 5 (1)(e).

Prayer 3: Compel TARDA to comprehensively engage residents of Tana River in all aspects of the project's design and implementation.

64. The Committee notes that—

- (i) The third prayer seeks public participation or community engagement in the implementation of the TDIP project by TARDA.
- (ii) Public participation is a process of according to citizens the opportunity to participate in public policy decisions that may affect them. It is considered an important principle in democratic governance and decision making.
- (iii) Public participation is enshrined in the Constitution under Article 10 (2)(a) that provides for national values and principles of governance that binds all state organs, state and public officers while making and implementing public policy decisions.
- (iv) TARDA claims to be undertaking in public participation, citing the community engagement forum held last year between the 14th to 17th September 2023. In which it undertook a comprehensive program in the Tana Delta region to promote dialogue and progress in water resource management for sustainable development.
- (v) In *Abdalla Rhova Hiribae & 3 others v Attorney General & 7 others [2013] KEHC 19 (KLR)J*, one of the prayers of the petitioner was that projects within tana delta were approved without the requisite land use plan and environmental impact assessment having been done, and that the implementation of such projects without a multiple and comprehensive land use Master Plan violated the constitutional rights of the petitioners and the communities living within the Tana Delta Wetlands.
- (vi) The court held that in accordance with section 8(d) of the TARDA Act there is need for a comprehensive plan to ensure proper use of the Delta and protection of its resources and bio- diversity not only in the interests of the petitioners but in the interests of the entire nation and future generations. There is also a need for the projects to be monitored from time to time to ensure that there is no threat of violation of the petitioners' and the communities' interests.
- (vii) Justice Mumbi Ngugi gave orders for Tarda and other respondents (3rd and 6th) to facilitate periodic monitoring of the projects that have already commenced to assess their impact on the Tana Delta wetlands and the interests of the communities which derive a living from the Tana Delta.

- (viii) The above-mentioned case did not deal with the TDIP Project but a different project within the Tana Delta. However, the aspect of periodic project monitoring highlighted by the court is critical in supporting continuous public engagement and participation of any project with social or environmental impact on any community.
- (ix) There was no evidence of extensive and periodic community engagement and participation in the implementation of the TDIP project. It is thus not evident the benefits of the project to the community or national interests.

PART SIX

6. COMMITTEE RECOMMENDATIONS

65. Pursuant to the provisions of Standing Order 227, the Committee recommends as follows—

- (i) On the proposal for the review of 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. The Committee rejects this prayer based on public and national interest of the project, as such a review will be economically unsustainable as TARDA has invested Kshs 6 billion on the project.
- (ii) On the proposal to facilitate the clear demarcation of boundaries of TARDA land from the general community land, 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.
- (iii) On the proposal to compel TARDA to comprehensively engage residents of Tana River in all aspects of the project's design and implementation, the Committee recommends that 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.

Signed: _____

Date: _____

THE HON. NIMROD MITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

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

ANNEXURES

- Annex 1: Adoption List
- Annex 2: Public Petition No.31 of 2023 regarding a Review of Boundaries of the Tana Delta Irrigation Project by Hon. Ali Wario, MP
- Annex 3: Minutes of the 45th Sitting of the Committee held on Thursday, 3rd August 2023
- Annex 4: Minutes of the 70th Sitting of the Committee held on Wednesday, 25th October 2023
- Annex 5: Minutes of the 61st Sitting of the Committee held on Saturday, 9th November 2024



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

ADOPTION SCHEDULE
OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO.31 OF 2023
REGARDING A REVIEW OF BOUNDARIES OF THE TANA DELTA IRRIGATION PROJECT

DATE.....9TH NOVEMBER 2024

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of **Public Petition No.31 Of 2023 regarding a Review of Boundaries of the Tana Delta Irrigation Project** to confirm our approval and confirm its accuracy, validity and authenticity:

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



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

PUBLIC PETITION

(No. 31 of 2023)

ON REVIEW OF BOUNDARIES OF THE
TANA DELTA IRRIGATION PROJECT

I, the **UNDERSIGNED**, on behalf of the residents of Garsen Constituency;

DRAW the attention of the House to the following:

1. **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;
2. **THAT**, the project is estimated to cover eight locations in Garsen Constituency namely; Mwina, Salama, Galili, Kipao, Wachuoda, Konemamsa, Handaraku, and Didewarede;
3. **THAT**, the project as currently designed will 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 an ecological habitat for marine and terrestrial wildlife;
4. **THAT**, part of the area covered by the project is the Tana River Delta which is 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. **THAT**, efforts by the residents to engage TARDA to review the boundaries before implementation of the project have not been successful;

Approved
SNA.
13/6/23

For. Garsen CD,
for my approval.
13/6/23

PUBLIC PETITION
ON REVIEW OF BOUNDARIES OF THE TANA DELTA IRRIGATION PROJECT


6. **THAT**, the reluctance by TARDA to conduct public participation on the project violates the national values and principles of governance stipulated in Article 10 of the Constitution of Kenya (2010)
7. **THAT**, the issues in respect of which this Petition is raised are not pending before any court of Law, or any constitutional or legal body;

THEREFORE, your humble petitioners pray that the National Assembly through the Public Petitions Committee;

- i. Engages the Tana and Athi Rivers Development Authority (TARDA) to 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, and
- iv. Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

And your **PETITIONER** will ever pray.

PRESENTED BY:



THE HON. ALI WARIO, MP
MEMBER FOR GARSEN CONSTITUENCY

DATE: ...13/06/2023.....



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 45TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, AUGUST 03, 2023 AT 12.00 P.M IN COMMITTEE ROOM ON 4TH FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS

PRESENT

- | | | |
|---|---|-------------|
| 1. Hon. Ernest Ogesi Kivai, M.P. | - | Chairing |
| 2. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. John Bwire Okano, M.P. | | |
| 6. Hon. Maisori Marwa Kitayama, M.P. | | |
| 7. Hon. Edith Vethi Nyenze, M.P. | | |
| 8. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 9. Hon. Caleb Mutiso Mule, M.P. | | |
| 10. Hon. Sloya Clement Logova, M.P. | | |
| 11. Hon. Suzanne Ndunge Kiamba, M.P. | | |

APOLOGIES

- | | | |
|--|---|------------------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. Bidu Mohamed Tubi, M.P. | | |
| 4. Hon. Peter Mbogho Shake, M.P. | | |

SECRETARIAT

- | | | |
|-------------------------|---|----------------------|
| 1. Ms. Miriam Modo | - | Clerk Assistant I |
| 2. Ms. Anne Shibuko | - | Clerk Assistant I |
| 3. Mr. Shadrack Omondi | - | Legal Counsel II |
| 4. Ms. Patricia Gichane | - | Legal Counsel II |
| 5. Ms. Elsie Moroto | - | Legal Counsel II |
| 6. Mr. Martin Sigei | - | Research Officer III |
| 7. Mr. Cosmas Ahonya | - | Audio Officer |
| 8. Ms. Lubi Werungo | - | Media Officer |

MIN./PPETC/2023/285: PRELIMINARIES

The Chairperson called the meeting to order at 12.10 p.m. and Hon. Hon. Maisori Marwa Kitayama, M.P said the prayers.

MIN./PPETC/2023/286: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sitzings
4. Matters Arising
5. **Consideration of Public Petition No. 10 of 2023 regarding resettlement of Residents of Muthanga Farm**
 - *Presentation of Legal Brief*
 - *Meeting with the Petitioner, Hon. Mary Wamaua, MP*
6. **Consideration of Public Petition No. 15 of 2023 regarding Declaration of Mukutani Forest as a Public Forest**
 - *Presentation of Legal Brief*
 - *Meeting with the Petitioner, Hon. Florence Jematia Sergon, MP*
7. **Consideration of Public Petition No. 31 of 2023 regarding Review of boundaries of the Tana Delta**
 - *Presentation of Legal Brief*
 - *Meeting with the Petitioner, Hon. Ali Wario, MP*
8. **Consideration of Public Petition No. 11 of 2023 regarding Illegal acquisition of private land by the defunct Awendo Town Council**
 - *Presentation of Legal Brief*
9. Any other Business
10. Adjournment & Date of Next Meeting

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by the Hon. (Eng.) Bernard Muriuki, M.P. and seconded by Hon. John Bwire Okano, M.P.

MIN./PPETC/2023/287: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/288: CONSIDERATION OF PUBLIC PETITION NO. 31 OF 2023 REGARDING REVIEW OF BOUNDARIES OF THE TANA DELTA

Brief on the Petition

The Legal Counsel guided the Committee through the brief on the Petition as follows:

- a) The Hon. Said Ali Wario, Member of Parliament for Garsen Constituency draws the attention of the House to the prayer for review of boundaries of the Tana Delta Irrigation Project.
- b) The petitioner claims that the project by the Tana and Athi Rivers Development Authority (TARDA) covers eight locations in Garsen Constituency which include Mwina, Salama, Galili, Kipao, Wachuoda, Konemamasa, Handaraku and Didewarede. The petitioner also claims that TARDA did not undertake any public participation before the implementation of the project.

- c) The petitioner seeks the intervention of the House through the Public Petitions Committee to: -
- i.) engage TARDA to review the boundaries of the land managed by the Tana Delta Irrigation Project, in order to ensure it does not extend beyond the southern parts of the Garsen-Lamu Road but rather it extends eastward towards the border of the Boni Forest to create a security buffer zone;
 - ii.) facilitate clear demarcation of boundaries of TARDA land and community land;
 - iii.) compel TARDA to comprehensively engage residents of the Tana River in all aspects of the design and implementation of the projects; and
 - iv.) make any other recommendation.

Submission by the Petitioner

The Member for Garsen Constituency (Hon. Ali Wario, MP) appeared before the Committee and submitted as follows: -

- i.) 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.
- ii.) Part of the area covered by the project is the Tana River Delta which is 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);
- iii.) Further, the area is a human settlement area and has established public amenities such as schools and hospitals.
- iv.) The petitioners are not opposed to the project but it is a wetland that extends southwards where it will interfere with act a as a reservoir for grazing land during dry season. This side has no human settlement on it and is a flood zone.

Committee concerns

Structure of the community

The Committee asked whether there was an established structure of the Community which it would engage on the matter. It was clarified that the clan system was well established and governed by elders.

The area was a Ramsasite and recognised by UNESCO as it acted as a migratory route for birds

Boundaries of the land

The Committee sought clarification on the existence of a clear demarcation of the land. It was clarified that the boundary was not clear because demarcation was done long time ago.

Court case on the land

The Committee inquired on whether the Petitioner was aware that there was a court case on the land before the Environment and Land Court in Malindi.

The Petitioner responded that he was aware that the matter had been considered by the court which ruled that the land be reverted to the community and TARDA was directed to cede farms to locals.

Occupancy of the land.

The Committee inquired on whether TARDA got the land in 1953 and whether there were any residents on the land by then.

It was clarified that there was already a sizeable population on the land evidenced by establishment of Kipao primary school in the 1950s.

Compensation to residents

The Committee inquired whether there had been any compensation issued to residents. It was explained that compensation was only issued to residents of Gamba village whose land was used to set up offices of the Irrigation project.

Committee Resolutions

The Committee resolved to: -

- a) Conduct a site visit to obtain views of the local communities within the County of Tana River on the review of the boundaries of the irrigation project as well as get submissions from the County Government of Tana River;
- b) Invite the National Government, the Ministry of Water, Sanitation and Irrigation and the National Irrigation Authority; and
- c) Invite TARDA as the custodian of the irrigation project.

MIN./PPETC/2023/289: CONSIDERATION OF PUBLIC PETITION NO. 15 OF 2023 REGARDING DECLARATION OF MUKUTANI FOREST AS A PUBLIC FOREST

Brief on the Petition

- a) Hon. Florence Jematia Sergon, Member of Parliament for Baringo County, on behalf of residents of Baringo draws the attention of the House to the declaration of Mukutani forest as a public forest through a gazette notice No 265/2017 dated 27th October 2017.
- b) The petitioner claims that under the Forest Conservation and Management Act the Cabinet Secretary should consult with the National Land Commission before declaring a public forest, and conduct public participation.
- c) The petitioner claims that there was no consultation with elected leaders or the communities of the Pokot, Tugen and Ilchamus that reside in the area.
- d) The petitioner seeks the intervention of the House to: -
 - i. Find the process leading to the declaration of Mukutani Forest was a brazen and egregious contravention of the Constitution and the Forest Conservation and Management Act, 2016; and

- ii. Recall the decision of the former Cabinet Secretary for Environment, Climate Change and Forestry, Mrs. Judy Wakhungu, in Legal Notice No. 265/2017 and a fresh exercise towards declaration of the forest be undertaken with the Cabinet Secretary, Board of Kenya Forest Service, the National Land Commission and all relevant stakeholders.

Submission by the Petitioner

The Petitioner submitted as follows: -

- a) Article 1 of the Constitution of Kenya reposes all sovereign authority in the people and further Article 10 of the Constitution provides for the national values and principles of governance which bind all state organs, state officers and all persons whenever any of them applies or interprets the Constitution, enacts, applies or interprets any law, makes or implements public policy decisions and which values and principles include public participation.
- b) That further, Article 63 of the Constitution recognizes community and provides that the land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.
- c) Section 8 of the Forest Conservation and management Act of 2016, Kenya Forest Service is bestowed with the responsibility of conserving, protecting and managing all public forests in Kenya.
- d) Section 31(2) of the Forest Conservation and Management Act 2016, provides that before declaring any section as a public forest, the Cabinet Secretary is required to consult the national Land Commission and make provision for public participation.
- e) In the Legal Notice No. 265 dated 27th October, 2017, that declared Mukutani Forest as a Public Forest, the then Cabinet Secretary decreed that the alleged forest was an area of land approximated at 13,185.8 hectares and the community was not involved in the decision yet it was community land.
- f) The said area is occupied by three communities namely Tugen, Pokot and Ilchamus.
- g) The alleged designation of the area as a forest poses an existential threat to the communities and requires urgent intervention of the House to avert any further conflict.
- h) The said land had been gazetted twice first by the Moi's government where residents were adjudicated land issued with Title Deeds and secondly, vide Legal Notice No. 265 dated 27th October, 2017.
- i) The second gazettelement led to eviction of communities that were settling in the area including those that were in possession of title deeds that were issued during Moi's era.
- j) That several attempts to revoke the said gazettelement by community and its leadership have never borne any fruit.
- k) She prayed that a fresh exercise to declare Mukutani Forest as a Public Forest should be undertaken by all the relevant stakeholders as stated under the prayers in the petition since the former processes were done in seclusion without the involvement of the community and other stakeholders and in contravention of the Constitution and the Forest Conservation and Management Act, 2016.

- l) She invited the Committee conduct a site visit to the area to facilitate in the conclusive consideration of petition.

Committee concerns

- a) *Body/Institution that authorized gazettelement*
The Committee sought to know who authorized the said gazettelement as alleged by the Petitioner. The Petitioner responded that the Gazettelement was authorized by the then Minister for Environment, Judy W. Wakhungu.
- b) *Revocation of Title Deeds*
The Committee asked whether the Title Deeds that the residents had been issued with by the former regime had been revoked. The Petitioner responded that members of the Community estimated at 100 who had been issued with Title Deeds were still in possession of them.
- c) *Boundaries that demarcate the communities in Mukutani Forest*
The Committee inquired whether there are any boundaries that demarcate the three communities living in the said forest namely; Ilchamus, Tugen and Pokots. The Petitioner responded that the boundaries exist and are very clear and the said communities co-exist with one another.
- d) *Status of Land before Gazettelement*
The Committee wanted to know whether the said land was a forest or it was occupied by people before gazettelement. The Petitioner responded that it was occupied by the communities namely, the Tugen, Ilchamus and the Pokots.
- e) *Impact on the community in case the said forest is taken by Government*
The Committee inquired on the impact to the community if the said land is taken by the Government. The Petitioner responded that the affected residents will remain as squatters forever and they would have been denied justice.
- f) *Procedure/Process for Gazettelement vis-a-vis land ownership*
The Committee sought to know whether the Petitioner had an issue with the procedure or process for gazettelement or she wanted the land. The Petitioner responded that her biggest concern was the manner in which the whole exercise was conducted because the community was not involved or rather, there was no public participation. She further emphasized that, the whole exercise be repeated with all relevant stakeholders brought on board. Further, she needs land to resettle about 20,000 people who are now living as squatters.
- g) *Documents to support the alleged adjudication by Moi's Government*
The Committee sought to know if the Petitioners or the affected residents were in possession of Title deeds or any other documentations in support of the pieces of land that had been adjudicated to them by the former regimes. The Petitioner responded that residents who were issued with title deeds were still in possession of them apart from those who may have died.

h) Number of people petitioner want resettled

The Committee sought to know the number of people the petitioner wants resettled. The Petitioner responded that, she wanted 20,000 people to be resettled.

Committee Resolutions

The Committee resolved to invite other stakeholders to shed more light on the petition in view of the issues raised and prayers sought by the petitioner. They include: -

- i.) Cabinet Secretary for Environment Climate Change and Forestry,
- ii.) The National Land Commission;
- iii.) The Kenya Forest Service;
- iv.) Kenya Forest Service Board; and
- v.) Conducts a site visit to listen to the views of the community.

MIN./PPETC/2023/290: CONSIDERATION OF PUBLIC PETITION NO. 10 OF 2023
REGARDING RESETTLEMENT OF RESIDENTS OF
MUTHANGA FARM

Brief on the Petition

The Legal Counsel guided the Committee through the brief on the Petition as follows: -

- a) Hon Mary Wamau, the Member of Parliament for Maragua Constituency, draws the attention of the House to her prayer for the resettlement of residents of Muthanga Farm Company limited, situated in Muthiga along Thika-Makutano-Nyeri Road, in Makuyu Sub-County Muranga County.
- b) The petitioner on behalf of the residents avers that the great grandparents of the residents were the original owners of the land before a white settler Mr. Michael Cantonnias in 1952 occupied the land and displaced them, to undertake a coffee plantation on the land.
- c) In 1964 the white settler left and the residents occupied and continued to cultivate the land. However, in 1983 the land was allocated to a private citizen, who sought to evict the residents.
- d) In 1988 the farmers purchased Makuyu/ Kambiti/ Blocks 1, 51, 61 and 62 formerly LR No. 9447/2 from the Ministry of Lands and were issued with title deeds.
- e) The residents without title deeds were to be evicted in 2002 through a High Court Judgement dated 19th November 2002. Despite this order they have not been able to relocate from the farm. The efforts to arbitrate the dispute between the farmers and residents has not been fruitful.
- f) The petitioner seeks the intervention of the House to -
 - i.) Ensure that the residents without title deeds are not evicted;
 - ii.) Ensure a long-lasting amicable solution is attained between the warring parties;
 - iii.) Make any other recommendation it deems fit.

Submission by the Petitioner

The Member for Maragua Constituency (Hon. Mary Wamaua, MP) appeared before the Committee and submitted as follows: -

- (a) That Muthanga Farm was situated at Muthiga Township along Thika-Makutano-Nyeri Road approximately 40 kilometres to the North East of Thika Town within Kimbiti trading Centre in Makuyu Sub-County in Murang'a County.
- (b) That the great grand parents of the petitioners lived in Muthanga Farm for a long time and were present when a white settler, Mr. Michael Cantonias arrived and occupied the farm.
- (c) The settler started planting coffee in the farm in 1952 forcing the earlier occupants to live in the camp as workers to the coffee plantations.
- (d) In 1964, the white settler became sick and left the country and never returned occasioning the former residents to continue to cultivate and occupy the said land.
- (e) In 1983, a private citizen emerged and claimed to have been allocated the said land by the Commissioner for Lands and wanted to evict the residents but upon intervention by the local administration, it was resolved that the purchaser of the land compensates the petitioners.
- (f) The farmers purchased Muthanga Farm i.e., Mukuyu/Kambiti blocks 1, 51, 61 and 62 formerly LR No. 9447/2 from the department of Settlement under the Ministry of Lands in 1988 and Members were issued with Title Deeds.
- (g) Some of the members of the Ex-Muthanga Farm Farmers Company Limited went to court in 2002 and sought for eviction orders for the residents without title deeds and vide a Judgement by the High Court dated 19th November, 2002, the Court gave Orders for eviction but residents did not move because they had nowhere to relocate to.
- (h) Efforts to resolve the matter has never borne any fruit.
- (i) The Petitioner prayed that the House intervenes to block the said eviction of the residents of Muthanga including those without title deeds.

Committee Concerns

(a) Second Presentation of the Petition

The Committee sought to know if the Petition had been presented in the 11th Parliament and why she has brought it back to the House a second time instead of taking the matter up with the Committee on Implementation.

The Petitioner confirmed that the petition was presented in the 11th Parliament but the Member who introduced it to the House, the then member for Gatundu South Constituency, the late Hon. Ngugi Nyumu, MP passed on before it was concluded and she wanted to revive the matter and take it up to its logical conclusion.

Committee Resolutions

The Committee resolved to get information from the Office of the Clerk in view of the issues raised by the Committee to facilitate in the consideration of the said petition.

MIN./PPETC/2023/291:

CONSIDERATION OF PUBLIC PETITION NO. NO. 11 OF
2023 REGARDING ILLEGAL ACQUISITION OF PRIVATE
LAND BY THE DEFUNCT AWENDO TOWN COUNCIL

The Agenda was deferred.

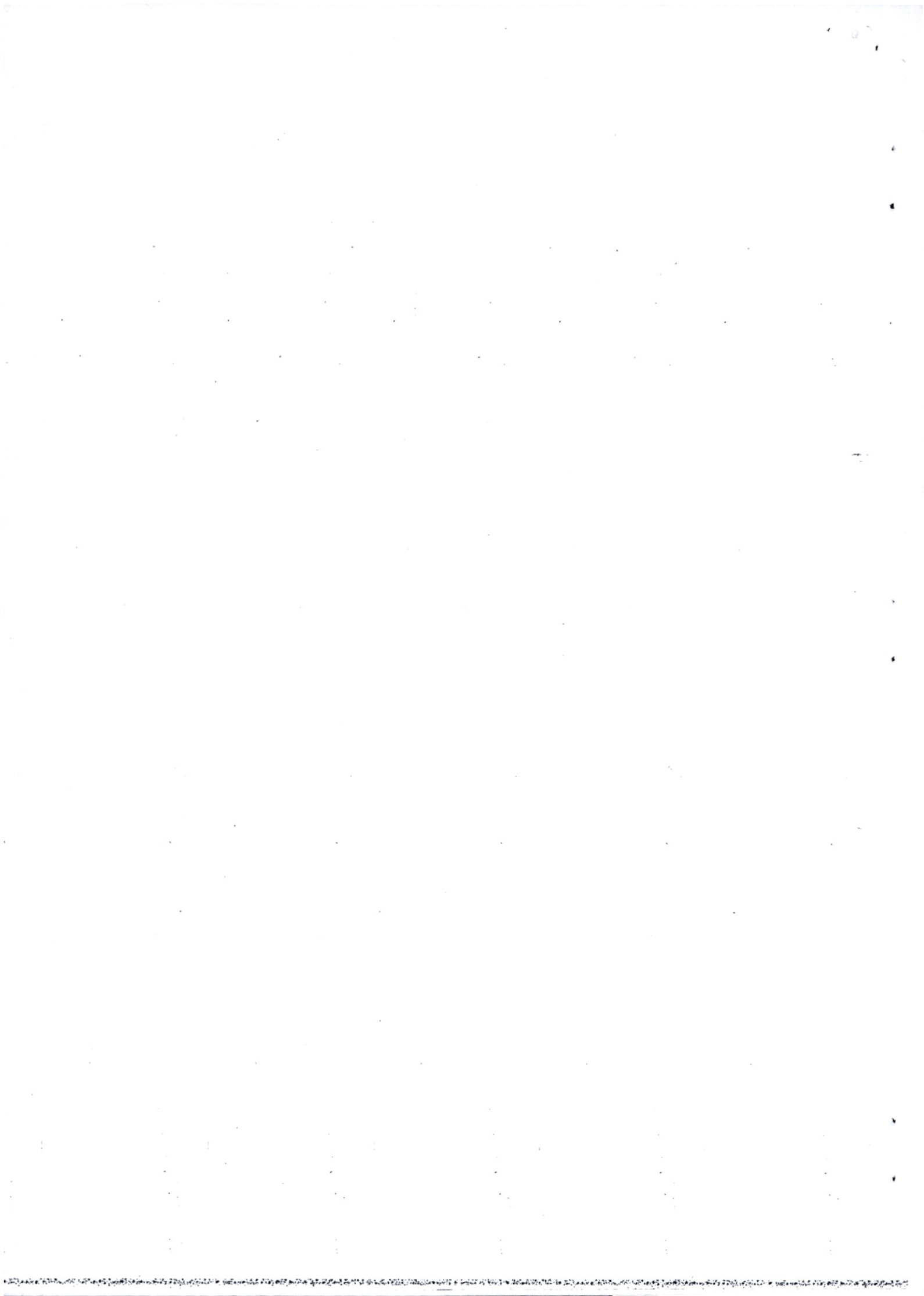
MIN./PPETC/2023/292:

ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1:00 p.m. The next meeting would be held on Tuesday, 8th August, 2023 at 11.00 a.m.

Sign:
(CHAIRPERSON)

Date.....





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 70TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, OCTOBER 25, 2023, IN THE COMMITTEE ROOM ON THE SECOND FLOOR, MAIN PARLIAMENT BUILDINGS AT 12.00 P.M

PRESENT

- | | | |
|---|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. John Walter Owino, M.P. | | |
| 3. Hon. Ernest Ogesi Kivai, M.P. | | |
| 4. Hon. Bidu Mohamed Tubi, M.P. | | |
| 5. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 6. Hon. Edith Vethi Nyenze, M.P. | | |
| 7. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 8. Hon. John Bwire Okano, M.P. | | |

APOLOGIES

- | | | |
|--|---|------------------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 3. Hon. Patrick Makau King'ola, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, M.P. | | |
| 5. Hon. Caleb Mutiso Mule, M.P. | | |
| 6. Hon. Peter Mbogho Shake, M.P. | | |
| 7. Hon. Sloya Clement Logova, M.P. | | |

SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Ms. Willis Obiero | - | Clerk Assistant III |
| 2. Ms. Lilian Mburugu | - | Media Relations Officer |
| 3. Mr. Martin Sigei | - | Research Officer III |
| 4. Ms. Felistus Muia | - | Protocol Officer |
| 5. Ms. Rahab Chepkilim | - | Audio Officer |

INATTENDANCE**MINISTRY OF EAC, ASALs AND REGIONAL DEVELOPMENT**

- | | | |
|-------------------------------|---|---|
| 1. Hon. Penninah Malonza, OGW | - | Cabinet Secretary |
| 2. Mr. Kello Harsama | - | PS, State Department ASAL |
| 3. Mr. Liban Duba | - | Managing Director, TARDA |
| 4. Ms. Jacqueline Muthoni | - | Assistant Manager Legal Services, TARDA |

COUNTY GOVERNMENT OF TANA RIVER

- | | | |
|---------------------------|---|---------------------------------------|
| 1. Hon. Mwanajuma Hiribae | - | CECM, Lands |
| 2. Mr. Alfred Mwenda | - | Director, Lands and Physical Planning |
| 3. Mr. Sango Maewa | - | County Legal Advisor |

- | | | |
|--------------------|---|--------------------------|
| 4. Mr. John Komora | - | County Surveyor |
| 5. Mr. Issa Adnan | - | Physical Planner |
| 6. Mr. Joel Ruhu | - | Community Representative |

MIN./PPETC/2023/447: PRELIMINARIES

The Chairperson called the meeting to order at 12.00 p.m. and Hon. John Walter Owino, M.P. said the prayers.

MIN./PPETC/2023/448: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of Public Petition No. 31 of 2023 regarding review of boundaries of Tana River Delta Irrigation Project—**

- *Meeting with the Cabinet Secretary, Ministry of EAC, ASALs and Regional Development*
- *Meeting with the Chairperson, TARDA*
- *Meeting with County Executive Committee Member, Agriculture, Tana River County*

6. Any Other Business
7. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Edith Vethi Nyenze, M.P. and seconded by Hon. (Eng.) Bernard Muriuki Nebart, M.P.

MIN./PPETC/2023/449: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/450: CONSIDERATION OF PUBLIC PETITION NO. 31 OF 2023 REGARDING REVIEW OF BOUNDARIES OF TANA RIVER DELTA IRRIGATION PROJECT

Meeting with CECM, Lands, Physical Planning, Agriculture and Cooperative Development, Livestock, Fisheries and Veterinary Services, Tana River County

The CECM, Hon. Mwanajuma Hiribae appeared before the Committee together with Community Representative.

The Community Representative Mr. Joel Ruhu submitted that the community was in support of the Petition. That TARDA engaged the locals to get land for rice farming and conducted research in 1986 for the best rice seeds. Further, TARDA built a protective band in form of a dyke which later acted as a boundary and acquired over 35,000 acres. However, the residents who needed farming lands did not get hence the complaint for recognition as original owners of the land.

The CECM submitted as follows—

Background

The Tana Delta Irrigation scheme was completed in 1997 and meant 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.

However, that has not been the case over the many years the project has been in existence. Many communities view this project as a curse, leading to numerous cases of resource-based conflicts, human displacements, irreversible denial of livelihood options, underdevelopment among other violations.

Therefore, the County Government on behalf of its people filed a petition in court to reverse the land ownership back to its people in 2015.

However, the County Government was not opposed to any development in Tana River County and has deliberately developed an investment policy that encourages and provides adequate and conducive environment for both local and foreign investors. To protect the interests of our people, the County Government was in support for the petition.

The Concerns by the County Government

- i.) *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.
- ii.) *Benefit of the Project on the Communities:* Such largescale developments across the country can contribute to the socio-economic development of communities but many of these including the Galana Kulalu project which is predominantly in Tana River County have not contributed anything significant to the development of the county and local communities.
- iii.) *Rationale of Owning the Entire Land:* TARDA owns 25,875 hectares of Land in Tana River County yet since its inception in 1997, it has only managed to use 4,700 acres at best even with the huge funding it received from government and other partners. Therefore, it has never used above 39% of its land. On the other hand, most of the communities have no farming spaces.
- iv.) *Water availability Concerns:* The region has 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 continues to affect crop farming, livestock production and fishing activities.
- v.) *Protection of Tana Deltaic Ecosystem:* The Delta is a key biodiversity hotspot, an important Bird area and a UNESCO designated Ramsar Site. Tana Delta is a critical dry

season grazing area for majority of the pastoralists within and outside Tana River County. Effectively, the ecosystem has been pivotal in helping reduce conflicts between Pastoralists and farmers which previously even turned deadly.

- vi.) *Consideration for Tana River County Greenheart Initiative:* The initiative proposed Green Heartland covering the entire Delta. The model will allow growers to practice environmentally friendly means to boost production of fish, livestock, and other produces. Therefore, the project by TARDA should have considered such kind of projects.

Proposals by the County Government

- i.) The project boundary be reviewed to ensure no communities were 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.
- ii.) That 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.
- iii.) That TARDA and any developer considers the role by the communities on production as opposed to just the large-scale privately-owned enterprise.
- iv.) The boundaries be restricted and altered towards the Boni Forest to serve as a buffer Zone and for security reasons.

Meeting with the Cabinet Secretary, Ministry of EAC, ASALs and Regional Development and TARDA

The CS, Ministry of EAC, ASALs and Regional Development, Hon. Peninnah Malonza, OGW appeared together with the Managing Director, TARDA, Mr. Liban Duba and submitted as follows-

That 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.

Background

- i.) The strategic position of the Project to the River Tana allows access to water from the Tana River is vital for the Project's sustainability.
- ii.) Extensive feasibility studies have been conducted in the area, confirming that TDIP is suitable for irrigating various crops like rice and sugar.
- iii.) The National Government has made significant investments amounting to billions of Kenyan Shillings in TDIP. The first phase of the Project was completed in October 1997, funded by the Overseas Economic Corporation Fund of Japan (OECF) and a local Component, with a total cost of Kshs6 billion.

- iv.) The TDIP was a Vision 2030 Flagship Project, with the goal of increasing rice production in Kenya and achieving self-sufficiency. It is also 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 creates employment opportunities and contributes to the Bottom-Up Economic Transformation Agenda (BETA) on food security.
- v.) The 46 kilometres 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 living along the Channel. The Channel provides water for domestic, areas that are an ecological habitat for marine terrestrial wildlife.

Response

- i.) That TARDA strongly opposed the proposed review of boundaries for the Tana Delta Irrigation Project (TDIP) as the review would have detrimental consequences for the people of Kenya, particularly if the boundaries are revised to exclude the southern part of the Garsen-Lamu. Livestock and farming purposes, benefiting the community, and enhancing their livelihoods.
- ii.) While TARDA had undertaken conservation activities to mitigate potential adverse effects on the environment within TDIP, the 1982 Haskoning feasibility study pointed out that the Project had negligible adverse effects on the environmental ecosystem composed of protected forest area.
- iii.) The TDIP land area boundaries were demarcated and were widely recognized. TARDA was lawfully granted a title deed LR No. 28026 measuring 28,875 Ha by the Government of Kenya for the said area.
- iv.) TARDA has been engaging the community since inception of the TDIP. There were extensive Consultations and public discussions in carrying out various activities within the Project. TARDA continues to conduct community engagements to this day. More recently, from 14th to 17th September 2023, TARDA undertook a comprehensive three-day program in the Tana Delta region aimed to foster community engagement, promote dialogue, and facilitate progress in water resource management for sustainable development. The initiative was a testament to TARDA's commitment to collaborating with the local communities in the heart of Tana Delta to ensure the effective and sustainable management of water resources.

Committee Concerns

- i.) **The Committee inquired into the proposals by the CS with regards to addressing the plight of the Petitioners.** The CS indicated that the review of the boundaries was not within TARDA's mandate but NLC. Further, the project was a flagship project for Vision 2030 meant to realize benefits for both the local community and the entire country.
- ii.) **The Committee inquired into the state of ownership of the land before TARDA was allocated the land and how TARDA acquired the land.** According to the community

representative, 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.

- iii.) **The Committee inquired into the position of public participation during the acquisition of the land.** While the county government submitted that adequate public participation was not done for the projects done, TARDA indicated that they were not opposed to community engagement. That the county was engaged regarding revival of the project with physical visits to the county seeking engagement of the county government. Further, there were ongoing stakeholder engagement.
- iv.) **With regards to the County's proposal for a partnership of TARDA with the community,** the CS indicated that public private partnership was being considered for the community to be involved in the project.
- v.) **The Committee inquired whether the TARDA project was fully utilising the entire land.** The CS indicated that as a national food security project, the project was started in 1997 but stalled due to the impact of the 1998 *El-nino* rains. The project was revived in 2009 and redesigned with four water intakes throughout the 31,000 acres both in Tana and Lamu.
- vi.) **The Committee inquired whether the community was benefiting from the said project and whether there was evidence to that effect.** The CS indicated that the project was undergoing feasibility studies and various trials, and the results were pointing towards numerous benefits. Further the project was different from many other such projects across the country. The topography was most suitable for the project for the rice farming and the benefits were for all citizens including Tana River residents.

The CS indicated that there was a cordial relationship between TARDA and local community. Further, previous public participation meetings were conducted since 1997 with the last one conducted between 14th September, 2023 and 17th October, 2023. That in the engagements, the locals had no objection to the activities, irrigation, and rice production in the area.

The community begun enjoying the benefits of the project with over 200 locals accessing gainful employment on the farm. Further, medical facilities, schools, and other amenities were being constructed for the locals. The local farmers were benefiting from subsidies on seeds, pesticides, and other farm inputs to ensure they maximumly benefit.

The CS submitted that there were no plans to displace the community by the government and the Ministry was willing to engage elected leaders from the region together with other stakeholders for them to understand the project better.

The CS stated that the project would immensely improve the food security by boosting rice farming in the area which would consequently benefit the entire country.

- vii.) **The Committee inquired about the presidential directive made on 7th July, 2023 that the areas be resurveyed and demarcated.** The CS indicated that the Ministry was following up on the directive to begin its implementation. The CS clarified that the presidential directive was that the community within the boundaries should not be disrupted. The CS indicated that TARDA would engage the community to demarcate the land. The Community Representative indicated that implementation of the directive was welcome if it was conducted in a structured manner.


viii. **The Committee inquired on the court ruling regarding the subject matter.** The CS indicated that the community had petitioned against the ownership of the land by TARDA, and the court ruled that the actions of TARDA were in contravention of public participation. However, TARDA appealed the case and the Court of Appeal set aside the ruling delivered on 14th September, 2016 and dismissed the petition.

Committee way forward

After the deliberations, the Committee resolved to allow the CS three weeks to engage the various stakeholders and follow up on the presidential directive before scheduling a site visit to Tana Delta for another consultative forum.

MIN./PPETC/2023/451: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 2:00 p.m. The next meeting would be held on Thursday, 26th October 2023 at 11.00 a.m.

Sign: 


(CHAIRPERSON)

Date..... 29/11/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 61ST SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON SATURDAY, NOVEMBER 09, 2024, IN MEDUSA 2 ROOM, ENGLISH POINT MARINA AT 02.00. P.M

PRESENT

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

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Caleb Mutiso Mule, M.P.
3. Hon. John Bwire Okano, M.P.
4. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Mr. Samuel Kalama | Principal Clerk Assistant II |
| 2. Mr. Ahmad Kadhi | Principal Clerk Assistant II |
| 3. Ms. Roselyn Njuki | Senior Sergeant at Arms I |
| 4. Ms. Anne Shibuko | Clerk Assistant I |
| 5. Ms. Patricia Gichane | Legal Counsel II |
| 6. Mr. Issaac Nabiswa | Legal Counsel II |
| 7. Mr. Willis Obiero | Clerk Assistant III |
| 8. Ms. Nancy Akinyi | Research Officer III |
| 9. Mr. Benson Muchiri | Audio Officer |
| 10. Mr. Calvin Karungo | Media Relations Officer III |

MIN./PPETC/2024/387: PRELIMINARIES

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

MIN./PPETC/2024/388: ADOPTION OF AGENDA
AGENDA

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

4. Matters Arising
5. Consideration of Public Petition No. 45 of 2023 regarding delayed adjudication and Settlement of Residents of Kidomaya/Miungoni Village in Vanga Ward in Lunga Lunga Constituency
6. Consideration of Public Petition No. 06 of 2024 regarding delays in posting Medical Interns, Absorption of Universal Health Coverage (UHC) Contract Staff, Conclusion of Collective Bargaining Agreement (CBAs) and Recognition of Agreement in the Health Sector in the Country
7. Consideration of Public Petition No. 31 of 2023 regarding Review of Boundaries of the Tana Delta
8. Any Other Business
9. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Joshua Kandie, M.P. and seconded by Hon. Bidu Tubi, M.P.

MIN./PPETC/2024/389: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/390: CONSIDERATION OF PUBLIC PETITION NO. 45 OF 2023 REGARDING DELAYED DJUDICATION AND SETTLEMENT OF RESIDENTS OF KIDOMAYA/MIUNGONI VILLAGE IN VANGA WARD IN LUNGA LUNGA CONSTITUENCY

Observations

The Committee considered the draft report and observed that:

- i. While records at the Ministry of Lands indicate that the parcels of land are owned privately and that the process of further subdivision can only be initiated by the registered owner, the National Lands Commission has previously acted on the premise that the land reverted to the County Government of Kwale upon expiry of the lease.
- ii. A court ruling declared that the Public Notice by the National Land Commission (Respondent) was irregular, unreasonable and procedurally unfair as the land belonged to the petitioner in the case, Karsan Velji Velani.
- iii. The conflicting interpretations have resulted in the County Government of Kwale seeking adverse possession of the land.

Recommendations

Pursuant to the provisions of Standing Order 227, the Committee made the following recommendations—

- i. On the prayer that the Committee inquires into the ownership of the land, Plot No. 12224, occupied by the residents of Kidomaya/Miungoni Village in Vanga Ward of Kiwegu Sub-Location in Lungalunga Sub County, the Committee undertook this inquiry by listening to the various stakeholders and state agencies and established that the land was subdivided in compliance with a court ruling and now registered under the names Karsan

V. Velani & Manji V. Velani (L.R. No. 12224/6), County Government of Kwale (L.R. No. 12224/5) and Muungano Self Help Group (LR. No. 12224/1).

- ii. On the prayer that the Committee investigates the cause of continue delay in carrying out the adjudication and settlement of the residents of Kidomaya/Miuongoni Village in Vanga Ward of Kiwegu Sub-Location in Lungalunga Sub County, the Committee notes that the land is privately owned by three parties being Karsan V. Velani & Manji V. Velani (L.R. No. 12224/6), County Government of Kwale (L.R. No. 12224/5) and Muungano Self Help Group (LR. No. 12224/1), hence the adjudication can only be initiated by the registered owners if necessary.
- iii. On the prayer that that the Government under the one-million-acre Compulsory Land Acquisition Programme, acquires the land for the local residents and that the land be adjudicated so as to ensure that residents acquire title deeds, the Committee recommends that County Government of Kwale resettles the squatters on the land L.R. No. 12224/5 as planned and budgeted.

MIN./PPETC/2024/391: CONSIDERATION OF PUBLIC PETITION NO. 06 OF 2024 REGARDING DELAYS IN POSTING MEDICAL INTERNS, ABSORPTION OF UNIVERSAL HEALTH COVERAGE (UHC) CONTRACT STAFF, CONCLUSION OF COLLECTIVE BARGAINING AGREEMENT (CBAS) AND RECOGNITION OF AGREEMENT IN THE HEALTH SECTOR IN THE COUNTRY

Observations

The Committee considered the draft report and observed that:

- i. Internship for health practitioners is a mandatory requirement for registration and subsequent licensing to practice.
- ii. The allocation of Kshs.20.4 billion from FY 2019/2020 to FY 2023/2024 towards posting of graduate interns for mandatory internship has not been sufficient to accommodate all the graduate interns coming through the years.
- iii. The delay in posting of interns affects the smooth running and interrupts service delivery in county health facilities as the facilities have inadequate human resources.
- iv. KMPDU was agitating for posting of interns based on the 2017-2021 CBA for which the Ministry of Health had no budgetary provisions to cater for the resultant costs. However, the matter was pending before the Employment and Labour Relations Court in Eldoret under Petition No. E003 of 2024. The Judgement was delivered on 17th October 2024, where the court ordered the parties to renegotiate on the terms of interns provided for in the CBA.
- v. There were clear disparities in remuneration across the different cadres of health workers, for instance laboratory or nutritionists or dietician cadres were not remunerated during their internship.

- vi. The contracts for the UHC staff have been extended over the years, to allow for the two levels of governments time to deliberate on the modalities on the permanent and pensionable terms, with the latest extension set for a further two years after the lapse between April and October 2024.
- vii. Transitioning the UHC staff to permanent and pensionable terms has not been possible due to inadequate budgetary allocation to county governments which are expected to absorb both UHC and CHERP staff.
- viii. The disparity in compensation of interns in the health sector was occasioned by the fact that the Ministry of Health was allocated Kshs5.7 billion to cater for the internship programme which was not enough to place all the interns at the initial stipend rates. Therefore, the rates were revised to accommodate 3759 interns from April 2024.
- ix. County Governments had recognized three unions in the health sector namely, the Kenya National Union of Nurses (KNUN) (December 2016); Kenya Medical Practitioners and Pharmacists and Dentist Union (July 2017); and Kenya Union of Clinical Officers (December 2017). Only six (6) county governments had signed and executed the recognition agreements with the respective unions.
- x. The Ministry of Health was in the process of receiving requests for recognition agreements from health sector unions and was in the process of verifying submitted membership list as required under the Labour Relations Act.

Recommendations

Pursuant to the provisions of Standing Order 227, the Committee made the following recommendations—

- i. The Ministry of Health in collaboration with Public Service Commission (PSC), SRC and all relevant stakeholders to fast-track the comprehensive policy proposal to guide on the management of internship in the health sector to address concerns about postings and disparities witnessed in the payment of stipends to interns. The Ministry of Health to present the policy proposal to the Committee on Health within ninety (90) days of tabling of this report.
- ii. The Ministry of Health in collaboration with the Council of Governors fast-tracks and presents a policy proposal on the employment of the UHC and CHERP staff on permanent and pensionable terms, including budgetary provision, to the Committee on Health within sixty (60) days. In the meantime, the Ministry of Health and the county governments continuously renews the contracts for UHC and CHERP staff until adequate provision of budget for their employment on permanent and pensionable terms.
- iii. Health sector unions without recognition agreements to engage the Council of Governors and the Ministry of Health to develop a framework as per the provisions of Section 54 (3) the Labour Relations Act. The Cabinet Secretary in charge of the Ministry of Health and the Council of Governors

to facilitate the verification of the membership register of the various unions to fast-track the adoption of recognition agreements across the 47 counties.

MIN./PPETC/2024/391: CONSIDERATION OF PUBLIC PETITION NO. 31 OF 2023 REGARDING REVIEW OF BOUNDARIES OF THE TANA DELTA

Observations

The Committee considered the draft report and observed that:

- (i) The Tana Delta Irrigation Project initiated by TARDA had covered an area of about 77,500 acres with the Authority undertaking a rice scheme project in about 4,000 acres with a possibility of extension by 30,000 acres. The proposed project plan aims to develop about 12,000 hectares of land
- (ii) The southern parts of the TDIP land referred by the Petitioner is occupied by local communities while the eastward side towards Boni Forest is expansive and secluded by nature making it a potential security threat.
- (iii) On 3rd February 1987 the Commissioner of Lands gave authority to TARDA to utilise the land for purposes of development. TARDA was later lawfully issued with the grant No. IR 152049 LR No. 28026 by the Ministry of Land on 20th November 2013.
- (iv) The public participation and community engagement undertaken by TARDA during the implementation of TDIP was not extensive.

Recommendations

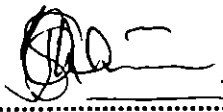
Pursuant to the provisions of Standing Order 227, the Committee made the following recommendations—

- (i) On the proposal for the review of 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. The Committee rejects this prayer based on public and national interest of the project, as such a review will be economically unsustainable as TARDA has invested Kshs 6 billion on the project.
- (ii) On the proposal to facilitate the clear demarcation of boundaries of TARDA land from the general community land. 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.
- (iii) On the proposal to compel TARDA to comprehensively engage residents of Tana River in all aspects of the project's design and implementation, the Committee recommends that 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.

MIN./PPETC/2024/394:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 02:00 p.m. The date of the next meeting will be communicated by Notice.

Sign: 

for (CHAIRPERSON)

Date.....19-11-2024.....