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KENYA NATIONAL ASSEMBLY  
TENTH PARLIAMENT –FOURTH SESSION

REPORT  
OF THE  
DEPARTMENTAL COMMITTEE ON LANDS & NATURAL RESOURCES  
ON THE

## PETITION

BY THE RESIDENTS OF BUNGOMA NORTH ON

**THE PROPOSED CONSTRUCTION OF NZOIA DAM  
AND THE IMPENDING DISPLACEMENT OF  
RESIDENTS FOLLOWING DAM CONSTRUCTION ON  
RIVER NZOIA IN BUNGOMA COUNTY**

CLERK'S CHAMBERS  
NATIONAL ASSEMBLY  
NAIROBI

AUGUST 2012

## PREFACE

1. On the Thursday August 25, 2011, a petition was tabled before the House pursuant to Standing Order No. 207 by the Member for Kimilili, Hon. Eseli Simiyu, M.P, on Behalf of the resident of Bungoma North who number 1,347 being citizens in Bungoma County of Kenya;
2. Pursuant to House rules, the petition was referred to the Parliamentary Committee on Lands and Natural Resources for consideration and preparation of a report within 21 days;
3. The Committee considered the petition pursuant to provision of Standing Order 201, 202, 203, 204, 205, 206, 207, 208, 209, 210 and 211. And further Third Schedule. And concluded that its meets the provision of the Standing Orders hence admissible.
4. The petitioners drew the attention of the House to the following, that:-
  - a) the Ministry of Water and Irrigation, through the National Water Conservation and Pipeline Corporation, has embarked on a project to build a dam on River Nzoia;
  - b) the dam is going to cover over 40 square kilometers and will affect six locations of Bungoma North District; namely, Kabuyefwe, Naitiri, Kimilili, Tongaren, Khakamwe and Soi Sambu, leading to displacement of between 30,000 to 40,000 people;
  - c) This is the most fertile land in Bungoma County and is the bread basket of the county and other counties in the former Western Province;
  - d) the sheer size of the dam is on the scale of a man-made lake and will irreversibly alter the environment and lifestyles of those who will be affected to their detriment; and
  - e) Those displaced are not assured of getting similarly fertile land of the same acreage and, hence, may become disenfranchised and deprived of their livelihoods, and future development for themselves and their families will become destitute.
5. Therefore, the petitioners pray that through Parliament, the Government of the Republic of Kenya should stops the development of the said dam and or substantially reduces the magnitude of the development, so as not to negatively affect the livelihood of so many hardworking farmers who are humble citizens of Kenya,

## MANDATE OF THE COMMITTEE

6. The Departmental Committee No. J on Lands and Natural Resources is established pursuant to provisions of Standing Order No. 198 (2) and (3) with the following terms of reference: -
  - 6.1 to investigate, inquire into, and report on all matters relating to the mandate,

management, activities, administration, operations and estimates of the assigned Ministries and departments;

- 6.2 to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- 6.3 to study and review all legislation referred to it;
- 6.4 to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- 6.5 to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
- 6.6 to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

7. The Committee is mandated to consider the following **subjects**:-

- i.) Lands and settlement,
- ii.) Forestry, water resource management and development,
- iii.) Irrigation;
- iv.) Environment,
- v.) Wildlife, and
- vi.) Mining and Natural Resources.

## 8. OVERSIGHT

In executing its mandate, The Committee oversees the following Government Ministries; namely: -

- 8.1 Ministry of Water and Irrigation;
- 8.2 Ministry of Environment and Minerals Resources;
- 8.3 Ministry of Lands; and
- 8.4 Ministry of Forestry and Wildlife.

## 9. COMMITTEE COMPOSITION

The Departmental Committee on Lands and Natural Resources was constituted on June 17<sup>th</sup> 2009 and its membership is as follows:-

- 9.1 Hon. Mutava Musyimi, M.P. – **Chairperson**;
- 9.2 Hon. Peris Chepchumba Simam, M.P. - **Vice Chairperson**;
- 9.3 Hon. Benjamin Jomo Washiali, M.P;
- 9.4 Hon. Silas Ruteere Muriuki, M.P;
- 9.5 Hon. Benedict Fondo Gunda, M.P ;
- 9.6 Hon. Justus M. Kizito, M.P ;

- 9.7 Hon. Njuguna Peter Gitau, M.P.
- 9.8 Hon. Mohammed Abdi Affey, M.P.
- 9.9 Hon. Omar Mbwana Zonga, M.P.
- 9.10 Hon. Kiema Julius Kilonzo, M.P.
- 9.11 Hon. Dr. Erastus Kihara Mureithi, MBS, HSC, MP

## 10. TERMS OF REFERENCE

The Committee proceeded with the consideration of the petition as follows,  
Held sittings for:-

- (a) Setting up the terms of reference;
- (b) Briefing from the Member who presented the matter – Hon. Eseli Simiyu, M.P;
- (c) Holding a public hearing on the proposed construction of Nzoia Dam; and
- (d) Seeking written submission from the Ministry of Water & Irrigation and the National Water Conservation and Pipeline Corporation.

## 11. FINDINGS.

- A part from constant flooding during rainy seasons, the lower reaches of the Nzoia River are plagued by prolonged drought spells giving rise to food and water scarcity when water flows in River Nzoia are low. It is this cycle of disasters occasioned by floods and droughts that have necessitated the proposal to develop Nzoia Multi-purpose Dam as a long term solution to the problem; It is for this reasons that the Government has classified **Nzoia Multi-purpose dam as vision 2030 flagship project**. The projected population to benefit from the project is estimated at 2,000,000 people up to the period 2032;
- Proposed Nzoia Multi-purpose dam is to be implemented by National Water Conservation and Pipeline Corporation (NWCPC) – a state Corporation under the Ministry of water and irrigation.
- The revised project is estimated to cost Kshs.13 billion. The project major objectives are to:-
  - a) Control flood on River Nzoia particularly in the lower reaches of the river;
  - b) Increased food production through irrigation; and
  - c) Power generation down-stream where feasible.
- The National Water Conservation & Pipeline Corporation is in the process of procuring a consultant to come up with a dam Development Plan for the upper Nzoia Basin that will identify **a series of feasible dam sites** for future development. This plan will help to maximize benefits within the upper Nzoia River basin.



- Potential dam sites for further studies include Mawe Tatu, Moi's bridge, Webuye falls dam site and Lugari dam on Kipkaren River.
- Initially the **proposed dam was going to be 60m high submerging 45Km<sup>2</sup> of land and impounding water storage of 980 million m<sup>3</sup>**. The dam would have resulted in 33,000 people being directly affected. The proposed dam has been reduced from the 60m to 30m height, and therefore the expected dam coverage will reduce from **4561 hectares to 1,693 hectares**. This will reduce the expected people to be directly affected from about 33,000 to about 11,800;
- The reduction in the dam height from 60m to 30m will significantly change the benefits expected under the 60m height i.e. reduction in volume of water storage, Power generation, water supply and irrigable area. This reduction in project benefits will be compensated by developing other similar dams on tributaries of Nzoia river or/and other locations on the Nzoia river;
- The government has allocated Kshs.500 million for the proposed Nzoia dam Project in the FY 2012/13 and plans to have the review and finalization of the current design (30m High) by end of August 2012. Most of the Kshs.500 million will go towards compensation of the affected persons. The balance will be used to mobilize the Contractor sometime in mid 2013;
- Initially there was no proper consultation among the developers and all other stakeholders – communities, leaders etc;
- There was no proper compensation plans in place was envisaged in the development plan;
- There was no awareness creation to the all stakeholders on the part of the Ministry of Water or its agents i.e. the NWCPCC;
- Stakeholder consultations reveal that the dam is important to the Region and the negative social impact on the livelihoods must be mitigated against.
- That subject to environmental impact assessments, a series of dams should be constructed to control the River Nzoia. The stakeholder's consultations of the project should be concluded by July 2012 to pave way for the project;
- Public awareness creation and consultations are aspects of development that must be undertaken;
- Six (6) stakeholder's consultations were held with project beneficiaries on 6<sup>th</sup> March 2012 and 23<sup>rd</sup> March 2012, with a view to:-

- Creating awareness on the proposed Nzoia Multipurpose Dam
  - Educating stakeholders on objectives and benefits of the project
  - Giving feedback and receiving feedback from stakeholders on the project
  - Seeking community support for and ownership of the project
- **Project Benefits**
    - Flood control
    - Hydro-power
    - Irrigation
    - Water Supply
    - Employment Creation
- **Benefits to Project Affected Persons**
    - a) Land for land compensation within the proximity of the project area. Land for land compensation implies that somebody whose one acre of land is taken by the project should be compensated by one acre of land elsewhere but preferably within the same county
    - b) Reconstruction of modern facilities ( schools, hospitals, churches, roads etc) to serve those who will be displaced from the project area and to replace infrastructure affected within project area
    - c) Empower the locals and displaced peoples through modern technologies of production such as Green House projects that grow value crops in addition to their traditional farming.

**.12. RECOMMENDATIONS – the Committee recommends that; -**

- a) The Ministry of Water & Irrigation through the National Water Conservation and pipeline Corporation should put in place resettlement and compensation plans before commencement of the project.
- b) The Ministry of Water & Irrigation through its agent, National Water Conservation and pipeline Corporation should empower the locals and displaced peoples through modern technologies of production such as Green House projects that grow value crops in addition to their traditional farming.
- c) The Ministry of Water & Irrigation through the National Water Conservation and pipeline Corporation should reduce the proposed dam from 60m high to 30m height; submerged 45Km<sup>2</sup> of land to a dam coverage reduction from 4561 hectares to 1,693 hectares. Therefore the number of people affected will

reduce from 33,000 people being directly affected to about 11,800;

- d) The Ministry of Water & Irrigation should requisition more funds to be allocated for the proposed Nzoia dam Project in the FY 2013/14, review and finalize the current design (30m High) by end of August 2012, ensure more funds go towards compensation to the rightfully identified affected persons.
- e) The Ministry of water & Irrigation through its agent National Water Conservation and pipeline Corporation, puts in place a proper plan and mechanism for consultation, awareness creation among the developers and all other stakeholders – communities, leaders etc as such activities are aspects of development that must, therefore, be undertaken;
- f) The Ministry of Water and Irrigation through its agent National Water Conservation and pipeline Corporation , in consultation, collaboration and agreement with, the local communities, other government agencies and leaders, should establish and put in place proper compensation plans and mechanism;
- g) The Ministry of Water and Irrigation through its agent National Water Conservation and pipeline Corporation should prepare a comprehensive Environmental impact Assessments report and subject it to stakeholder scrutiny pursuant to Environment Management Coordinating Act , 1999; and
- h) The Ministry of Water and Irrigation should, subject to environmental impact assessments report, undertake to develop and construct a series of dams to control the River Nzoia.

### **13 ACKNOWLEDGMENT**

- 13.1 The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate;
- 13.2 the Chairperson of the Committee takes this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period;

- 13.3 The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible;
- 13.4 Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Lands and Natural Resources, to present and recommend this report to the House pursuant to the provisions of Standing Orders of the National Assembly.
- 13.5 On behalf of the Committee, I request the House to adopt the report.



SIGNED:.....

HON. MUTAVA MUSYIMI, MP

CHAIRMAN

DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES

DATE: 14-8-12.....

## **PREAMBLE:**

14. On the Thursday August 25, 2011, a petition was tabled before the House pursuant to Standing Order No. 207 by the Member for Kimilili, Hon. Eseli Simiyu, M.P, on Behalf of the resident of Bungoma North who number 1,347 being citizens in Bungoma County of Kenya;
15. Pursuant to House rules, the petition was referred to the Parliamentary Committee on Lands and Natural Resources for consideration and preparation of a report within 21 days;
16. The Committee considered the petition pursuant to provision of Standing Order 201, 202, 203, 204, 205, 206, 207, 208, 209, 210 and 211. And further Third Schedule. And concluded that its meets the provision of the Standing Orders hence admissible;
17. The petitioners drew the attention of the House to the following, that:-
  - a) the Ministry of Water and Irrigation, through the National Water Conservation and Pipeline Corporation, has embarked on a project to build a dam on River Nzoia;
  - b) the dam is going to cover over 40 square kilometers and will affect six locations of Bungoma North District; namely, Kabuyefwe, Naitiri, Kimilili, Tongaren, Khakamwe and Soi Sambu, leading to displacement of between 30,000 to 40,000 people;
  - c) This is the most fertile land in Bungoma County and is the bread basket of the county and other counties in the former Western Province;
  - d) the sheer size of the dam is on the scale of a man-made lake and will irreversibly alter the environment and lifestyles of those who will be affected to their detriment; and
  - e) Those displaced are not assured of getting similarly fertile land of the same acreage and, hence, may become disenfranchised and deprived of their livelihoods, and future development for themselves and their families will become destitute.
18. Therefore, the petitioners pray that through Parliament, the Government of the Republic of Kenya should stops the development of the said dam and or substantially reduces the magnitude of the development, so as not to negatively affect the livelihood of so many hardworking farmers who are humble citizens of Kenya,

## **HOUSE RESPONSE ON THE PETITION**

19. Following the presentation of the petition, the House raised a number of comments, as follows, that:-
  - a) a similar scenario happened in the development Ndakaini dam in Murang'a County, therefore It is important that the Petition from the people of Kimilili be heard so



that they do not go through the same difficulties that those from Ndakaini dam had;

- b) The issue of environmental conservation and, especially, the interference with ecosystems be considered;
- c) A similar dam which is being constructed between Ainamoi and Muhoroni. The Committee should ensure that the communities or the people who will be affected by those dams, before they start anything, must be properly consulted and ensure proper compensated;
- d) Urge the Government that even as it tries to bring facilities or services to the people, there is need for consultation with the residents of places where we want to put up those facilities.
- e) The magnitude of the project is going to displace more than 40,000 people ostensibly to help protect the lives of people affected by floods, who are just about 15,000. Maybe, the intended cost of that project should be re-thought; the money meant for that project should be used to settle the 15,000 people that the project was intended to protect.
- f) The Committee and the Minister should note that before Independence, the colonial government had already thought of resettling the people of Budalangi away from that swampy area. therefore either construct the dam below Kipkaren and Kuywa rivers with consultations, or pursue the original plan which was to settle the people of Budalangi away as it was envisaged;
- g) The Government has been constructing dams that have already been planned yet it's not prepared to cater for the community; even for provision of drinking water.
- h) Request the Government to consult widely and cater for the communities that are affected by those dams. The ideas are good but consultations and availability of services to the people affected should be considered in detail.
- i) This is not a regional issues but a national issue. It should be noted that the country needs, more than 5,000 megawatts of electricity and nobody is going to invest in this country unless we can produce that electricity. To produce that electricity, dams must be built. Those dams are going to displace people, definitely, and cause some harm. But the overall effect and overall benefit to the nation will override the harm that some 30,000 or even 50,000 people will suffer.
- j) The dams ought to be built, but the harm must be mitigated and the compensations must be done. There is need for consultations. The dams will provide power, fishing, irrigation and so many other things that will benefit the country;
- k) To mitigate floods, the dam be built in Busia where people are affected by perennial floods. One time some families were moved to create Nzoia Sugar Company; these families are still landless to date, therefore the Government

should listen to the voice of the people.

### SUMMARY OF FACTS.

20. In February 2010, the National Water Conservation & Pipeline Corporation (NWPC) secured a consultant to undertake the feasibility study, Preliminary Design, Final Design, Tender document preparation and Environmental and Social Impact Assessment study for the proposed Multipurpose Nzoia Dam;
21. The National Water Conservation & Pipeline Corporation (NWPC) advertised for expression of interest early 2012 to invite potential consultants to undertake the review. Initially the proposed dam was going to be 60m high submerging 45Km<sup>2</sup> of land and impounding water storage of 980 million m<sup>3</sup>. The dam would have resulted in 33,000 people being directly affected;
22. The dam is going to cover over 45 Km<sup>2</sup> and will affect six locations of Bungoma North District; namely, Kabuyefwe, Naitiri, Kimilili, Tongaren, Khakamwe and Soi Sambu locations, leading to displacement of about 33,000 people;
23. The revised project is estimated to cost Kshs.13 billion and is currently at design review stage;
24. Proposed Dam height options and their extent of coverage in Hectares

Area	Area (in Hectares) to be submerged		
	60m dam	40m dam	30 m dam
	Actual	Actual	Actual
Tongaren	1391	858	600
Mautuma	735	720	455
Kabuyefwe	93	660	531
Naitiri	80	240	51
Soysambu	31	112	30
Kiminini	31	67	8
Lugari	85	29	18
<b>Total</b>	<b>4561</b>	<b>2686</b>	<b>1693</b>

25. These potential dam sites will be identified in the Dam development plan to be prepared by the independent consultant.

Parameter	60 m High Dam	40 m high Dam	30 m High Dam
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Dam Crest Length	2900 m	1800 m	1400 m
Area At Max. Flood	45.69 Km <sup>2</sup>	25.32 Km <sup>2</sup>	15.59 Km <sup>2</sup>
Maximum Storage	985.5 Million M <sup>3</sup>	240.0 Million M <sup>3</sup>	170.0 Million M <sup>3</sup>
Installed Capacity	10 MW	5.4 MW	4.5 MW
<i>Displaced Persons</i>			
Lugari	6,582	3,207	2,305
Bungoma	27,172	13,238	9,515
Total Affected	33,754	16,445	11,800

## PROPOSED NZOIA DAM PROJECT - PROJECT BACKGROUND

26. Flooding is a frequent phenomenon in the lower reaches of the Nzoia River basin and causes damage to property displaces people and poses health related problem to communities. The effects of flooding include interference with seasonal patterns of Agriculture, destruction of infrastructure and disruption of socio-economic activities among others;
27. A part from constant flooding during rainy seasons, the lower reaches of the Nzoia River are also plagued by prolonged drought spells giving rise to food and water scarcity when water flows in river Nzoia are low. It is this cycle of disasters occasioned by floods and droughts that have necessitated the proposal to develop Nzoia Multi-purpose Dam as a long term solution to the problem;
28. The Government has classified **Nzoia multi-purpose dam** as vision 2030 flagship project. The projected population to benefit from the project is estimated at 2,000,000 people up to the period 2032;
29. Project details as designed at 60m dam height

<b>Project</b>	Nzoia dam site No 34B
Counties to Benefit	Bungoma, Kakamega, Busia, Siaya
District	Bungoma North/Lugari
River Basin	Nzoia River Basin
River	Nzoia
Project Preparation Stage	Design
Storage Capacity (million m <sup>3</sup> )	985.7
Hydropower Generation	10MW
Irrigation area	3700 Ha
Water supply	71,000m <sup>3</sup> /day (up to 2022) 91,000m <sup>3</sup> /day (up to 2032)
<b>Estimated cost of the Project</b>	20 Billion Kshs

30. The proposed dam is reduced from the 60m to 30m height, and then the expected dam coverage will reduce from 4561 hectares to 1,693 hectares. This will reduce the expected people to be directly affected from about 33,000 to about 11,800.
31. It should be stated here that of the directly affected persons (11,800), not all will need to be completely displaced from their farms. Others will just have portions of their land adjacent to river riparian acquired and still remain put;
32. Proposed Dam height options and their extent of coverage in Hectares

	Area (in Hectares) to be submerged		
	60m dam	40m dam	30 m dam
Area	Actual	Actual	Actual
Tongaren	1391	858	600
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Kiminini	31	67	8
Lugari	85	29	18
<b>Total</b>	<b>4561</b>	<b>2686</b>	<b>1693</b>

33. The reduction in the dam height from 60m to 30m will significantly change the benefits expected under the 60m height i.e. reduction in volume of water storage, Power generation, water supply and irrigable area. **This reduction in project benefits will be compensated by developing other similar dams on tributaries of Nzoia river or/and other locations on the Nzoia river;**
34. These potential dam sites will be identified in the Dam development plan to be prepared by the independent consultant.

Parameter	60 m High Dam	40 m high Dam	30 m High Dam
Dam Crest Length	2900 m	1800 m	1400 m
Area At Max. Flood	45.69 Km <sup>2</sup>	25.32 Km <sup>2</sup>	15.59 Km <sup>2</sup>
Maximum Storage	985.5 Million M <sup>3</sup>	240.0 Million M <sup>3</sup>	170.0 Million M <sup>3</sup>
Installed Capacity	10 MW	5.4 MW	4.5 MW
<i>Displaced Persons</i>			
Lugari	6,582	3,207	2,305



Bungoma	27,172	13,238	9,515
Total Affected	33,754	16,445	11,800

## PROJECT BENEFITS

35. The project will provide benefits to the people in the entire Nzoia Basin. The proposed project targets to benefit four counties namely **Bungoma, Kakamega, Busia and Siaya in Western and Nyanza Provinces**. Below is a highlight of the key expected project benefits. It is projected that about 2 million people within the Western Province will directly derive benefits from the proposed Nzoia dam project.

**35.1 Flood control** - In the lower reaches of River Nzoia, the last 20 Km reach, the estimated annual damage from flooding is Kshs. 80 million. This amount is used in relief and rehabilitation of about 40,000 displaced people as well as infrastructure restoration. Construction of the proposed reduced dam will store about 170 million cubic meters of water and regulate the downstream flow thereby mitigating against social and economic disruption of livelihoods in the lower Nzoia basin;

**35.2 Hydro-power** - Within the Nzoia river basin are a number of industries namely Webuye Pan Paper Mills, Nzoia sugar, West Kenya sugar and Mumias sugar factories. One of the challenges facing these industries is high electricity costs. This consequently eats into the net benefits to farmers and employees in these institutions. Webuye Pan Paper mill for example has faced intermittent closures over the last decade due to high electricity costs resulting in high job losses. The rest of the sugar factories continue to experience high operation cost mainly due to high power costs. Construction of the proposed Nzoia dam is expected to generate 4.5MW of hydro-power. This will be directed to say Webuye Panpaper mills and ensure sustained employment opportunities in the now threatened industries as well as improve incomes for farmers supplying raw materials to the factories. The power will also be used to pump treated water to high elevated tanks on Naitiri and Mautuma hills before the water is gravitated to target supply areas in the two of Bungoma and Kakamega.

**35.3 Irrigation** - The irrigation area as proposed under the proposed Nzoia dam is as below

- **Lugari:** - 800 hectares to benefit 1840 Households
- **Matete:** - 1450 hectares to benefit 2800 Households
- **Bungoma North:** - 430 hectares to benefit 2040 households
- **Bungoma East:** - 1230 Hectares to benefit 2150 households

**35.4 Water Supply** - The proposed project promises to improve access and availability of safe and affordable water for both domestic and industrial use in the project



area and its environs. It is intended that the water supply will make use of the reservoir water and the hydropower produced from the hydropower generation plant to pump water to higher grounds of Mautuma and Naitiri hills then supply by gravity both urban and rural centers in the two districts of Bungoma North and Lugari. Key target towns in Bungoma County include **Webuye, Bungoma town and Kiminini**. In Kakamega County the target urban centres include **Lugari, Mautuma, Matete and Malava**. The ultimate water supply demand for the period 2032 is 91,000m<sup>3</sup>/day. The demand for 2022 is 71,000m<sup>3</sup>/day. The treatment plant has been designed to supply the demand for 2022.

**35.5 Employment Creation** - Through sustained cheap energy generation from the dam project, local Industries will break even and create more jobs for the people of Western Province. Improved farming mainly through irrigation will ensure year round employment on the farms. During dam construction direct employment over the three years is projected to be about 500 youths.

**35.6 Benefits to Project Affected Persons** - The Corporation will work with the people to be displaced to ensure that their livelihoods are made better than their current status. Measures being explored towards this end include:

- Land for land compensation within the proximity of the project area. Land for land compensation implies that somebody whose one acre of land is taken by the project should be compensated by one acre of land elsewhere but preferably within the same county
- Reconstruction of modern facilities ( schools, hospitals, churches, roads etc) to serve those who will be displaced from the project area and to replace infrastructure affected within project area
- Empower the locals and displaced peoples through modern technologies of production such as Green House projects that grow value crops in addition to their traditional farming.

**36. DAM DEVELOPMENT PLAN** - The National Water Conservation & Pipeline Corporation is in the process of procuring a consultant to come up with a dam development plan for the upper Nzoia Basin that will identify a series of feasible dam sites for future development. This plan will help to maximize benefits within the upper Nzoia River basin. For purposes of this study, Nzoia basin upstream of the Webuye town will form the study boundary. Potential dam sites for further studies include Mawe Tatu, Moi's bridge, Webuye falls dam site and Lugari dam on Kipkaren River.

**37. PROJECT IMPLEMENTATION** - The proposed Nzoia Multi-purpose dam is to be implemented by National Water Conservation and Pipeline Corporation (NWPC) – a state Corporation under the Ministry of Water and Irrigation. The implementation will proceed after all necessary compensations to the affected is completed and sufficient

notice is given to those affected to relocate.

38. **PROJECT COST** - The project is estimated to cost Kshs. 13 billion and is currently at design review stage.

## INVESTIGATION:

### 39. THE PETITION

39.1 The Committee considered the petition pursuant to provision of Standing Order 201, 202, 203, 204, 205, 206, 207, 208, 209, 210 and 211. And further Third Schedule;

39.2 And concluded that it meets all the criteria as set out in the Rules of Procedure hence admissible.

## PRAYERS OF THE PETITIONERS

40. **STATUS OF THE DAM** - In February 2010, the National Water Conservation & Pipeline Corporation (NWPC) secured a consultant to undertake the feasibility study, Preliminary Design, Final Design, Tender document preparation and Environmental and Social Impact Assessment study for the proposed Multipurpose Nzoia Dam.
41. The Corporation has undertaken all the above and resulting from stakeholder concerns there has been need to review the designs to incorporate the same.
42. The Corporation advertised for expression of interest early 2012 to invite potential consultants to undertake the review. Initially the proposed dam was going to be 60m high submerging 45Km<sup>2</sup> of land and impounding water storage of 980 million m<sup>3</sup>. The dam would have resulted in 33,000 people being directly affected, a concern the stakeholders have raised.
43. The current design of the dam has been scaled down by 50% to a 30m high dam as per the request by the stakeholders. The scaled down dam will now cover 16Km<sup>2</sup> and will affect 11,800 people;
44. The status of the project preparation activities of the dam are as follows:
- Scaled down dam is to be reviewed to accommodate the concerns of the stakeholders
  - The Corporation is in the process of securing an independent consultant to review the design of the scaled down dam and prepare a dam development plan for the Nzoia River Basin
  - Stakeholder consultations reveal that the dam is important to the Region and the negative social impact on the livelihoods must be mitigated against. Stakeholder



consultations will therefore be a continuous process.

## **PUBLIC CONSULTATIONS HELD**

45. Public consultations have been a key component during the project preparation phase. A Total of six (6) stakeholder consultations have been held on 6<sup>th</sup> March 2012 and 23<sup>rd</sup> March 2012, with the project beneficiaries with a view to:-

- Creating awareness on the proposed Nzoia Multipurpose Dam
- Educating stakeholders on objectives and benefits of the project
- Giving and receiving feedback from stakeholders on the project
- Seeking community support for and ownership of the project

46. Several stakeholder concerns were raised and concerns addressed as follows:-

- **The Construction of the dam will affect livelihood e.g. sand harvesting, brick making, small scale fishing and farming by the Youth.** On the construction of the dam other opportunities will be created such green house farming, commercial fishing and fingerling production, Diversification of agriculture where Youth Groups capacity will be developed to undertake the same
- **Large areas of some sub-locations in proposed Project area will be submerged on construction of the proposed dam.** The height of the dam has been scaled down and the area to be submerged reduced from 45Km<sup>2</sup> to 16Km<sup>2</sup>.
- **Crop production: The affected area is fertile, receives high rainfall, and crop production has taken place without irrigation. Would not submerging it be against Kenya's food security policy? Would it not significantly affect the Cereals Board of Kenya?** The total land in the two constituencies is 1229 Km<sup>2</sup> and the area being submerged is 16Km<sup>2</sup>. A big part of 16Km<sup>2</sup> is within river riparian. The Cereals Board of Kenya will not be adversely affected. The proposed project would introduce Green House farming in affected constituencies.
- Land ownership issues where many land owners don't have title deeds and land registration numbers, those who have used their land to secure loans which are still being recovered. At the time of compensation, all interested parties will be actively involved and their matters sorted out on case by case
- The affected community should benefit from the dam. The project benefits include Domestic and industrial water supply; construction of schools, Hydro power generation
- **Flood control is downstream the River Nzoia: Is a dam the final solution? Are there no other ways? Have these been explored? Why cannot the government take to Budalangi the money it plans to use in the construction of the dam to**

solve the problem there? Why can the flooding not be controlled at the mouth of River Nzoia? There are big tributaries of River Nzoia downstream the proposed dam site. Examples are Rivers Kuywa and Kibisi. These too contribute to flooding in Budalangi area, thus the proposed dam may not be effective in controlling floods in Budalangi. There are Economic benefits of regulating River Nzoia: The economic value of River Nzoia is by regulating it with a prediction. The value of regulating the River Nzoia is from upstream the river, not at the mouth. The recurrent cost of rehabilitation after floods far much out weights the long term benefits from the proposed Project. The socio-economic threats of floods downstream River Nzoia include food security, interruption of fishing, contamination of water supplies, closure of institutions, displacement of people etc :

- **There are tributaries of River Nzoia downstream the proposed dam site, which too contribute to flooding downstream:** This is true. There are other dams proposed for construction along the River Nzoia. At 30 metres high, the proposed project would be part of the solution. Separately, the other dams are also part of the solution and the Corporation will develop a dam development plan for the River Nzoia Basin.
- **Irrigation: The Project Affected Area receives high rainfall. How would the irrigation component be beneficial?** With irrigation, agriculture production can be controlled and there would be more enhanced food production improving the livelihoods and the economy of the people.
- **Where will Project Affected Persons be resettled?** The project affected persons will be resettled based on the Resettlement Action Plan to be developed jointly with the affected people
- **How will affected persons be compensated? Structures and, perennial and annual crops that will be affected will be compensated.** The government valuer will determine the rates of compensation, which will facilitate development of the compensation package for each of the Project Affected Persons s as per the legal requirements of the country. The compensation package will include, as appropriate: compensation, resettlement and rehabilitation assistance for the land, building or fixed assets on the land and building taken by the proposed Project. PAPs will be actively involved in the development of the compensation packages. All determined compensation will be awarded prior to construction of the proposed multi-purpose dam.
- **In connection with money for land compensation, the challenge is that land in the preferred resettlement area may be more expensive than in the project affected**

area. For example, land in Trans Nzoia, a preferred resettlement region, is more expensive than in the project affected region. How can the Project address this concern? Can Project Affected Persons negotiate with the Project on the matter? The proposed Project highly recommends land for land compensation. The replacement land should either be of comparable or better quality.

- The size of the dam will have an effect on the micro-climate of the area and have diseases in the project area such as AIDS. In the design of the proposed project, safety and education programmes will be incorporated. People will be sensitized on how to co-exist with the dam on its construction. As part of the corporate social responsibility there will be health facilities constructed. The tender document for the project contains sensitization of HIV and AIDS.

**47. RESPONSE ON THE PETITION BY THE MEMBER OF PARLIAMENT FOR KIMILILI CONSTITUENCY IN BUNGOMA COUNTY** – following the Member of Parliament for Kimilili Constituency in Bungoma County tabling of a public petition on August 23, 2011 before the House on behalf of the residents of Kabuyefwe, Naitiri, Kiminini, Tongaren, Kakamwe and Soysambu locations of Bungoma North District., Bungoma County, where the residents petitioned the Government that it stops the Development and subsequent construction of the dam based on its social economic impact.

48. The Corporation has looked into the said petition and would respond as follows:

- That an independent consultant is in the process of being procured to review the current draft design for the 30 m high dam, Environmental and social impact study report, preparation of resettlement action plan (RAP) by incorporating views of the local leaders and project affected people
- That the same consultant will come up with a dam development plan (DDP) prioritizing at least three (3) critical dam sites that need to be developed in future within Nzoia river basin so as to minimize negative social and environmental impacts and maximize benefits that can be derived from the Water Resources in the entire basin

**49. FUNDS ALLOCATED TO THE PROJECT FOR THE FINANCIAL YEAR 2012/2013** - The Government of Kenya has allocated Kshs.500 million for the proposed Nzoia dam Project in the FY 2012/13. The Government plans to have the review and finalization of the current design (30m High) by end of August 2012. Most of the Kshs.500 million will go towards compensation of the affected persons. The balance will be used to mobilize the Contractor sometime in mid 2013;

**50. PUBLIC HEARINGS – PUBLIC VIEWS ON SEPTEMBER 28, 2011**

- There is need for consultations and ensuring the peoples participation in matters



of development projects and issues;

- That the dam construction will affect 936 plots and approximately 85,000 peoples. This is figures provided by the ministry are not correct;
- The ministry should get the facts, figures right on those to be displaced and other infrastructures to be displaced or affected;
- Their land are fertile for more better farming and will not accept to be displaced;
- The storage of water does not help the residents of the area;
- The community is not ready to leave their ancestral land having established their burial sites and ceremonial sites;
- The project will bring health and psychological disturbances and shock due to the proposed displacement;
- They do not know how to swim;
- They are completely settled and self reliant as there are sufficient rain to support livelihoods;
- The government in not abiding with article 45 of the Constitution;
- No initial consultations
- The project will displaced and demolish a lifelong investments which include 35 schools, 3 cattle dips, 64 churches and 4 hospitals among other important infrastructures;
- Irrigation is not necessary;
- Loose of fertile land will lead to food insecurity;
- It is unreasonable to submerge fertile land under water;
- The use of the dams to cure the floods downstream, is not proper because other tributaries have been left out i.e. Kipkaren;
- The Community rejected the project;

51. **MINISTRY OF WATER & IRRIGATION POSITION WITH REGARDS TO THE DAM** - The proposed Nzoia Dam is aimed at achieving 3 major objectives, to:-

- Flood control on River Nzoia particularly in the lower reaches of the river.
- Increased food production through irrigation. During these times of failing rains due to climate change, rain-fed agriculture is no longer reliable. Irrigated agriculture will ensure food production throughout the year and a food secure region which will improve the lives of the people; and
- Power generation down-stream where feasible.

52. The position of the Ministry of Water and Irrigation is that these objectives should be realized in the shortest time possible since they meet the development agenda set out in Vision 2030;

53. However, the Ministry cannot impose the project on the people being keenly aware of

the constitutional provisions set out in the Bill of Rights particularly concerning the environment. Stakeholder consultations are also a vital provision at the Constitution. Public awareness creation and consultations are aspects of development that must, therefore, be undertaken. During these consultations the people have the opportunity to voice their concerns and are free to object to any or all of the development objectives;

54. Guided by these principles, the Ministry's position therefore, is that subject to environmental impact assessments a series of several dams should be constructed to control the River Nzoia. The stakeholder's consultations of the project should be concluded by July 2012 to pave way for the project.

#### 55. FINDINGS.

- A part from constant flooding during rainy seasons, the lower reaches of the Nzoia River are also plagued by prolonged drought spells giving rise to food and water scarcity when water flows in River Nzoia are low. It is this cycle of disasters occasioned by floods and droughts that have necessitated the proposal to develop Nzoia Multi-purpose Dam as a long term solution to the problem;
- It is for this reasons that the Government has classified **Nzoia Multi-purpose dam as vision 2030 flagship project**. The projected population to benefit from the project is estimated at 2,000,000 people up to the period 2032;
- Proposed Nzoia Multi-purpose dam is to be implemented by National Water Conservation and Pipeline Corporation (NWCPC) – a state Corporation under the Ministry of water and irrigation.
- The revised project is estimated to cost Kshs. 13 billion. The project major objectives are to:-
  - a) Control flood on River Nzoia particularly in the lower reaches of the river;
  - b) Increased food production through irrigation; and
  - c) Power generation down-stream where feasible.
- The National Water Conservation & Pipeline Corporation is in the process of procuring a consultant to come up with a dam development plan for the upper Nzoia Basin that will identify a **series of feasible dam sites** for future development. This plan will help to maximize benefits within the upper Nzoia River basin. For purposes of this study, Nzoia basin upstream of the Webuye town will form the study boundary.
- Potential dam sites for further studies include Mawe Tatu, Moi's bridge, Webuye falls dam site and Lugari dam on Kipkaren River.
- Initially the **proposed dam was going to be 60m high submerging 45Km<sup>2</sup> of land and impounding water storage of 980 million m<sup>3</sup>**. The dam would have resulted in 33,000 people being directly affected
- The proposed dam has been reduced from the 60m to 30m height, and therefore the

expected dam coverage will reduce from 4561 hectares to 1,693 hectares. This will reduce the expected people to be directly affected from about 33,000 to about 11,800;

- The reduction in the dam height from 60m to 30m will significantly change the benefits expected under the 60m height i.e. reduction in volume of water storage, Power generation, water supply and irrigable area. This reduction in project benefits will be compensated by developing other similar dams on tributaries of Nzoia river or/and other locations on the Nzoia river;
- The government has allocated Kshs.500 million for the proposed Nzoia dam Project in the FY 2012/13 and plans to have the review and finalization of the current design (30m High) by end of August 2012. Most of the Kshs.500 million will go towards compensation of the affected persons. The balance will be used to mobilize the Contractor sometime in mid 2013;
- Initially there was no proper consultation among the developers and all other stakeholders – communities, leaders etc;
- There was no proper compensation plans in place was envisaged in the development plan;
- There was no awareness creation to the all stakeholders on the part of the Ministry of Water or its agents i.e. the NWCPC;
- Stakeholder consultations reveal that the dam is important to the Region and the negative social impact on the livelihoods must be mitigated against. Stakeholder consultations will therefore be a continuous process;
- That subject to environmental impact assessments, a series of dams should be constructed to control the River Nzoia. The stakeholder’s consultations of the project should be concluded by July 2012 to pave way for the project;
- Public awareness creation and consultations are aspects of development that must, therefore, be undertaken;
- Six (6) stakeholder’s consultations were held with project beneficiaries on 6<sup>th</sup> March 2012 and 23<sup>rd</sup> March 2012, with a view to:-
  - a) Creating awareness on the proposed Nzoia Multipurpose Dam
  - b) Educating stakeholders on objectives and benefits of the project
  - c) Giving and receiving feedback from stakeholders on the project
  - d) Seeking community support for and ownership of the project
- **Project Benefits**
  - a) Flood control
  - b) Hydro-power
  - c) Irrigation
  - d) Water Supply

e) Employment Creation

▪ **Benefits to Project Affected Persons**

- a) Land for land compensation within the proximity of the project area. Land for land compensation implies that somebody whose one acre of land is taken by the project should be compensated by one acre of land elsewhere but preferably within the same county
  - b) Reconstruction of modern facilities ( schools, hospitals, churches, roads etc) to serve those who will be displaced from the project area and to replace infrastructure affected within project area
  - c) Empower the locals and displaced peoples through modern technologies of production such as Green House projects that grow value crops in addition to their traditional farming.
- The Ministry's position with regard to the project is that, subject to environmental impact assessments a series of dams should be constructed to control the River Nzoia and the stakeholder's consultations of the project should be concluded by July 2012 to pave way for the project.

**53. RECOMMENDATIONS – the Committee recommends that; -**

- a) The Ministry of Water & Irrigation through the National Water Conservation and pipeline Corporation should put in place resettlement and compensation plans before commencement of the project.
- b) The Ministry of Water & Irrigation through its agent, National Water Conservation and pipeline Corporation should empower the locals and displaced peoples through modern technologies of production such as Green House projects that grow value crops in addition to their traditional farming.
- c) The Ministry of Water & Irrigation through the National Water Conservation and pipeline Corporation should reduce the proposed dam from 60m high to 30m height; submerged 45Km<sup>2</sup> of land to a dam coverage reduction from 4561 hectares to 1,693 hectares. Therefore the number of people affected will reduce from 33,000 people being directly affected to about 11,800;
- d) The Ministry of Water & Irrigation should requisition more funds to be allocated for the proposed Nzoia dam Project in the FY 2013/14, review and finalize the current design (30m High) by end of August 2012, ensure more funds go towards compensation to the rightfully identified affected persons.



- e) The Ministry of water & Irrigation through its agent National Water Conservation and pipeline Corporation, puts in place a proper plan and mechanism for consultation, awareness creation among the developers and all other stakeholders – communities, leaders etc as such activities are aspects of development that must, therefore, be undertaken;
- f) The Ministry of Water and Irrigation through its agent National Water Conservation and pipeline Corporation , in consultation, collaboration and agreement with, the local communities, other government agencies and leaders, should establish and put in place proper compensation plans and mechanism;
- g) The Ministry of Water and Irrigation through its agent National Water Conservation and pipeline Corporation should prepare a comprehensive Environmental impact Assessments report and subject it to stakeholder scrutiny pursuant to Environment Management Coordinating Act , 1999; and
- h) The Ministry of Water and Irrigation should, subject to environmental impact assessments report, undertake to develop and construct a series of dams to control the River Nzoia.



APPENDIX

RESPONSE ON THE PETITION BY THE MEMBER OF PARLIAMENT FOR KIMILILI CONSTITUENCY IN BUNGOMA COUNTY

Item	Petitions	Response /Action by NWPCPC
1.	That the Ministry of Water and Irrigation through the National Water Conservation and Pipeline Corporation has embarked on a project to build a dam on river Nzoia	This is true. The Project is still under design as far as site, size and objectives are concerned
2.	This dam is going to cover over 40 square Kilometers and will affect 6 locations of Bungoma North district namely Kabuyefwe, Naitiri, Kiminini, Tongaren, Kakamwe and Soysambu locations leading to displacement of between 30,000 to 40,000 people	<p>Preliminary investigations for Site No. 34B, at a height of 60 m, and which covers the listed sub-locations, shows the submerged area of the dam shall be 45km<sup>2</sup>. At a height of 30m the area to be submerged is 16Km<sup>2</sup></p> <p>The number of individuals to be displaced on the construction of a 60 metre high dam is estimated at 33,754 and for 30m are 11,800 people. Further consultations are ongoing with the potential of the dam site being reviewed.</p>
3.	That this is the most fertile land in Bungoma county and is the breadbasket of the county and other counties in the former Western province	<p>We agree that Bungoma county which covers approx. 2,076 sq. Km is agriculturally productive and generally most of Western Province is productive. This productivity is limited to rain fed agriculture. The construction of the dam will ensure all year round productivity through irrigation and greenhouse farming. This will have a multiplier effect on agriculture production.</p> <p>The area which has the potential of being submerged is relatively small as compared to the County area (1.64%). From the preliminary analysis, this dam has been shown by the economic analysis, to have benefits outweighing the costs by far, and these are not only agricultural but multi-sectoral (Water Supply, Hydropower, Irrigation, Greenhouse farming, Fishing, Resort Development and potential to develop tourism facilities.). Local employment will be enhanced during the construction period and thereafter for the operation and maintenance of the investment .The Internal Rate of Return and the Net Present Value for the investment is high.</p>
4.	That the sheer size of the dam is on the scale of a man-made lake and will irreversibly alter the environment and lifestyles of those who will be affected to their detriment.	<p>At 30 meter high dam, it is true that the reservoir will be reasonable and will submerge 16Km<sup>2</sup> of land which is mainly within the Nzoia river valley. The Environmental study report shows that the impact on the environment is reversible through proper mitigation measures.</p> <p>The Environmental and Social Impact Assessment (ESIA) study report shows, there will be benefits and adverse effects. The status quo also has similar effects. But the preliminary studies did so far show that the benefits are more than the adverse effects. A preliminary Environment Management Plan has been developed for dealing with any adverse effects that might arise.</p> <p>During the preliminary assessment of the environmental and social issues, the Stakeholders have been consulted and their views will be incorporated in the recommendations of the project.</p>
5.	That those displaced are not assured of getting similarly fertile land of the same	This is not true. Once the plots and the people to be affected by the project are concluded, a Resettlement Action Plan (RAP) will be developed in

<p>acreage and hence may become disenfranchised and deprived of their livelihood and future development for themselves and their families will become destitute</p>	<p>consultation with the affected persons, local leaders and the relevant Government Agencies. The guiding principle of the RAP is to ensure that those who will be affected by the project are compensated to the extent that they are not in any worse off position than they are currently. More often than not they should end up better than currently. The current constitution strongly supports Consultative /Participatory process and this will be complied with to ensure that those affected are properly and adequately compensated, resettled and rehabilitated.</p> <p>The livelihoods of the people displaced by the project will be improved through provision of basic infrastructure, social amenities in the areas where they will be relocated and their capacity developed for new farming techniques such as green house, drip irrigation etc.</p> <p>It is the desire of the Government to resettle those affected by the project within the same counties as far as is practical.</p>
<p>6. Government of the Republic of Kenya stops the development of the said dam or substantially reduces the magnitude of the development so as not to negatively affect the livelihood of so many hardworking farmers who are humble citizens of Kenya and your petitioners will ever pray.</p>	<p>MWI and NWPCPC submits strong prayers that the development of this Project be allowed to completion after stakeholder consultations have been completed and the dam design reviewed for the benefit of the counties of Bungoma and Kakamega and indeed for the whole of the Country.</p> <p>The request by the stakeholders that the dam height be reduced has been considered and the Corporation now plans to develop a 30m high dam as opposed to the 60m initially proposed. The reduction will reduce the area to be submerged from 45Km<sup>2</sup> to 16km<sup>2</sup> the people to be displaced from 33,754 to 11,800. During the entire process of this dam development, consultations and consensus building will remain a critical component</p>