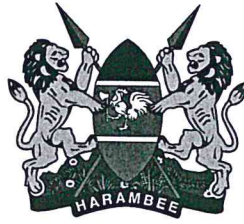


REPUBLIC OF KENYA



THE SENATE

TWELFTH PARLIAMENT

Approved  
now  
06/07/2021

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

ON

THE PETITION CONCERNING THE GAZETTEMMENT OF ONDIRI  
WETLAND, KIAMBU COUNTY

PAPERS LAID	
DATE	07/07/2021.
TABLED BY	Chairman.
COMMITTEE	Lands;
CLERK AT THE TABLE	Daaa

JUNE, 2021

② Rt. Hon. Speaker  
You may approve for  
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### **List of Abbreviations/ Synonyms**

CBS	- Chief of the Burning Spear
CEC	- County Environment Committee
CS	- Cabinet Secretary
EACC	- Ethics and Anti-Corruption Commission
EGH	- Elder of the Order of the Golden Heart
FOWK	- Friends of Ondiri Wetland Kenya
MGH	- Moran of the Order of the Golden Heart
MoLPP	- Ministry of Lands and Physical Planning
MP	- Member of Parliament
NECC	- National Environmental Complaints Committee
NEMA	- National Environment Management Authority
WRA	- Water Resources Authority

## **PREFACE**

**Mr. Speaker sir,**

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

### **Committee Membership**

The Committee comprises of the following Members.

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

**Chairperson**

**Vice-Chairperson**

At the sitting of the Senate held on 7<sup>th</sup> July, 2020, Sen. (Dr.) Isaac Mwaura, CBS, MP reported to the Senate that a Petition had been submitted through the Clerk, by Friends of Ondiri Wetland Kenya (FOWK) regarding the gazettelement of Ondiri Wetland, Kiambu County.

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

1. That there are a myriad of threats and challenges that the wetland has been facing which has resulted to its continued degradation and over exploitation of its resources. This included but not limited to pollution, water obstruction,

- encroachment, overgrazing, plantation of eucalyptus on its riparian reserve, infrastructural development and fodder harvesting;
2. That the wetland lacked formal protection status which threatens the wetland and attributed to low environmental literacy among the surrounding communities and poor coordination by the stakeholders;
  3. That there was continued operation of greenhouses which lack proper waste management practices and this led to release of chemical effluents into the wetland which is violation of Rule 81 of the Water Resources Management Rules, 2006 which prohibits discharge or application of any poisonous toxic, noxious or obstructing matter, radio activity waste or other pollutants into a water body;
  4. That some of the land owners surrounding the wetland have encroached into the wetland for agricultural expansion and construction of residential homes. Riparian land owners have built permanent structures and cultivated horticultural crops beyond the set back line. The eroded soil causes segmentation of the wetland, thus raising the issue of ground seepage of sewage effluent into the wetland;
  5. That there has been unregulated abstraction of water from the wetland and there are about over 40 permanent water pumps drawing water from the wetland yet this is one of the sources of Nairobi River, out of which 50 per cent lack permits and are unmetered making it difficult to monitor water abstraction from the wetland. This contravenes Section 36b of the Water Act 2016 which requires the issuance of permits for abstraction of water; and
  6. That they have made the best efforts to have these matters addressed by the relevant authorities, all of which have failed to give a satisfactory response.
  7. That none of these issues raised in this Petition is pending in any court of law, constitutional or any other legal body.

Therefore, the petitioners humbly pray that the Senate investigates this matter and –

1. Initiate a formal protection status for Ondiri wetlands in the Republic of Kenya;
2. Intervene in the matter with a view to ensure that the Water Resources Authority (WRA) verifies whether all of the water abstraction permits are registered or not and legalize them and delineate the boundaries of Ondiri wetland;

3. Initiate the recognition of Ondiri wetland Kenya as a highland bog and a major water tower and an ecosystem site;
4. Initiate the process of funds allocation to carry out awareness campaigns that will involve the Government, private sector and fencing off of the wetland so that people can understand the importance of the resource, so that it can be properly managed; and
5. Intervene for the folk group to enable the gazettelement of Ondiri Wetland as a wetland area.

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

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

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

The Committee proceeded to invite the Cabinet Secretary, Ministry of Environment and Natural Resources for an online meeting and the County Government of Kiambu, County Government of Nairobi and the Ministry of Water, Sanitation and Irrigation for them to send their written responses on the aforementioned Petition.

## ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee extends its appreciation to the Petitioners Mr. David Ndungu, Mr. Moses Ndichu, Mr. Julius Muhia, Mr. Robert Njoroge and Mr. Samuel Kuria. Further, the Committee wishes to also thank the Stakeholders; the Cabinet Secretary, Ministry of Environment and Forestry, Mr. Keriako Tobiko, CBS, SC, the Cabinet Secretary, Ministry of Water, Sanitation and Irrigation, Mrs. Sicily Kariuki, EGH, and the Cabinet Secretary, MoLPP, Ms. Farida Karoney, EGH for their submissions and contribution to the resolution of this matter.

**Mr. Speaker Sir,**

It is now my pleasant duty and privilege, on behalf of the Committee, to present the Report of the Standing Committee on Land, Environment and Natural Resources on the Petition by Friends of Ondiri Wetland Kenya (FOWK) on the gazettelement of Ondiri Wetland, Kiambu County.

Signed:  Date: 11/06/2021

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

## CHAPTER I

### INTRODUCTION

1. At the sitting of the Senate held on 7<sup>th</sup> July, 2020, Sen. (Dr.) Isaac Mwaura, CBS, MP reported to the Senate that a Petition had been submitted through the Clerk, by Friends of Ondiri Wetland Kenya (FOWK) regarding the gazettelement of Ondiri Wetland, Kiambu County.
2. Petition
  - (a) THAT, there are myriad of threats and challenges that the wetland has been facing which has resulted to its continued degradation and over-exploitation of its resources; this include but not limited to pollution, water abstraction, encroachment, overgrazing, plantation of eucalyptus on its riparian reserve.
  - (b) THAT, the wetland lacks formal protection status which threatens the wetland and attributes to low environmental literacy among the surrounding community and poor coordination among the stakeholders.
  - (c) THAT, there is continued operation of greenhouses which lack proper waste management practices and this has led to release of chemical effluents into the wetland which is in violation of rule 81 of the Water Resource Management (water) rules 2006, which prohibits discharge or application of any poisonous, toxic, noxious or obstructing matter, radioactive waste or other pollutants into a water body.
  - (d) THAT, some of the land owners surrounding the wetland have encroached into the wetland for agricultural expansion and construction of residential homes. The riparian land owners have built permanent structures and have cultivated horticultural crops beyond the setback line, the eroded soil causes sedimentation of the wetland not forgetting the realization of group seepage of sewage effluent into the wetland.
  - (e) THAT, there has been abstraction of unregulated water from the wetland. There are over 40 permanent water pumps drawing water from the wetland, out of which 50% lack permits and are unmetered making it difficult to monitor water abstracted from



the wetland these contravenes section 36 of the Water Act 2016 which requires the issuance of permits for abstraction of water with works of water source.

(f) THAT, I/we have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response.

3. The Petitioner, therefore, prays that –

- (a) Initiate a formal protection status for Ondiri wetlands in the Republic of Kenya;
- (b) Intervene in the matter with a view to ensure that the Water Resources Authority (WRA) verifies whether all of the water abstraction permits are registered or not and legalize them and delineate the boundaries of Ondiri wetland;
- (c) Initiate the recognition of Ondiri wetland Kenya as a highland bog and a major water tower and an ecosystem site;
- (d) Initiate the process of funds allocation to carry out awareness campaigns that will involve the Government, private sector and fencing off of the wetland so that people can understand the importance of the resource, so that it can be properly managed; and
- (e) Intervene for the folk group to enable the gazettelement of Ondiri Wetland as a wetland area.

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

### LEGAL BASIS FOR PETITIONS

5. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.
6. Article 37 of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while Article 119(1) of the Constitution provides that *“every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”*
7. Section 5(2) of the Petition to Parliament (Procedure) Act, provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House.* In this regard, standing order 232 of the Senate Standing Orders provides as follows-
  232. *Committal of Petitions*
    - (1) *Every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.*
    - (2) *Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.*
8. Standing order 233 requires the Clerk to, within fifteen days of tabling of the report on a petition under Standing Order 232 (Committal of Petitions), submit a copy of the report to the petitioner or petitioners.

## CHAPTER 2

### CONSIDERATION OF THE PETITION

#### Approach taken by the Committee

1. In considering the Petition, the Committee observed that it would be important to verify the facts alleged by the Petition. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.
2. In this regard the Committee received the Petition from the Petitioner through the House and further invited the Cabinet Secretary, Ministry of Environment and Forestry, together with his team from NEMA who virtually appeared before the Committee on 10<sup>th</sup> March, 2021. The Committee was able to discuss broadly on the Petition as well as other Petitions that were before the Committee.
3. Thereafter the Committee called for a multi-stakholder meeting that was scheduled for 24<sup>th</sup> March, 2021 comprising of the Ministry of Environment and Forestry, MoLPP, Ministry of Water and Sanitation, County Government of Kiambu, County Government of Nairobi.

#### Petitioners Submissions

##### The Petitioners presented as follows:

Background:

Ondiri Wetland is the only Highland bog in the Republic of Kenya and is part of ONKARU (Ondiri, Nyongara, Kabuthi and Rungiri) Sub-Catchment Management plan which covers an area of 118 square kilometers. The main direction of outflow of the Wetland is to the South and East where several small streams join downstream to form larger streams that make the headwaters of Nairobi and Athi Rivers. The Wetland is also linked to Kikuyu Springs which are a major source of water to Kikuyu and Nairobi throughout the year. Kikuyu Springs is the oldest source of piped water for the city of Nairobi which was connected in 1906.

The Petitioners prayed that the Senate intervenes to ensure that they achieve official gazettement of Ondiri Wetland to protect it from further encroachment.

*(Annexed to this Report are the presentations made by the Petitioners as Annex III)*

### **Response by the Cabinet Secretary, Ministry of Environment and Forestry**

#### **The Cabinet Secretary presented as follows:**

The Senate Standing Committee on Land, Environment and Natural Resources through letter Ref. No. SEN/DCS/LENR/2/2020/(70) dated 17<sup>th</sup> November, 2020 by the Clerk of the Senate invited the Cabinet Secretary, Ministry of Environment and Forestry to a meeting to respond to a petition to the senate concerning the gazettement of Ondiri wetland Kenya as follows:-

#### **Background**

Ondiri Swamp is located in Kiambu County. It covers 34.5 ha with a perimeter of 3.5 km and a depth range of 2 to 3 meters. It is a wetland of great importance as it forms the headwaters of Nairobi River where it is fed by Nyongera River. It also recharges the Kikuyu springs through a subterranean passage. The swamp is a source to 40 other springs, which provides water to the local community. Ondiri wetland supports biodiversity ranging from aquatic and semi aquatic plants, birds, mammals, amphibians, reptiles and insects. It also provides critical ecosystem services from provisioning, regulatory, supporting and cultural. It is the main source of water for the Nairobi River and surrounding local communities.

However, just like other wetlands in the country, Ondiri continues to face many challenges and threats. Mainly:

- (a) Land ownership issues and unclear swamp boundary

- (b) Uncoordinated stakeholder efforts
- (c) Weak law enforcement
- (d) Unregulated water abstraction
- (e) Pollution (industrial, infrastructure, agricultural and domestic waste)
- (f) Growing of exotic trees
- (g) Over-exploitation of the wetland resources
- (h) Siltation
- (i) Inadequate community participation

### **1. Initiate a formal protection for Ondiri Wetland in the Republic of Kenya**

The National Environment Management Authority (NEMA) has continued to engage stakeholders through sensitization programmes, coordinating tree planting and cleanups to safeguard the ecosystems. Other interventions that NEMA has put in place is through ensuring that developments in the neighbourhood undertake Environmental Impact Assessment and environmental audits as provided for by EMCA1999 and they are compliant with water quality as well as waste management Regulations.

Protection of Ondiri wetland requires a multi sectoral approach involving all stakeholders coordinated by National Environment Management Authority (NEMA) through the County Environment Committee (CEC).

### **2. Initiate the recognition of Ondiri wetland Kenya as a highland bog and a major water tower and an ecosystem site**

The Gazettement of Ondiri wetland under section 42 of the Environmental Management and Coordination Act Cap 387 laws of Kenya as a protected wetland will ensure recognition of the natural resource as a national resource. In addition, the Wetlands

regulation (2009) empowers the minister by a gazette notice to declare an area as a protected wetland. NEMA will spearhead the process of gazettement as a protected area.

**3. Intervene in the matter with a view to ensure that WRA verifies weather water abstraction permits are registered or not and legalize them and delineate the boundaries of the wetland.**

This can best be handled by Water Resources Authority as the lead agency in this matter

In the coordination and supervisory role of NEMA, the CEO WRA shall be notified through writing to provide information on the abstraction permits as well as the boundary maps.

**4. Initiate the process of funds allocation to carry awareness campaigns that will involve the government and private sector to understand the importance of the wetland and how it can be managed:**

- (a) NEMA can collaborate with the friends of Ondiri Wetland Kenya to undertake awareness campaigns on the importance of the wetland;
- (b) NEMA can be facilitated to undertake conservation programmes;
- (c) NEMA to undertake stakeholder analysis within Ondiri to ensure inclusivity which has been lacking in an effort to conserve the wetland

**5. Intervene for the group to enable the Gazettement of Ondiri wetland**

Gazettement of a wetland is a multispectral and a lengthy process that requires comprehensive consultations and resources. NEMA will spearhead gazettement of the wetland in collaboration with County Environment Committee of Kiambu County.

The Gazettement process as outlined in the Wetlands Regulations sec 9 (2);

- (a) By notice in the gazette, notify the public of the intention to declare an area to be protected wetland;*

- (b) Setup a taskforce to prepare a management plan by incorporating views of people inhabiting the area adjacent to the wetland;*
- (c) Cause a SEA of the management plan in accordance with the Act; and,*
- (d) Where the Authority is satisfied with the findings, submit to the Minister for gazettelement.*

Attached are two reports that have been prepared by Agencies of the Ministry and their recommendations that will go a long way in sustainable management of this important resource.

- (a) Special report on the degradation of Ondiri Swamp in Kikuyu sub-county, Kiambu County of September, 2018 by the National Environment Complaints Committee (NECC) **(Annex 1)**.
- (b) Report on the status of Ondiri Swamp of May 2020 prepared by Kenya Water Towers Agency among others **(Annex 2)**

The Cabinet Secretary assured the Committee of the Ministry's commitment to working towards a sustainable management of this very important natural resource together with the relevant stakeholders.

The CS informed the Committee that he fully supports the Petition and that something needs to be done by all players involved.

The Ministry presented before the Committee a Special report on the degradation of Ondiri Swamp in Kikuyu Sub-county, Kiambu County by National Environmental Complaints Committee (NECC) dated September, 2018. *(A copy of which is annexed to this Report as Annex III)*

NECC is established under Section 31 of the Environmental Management and Co-ordination Act, 1999 (No. 5 of 2015). According to Section 31 of the Act, the

membership of NECC is drawn from key stakeholders in environmental management. The Committee consists of seven members who include a Chairman, who qualifies to be a judge of the Environment and Land Court of Kenya, a representative of the Attorney General, a representative of the Law Society of Kenya, one person nominated by the Council of Governors and who is the Secretary to the Committee, a representative of the business community and two members, appointed by the Cabinet Secretary for their active role in environmental management.

NECC observed articles in the media regarding the degradation of Ondiri Swamp in Kikuyu Sub-county of Kiambu County. There were allegations that there was encroachment on the swamp and release of effluent and solid waste into the swamp. Over-abstraction of water and clearing of vegetation for fodder was also said to contribute to the degradation. NECC investigated the complaint on 4<sup>th</sup> September 2018.

The Report had the following Observations, Findings, Policy Framework and Recommendations.

## **OBSERVATIONS**

1. Ondiri swamp is located in Kikuyu sub-county, Kiambu County
2. There were greenhouses and horticultural crop cultivation on the steep slopes adjacent to the swamp
3. There were several water pump stations abstracting water from the Ondiri swamp
4. WRA had placed beacons to mark the riparian reserve of swamp. However, there was encroachment on the riparian area
5. Untreated sewage was flowing in the storm drains in Kikuyu town and into River Nyongora
6. Water in River Nyongora, which drains out of Ondiri swamp, had a foul smell
7. Despite the beacons demarcating the swamp, it had not been fenced off and hence the encroachment
8. Storm drains from the southern by emptied into the swamp



## **FINDINGS**

1. Ondiri swamp is located in Kiambu County but lies in Athi catchment area
2. The swamp is an important water resource for both Kiambu and Nairobi counties as it is the main recharge area for its groundwater
3. Some of the water pumps in the swamp are unmetered and the farms did not have the reservoirs to hold water. Therefore, over abstraction of water is likely to occur. According to WRA, some of the water pumps were illegal.
4. The greenhouses and other horticultural farms encroached close to the swamp and are situated on the steep slopes that drain into the swamp. Therefore agricultural chemicals are likely to be swept by surface runoffs into the swamp.
5. Kikuyu town did not have a central sewer system and therefore untreated sewer ended up in the swamp causing pollution
6. The storm drains along the Southern by-pass drain into Ondiri swamp
7. WRA had marked the riparian reserves of the Ondiri swamp and were in the process of gazetting both Kikuyu spring and the Ondiri swamp.
8. The management of the Ondiri swamp is being undertaken by different stakeholders independently. The stakeholders include the local community, Water resources authority, NEMA, Kiambu County Government.

## **RECOMMENDATIONS**

1. The immediate recommendations to redress the complaint include;
  - WRA should disconnect all the illegal abstraction points
  - NEMA, WRA and the county Government of Kiambu should ensure that all activities extending beyond the pegged out riparian areas are relocated
  - NEMA, WRA should conduct an audit on all the flower farms adjacent to the swamp, with emphasis on effluent disposal
  - NEMA and the County Government of Kiambu's public health department should identify and prosecute all entities discharging effluent onto the storm drains in Kikuyu town

2. The Water Resources Authority, NLC and the County Government of Kiambu should carry out the physical survey, demarcate and fence off the swamp to prevent the encroachment by the private developers. They should also create a clear buffer zone to prevent activities beyond the riparian reserve of the swamp.
3. The Water Resources Authority should carry out a control audit on all the water pump stations to clear out the illegal ones and regulate the amount of water being abstracted from the swamp.
4. NLC should enforce the protection of the public swamp.
5. The Survey of Kenya should assist in mapping out the swamp and erect clear off-ground beacon posts all around the swamp.
6. The attempts to conserve Ondiri swamp are being undertaken by different stakeholders independently leading to conflicts in the process. Therefore, WRA and the County government should develop an integrated approach towards conserving Ondiri swamp. This should involve all the stakeholders not limited to local community, WRA, the County Government and non-state actors
7. Water Resources Authority should fast-track the process of gazetting the Ondiri Swamp.
8. The County Government of Kiambu should spearhead an all-inclusive task force to fast-track the gazettelement process and fencing it off for the conservation of the wetland.

#### **APPLICABLE LEGAL AND POLICY FRAMEWORK**

1. The Constitution of Kenya, 2010
2. National Environment Policy, 2013
3. Environmental Management Coordination Act, Cap 385
4. Environment Management and Coordination (Wetlands, River Banks, Lakeshores and Sea Shore Management) Regulation, 2009
5. Environmental Management Coordination (Waste Management) Regulations, 2006

6. Environmental Management and Coordination (Water Quality) Regulations, 2006
7. Wildlife Conservation and Management Act, 2013
8. Wildlife Conservation and Management ( Protected Wetlands) Regulations, 2015
9. Kiambu County Water and Sanitation Services Act, 2015
10. Kiambu County Citizen Petition and Participation Act, 2016
11. The Water Act of 2016
12. County Governments Act 2012
13. Public Health Act, 2012
14. Land Act, 2012
15. National Land Commission Act, 2012
16. Ramsar Convention on Wetlands

### **POLICY FRAMEWORK**

The Government should expedite the process of gazettelement and enforcement of the Environmental Management Coordination (Conservation and Management of Wetlands) Amendment Regulations, 2018.

The Government needs to harmonize the various roles of regulatory agencies charged with the mandate of managing wetland ecosystems and develop and implement catchment-based management plans for all wetlands with the need to promote conservation and sustainable use of wetland resources.

### **Response by the Cabinet Secretary, MoLPP**

Vide a letter Ref. **SEN/DCS/LENR/2/2021/(15)** dated March 17, 2021, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning to respond in detail to the Petition concerning the Gazettelement of Ondiri Wetland in Kiambu County.

The Ministry provided the responses indicated:

1. The Ministry of Environment and Forestry through its agencies has spearheaded a

number of initiatives to address the prayers of the petitioners. Some achievements of these initiatives include formulation of the Report on the Status of Ondiri Swamp of May 2020 prepared by the Kenya Water Towers Agency, which the Ministry of Lands participated in.

2. Sessional Paper No. 1 of 2017 on National Land Use Policy acknowledges the challenges facing surface and underground water bodies in the country, which include those that have been observed in the Ondiri wetland area. These challenges include increased population settlement on riparian reserves, pollution and over-abstraction of water, creation of land parcels onto riparian areas, and increased cultivation on catchment areas causing sedimentation.
3. To address these challenges, the NLUP policy adopts a number of approaches including, but not limited to:
  - i. Map, restore and reclaim riparian areas along lakes, rivers, swamps and other wetlands
  - ii. Map and ascertain the state and extent of aquifers and groundwater resources and plan for their sustainable exploitation
  - iii. Promote and protect sustainable utilisation of inland water bodies' resources
  - iv. Set up a special fund for management and reclamation of wetlands under Ministry of Lands and Physical Planning
4. The NLUP further acknowledges that a key challenge to the management of riparian reserves has been the lack of a coordinated legal framework. Different statutes have offered varied, conflicting interpretations of the definition and standards of measurement applicable to riparian reserves.
5. In light of these inconsistencies, the Ministry of Land and Physical Planning prepared a Cabinet Memo which has been approved by Cabinet with a view to:
  - i. Review and introduce standard measurements for riparian reserves around wetlands to deal with the conflicts and inconsistencies in various sectoral laws

- governing riparian areas
- ii. Review and amend respective laws and regulations in line with the new, harmonised standards of measurement for riparian reserves
  - iii. Establish multi-agency teams to deal with the profiling, mapping and delineation of riparian land along all water courses, starting with Nairobi and eventually in all counties
  - iv. Inspect and profile all developments, properties and structures that have been illegally created within riparian land with the view to remove them and restore wetlands
6. The Ministry was at an advanced stage of preparing regulations under the Physical and Land Use Planning Act, 2019 to provide a detailed framework for guidance and control of land use development activities within riparian land/reserves.
  7. Given the challenges observed in Ondiri Wetland, it is the Ministry's position that a Riparian Reserve Management Plan be prepared by a multi-agency team, through coordination of the Water Resources Authority. Such a plan will help to delineate the boundaries of the wetland for purposes of its conservation, protection and gazettement.
  8. To this end, the Ministry affirms its continued commitment to work together with the relevant MDAs and the County Government of Kiambu in the activities pursuing protection and gazettement of Ondiri Wetland.

**Response by the Cabinet Secretary, Ministry of Water, Sanitation and Irrigation**

The Committee invited the Ministry vide a letter Ref. No. SEN/DCS/LENR/2/2021/ (15) dated 17<sup>th</sup> March, 2021 regarding the petition concerning the gazettement of Ondiri wetland in Kiambu County.

The Ministry of Water, Sanitation and Irrigation responded as follows:

1. The Ministry of Water, Sanitation and Irrigation under Section 11 of the Water Act, 2016 is responsible for regulating the management and use of water

resources. Under Section 22 and 23 of the Act, the Ministry is mandated, where necessary to conserve a vulnerable water resources or conserve groundwater, to take special measures which may include gazettelement.

2. The Ministry was aware of the threats and challenges facing Ondiri Wetland. The wetland is the largest and deepest within the upper drainage of the greater Athi River. It is located in the extreme south western part of Kiambu County. A study commissioned by Water Resources Authority (WRA), an agency of the Ministry in 2010 showed that the wetland is the immediate recharge area of the Kikuyu Springs and a source of Nyongara River that eventually flows into Nairobi River. The conservation and protection of the wetland will therefore ensure sustainable water supply for Kikuyu town, Nairobi City and the existence of the Nairobi River.
3. The Ministry has taken the following steps towards the conservation and protection of the wetland:
  - i) In line with Rule 10 of the Water Resources Management Rules 2007, mobilized and established the Onkaru WRUA, which covers the sub catchments drained by Ondiri Wetland, Nyongara River, Kabuthi River and Rungiri River; **(See Annex 1- Report on Restructuring and Updating Onkaru WRUA)**
  - ii) The WRUA has recruited members who have been trained on management of water resources in the sub catchment. It is worth noting that Friends of Ondiri Wetland Kenya is a corporate member of the WRUA. The register of members is domiciled with the WRUA.
  - iii) Undertaken measures to address the pollution issues by developing the waste water management guidelines to regulate the discharge of wastewater within the area. These guidelines have been adopted by the stakeholders. **(See Annex**

## **2-Waste Water Management and Efficient Water Use in Kikuyu Springs GCA)**

- iv) Marked Ondiri Wetland riparian reserve as stipulated in Rule 116 of the Water Resources Management Rules 2007. The Rule explicitly indicate that Riparian land” does not imply a change of ownership but imposes management controls on land use for water resource quality as defined.
4. Unless authorized by the WRA in consultation with other relevant stakeholders, no person is allowed to undertake the proscribed activities on riparian land. The proscribed activities include:
- (a) Tillage or cultivation;
  - (b) Clearing of indigenous trees or vegetation;
  - (c) Building of permanent structures;
  - (d) Disposal of any form of waste within the riparian land;
  - (e) Excavation of soil or development of quarries;
  - (f) Planting of exotic species that may have adverse effect to the water resource
  - (g) or any other activity that in the opinion of the Authority and other relevant stakeholders may degrade the water resource;
5. That the wetland is a bog, and settlement and/or cultivation within it is not possible. However, encroachment on the fringes of the wetland has been observed and this has led to the need for protection and conservation.
6. That the Friends of Ondiri Wetland Kenya have been working with the Ministry during the planning and sensitization of the stakeholders for the Ondiri Wetland fencing project, which was undertaken in 2020.

The Ministry responded to the prayers of the petition follows;

**1. Initiate Formal Protection Status for Ondiri Wetland in the Republic of Kenya**

The Ministry in conjunction with the riparian land owners demarcated and pegged the riparian reserve of the wetland. This was preceded by sensitization meetings where the land owners were taken through the Water Act 2016 and the Water Resources Management Rules 2007 with special emphasis on PART IX - CONSERVATION OF RIPARIAN AND CATCHMENT AREAS. This was to ensure that they were brought on board into the conservation efforts for sustainability. The riparian land owners voluntarily agreed and participated in the marking of their land. This was followed by the erection of a chain-link fence totaling 3.7 kilometers around the perimeter of the swamp. During the marking and pegging exercise, eucalyptus trees within the reserve were marked for removal by the owners, and which have since been removed;

**2. Intervenes in the matter with a view to ensure that WRA verifies whether all the water abstraction permits are registered or not and legalize them, and delineates the boundaries of Ondiri Wetland**

The Ministry through WRA has ensured compliance with the Water Resources Management Rules 2007 in terms of water resources abstraction from the swamp and its vicinity. In this regard, a total of 104 abstractors have been identified and distributed as follows:

<i>Status</i>	<i>No.</i>
Issued Permits	33
Authorization	58
Extension	3
Pending RO	3
Received inspection report awaiting permit approval	6



Unposted	1
<b>TOTAL</b>	<b>104</b>

The 58 Authorizations and 3 Extensions are awaiting completion and inspection of the works to confirm that they have been done in accordance with the specifications and conditions set out in the regulations before they are issued with water use permits.

**3. Initiate the recognition of Ondiri Swamp as a Highland Bog and a major water tower and an eco-system site**

The steps outlined above which the Ministry has taken in the effort of conservation and protection of Ondiri Wetland is a clear precursor to the recognition of the Bog as a major water catchment and groundwater conservation area. The Ministry will initiate wide consultations with other relevant stakeholders on the environmental and social impacts, including mitigation measures and safeguards to be considered for the recognition of the wetland as a major water tower.

**4. Initiate process of funds allocation to carry awareness campaigns that will involve the government and private sector to understand the importance of this wetland and how it can be managed**

The Ministry through its Agency, Water Resources Authority has in this financial year allocated funds for the sensitization of the stakeholders and the updating of the Onkaru WRUA Sub Catchment Management Plan (SCMP) to take into account emerging issues. Ksh 4.9 million will be disbursed to the WRUA for implementation of the SCMP with part of the funds being applied at Ondiri Wetland. So far, the first tranche of Ksh 1.75 million has been disbursed and the balance of Ksh 3.16 million will be released once the first tranche is accounted for. In addition, the Ministry has planted about 8,000 trees in the wetland's riparian reserve and spent Ksh 4.917 million for the fencing project. (See

**Annex 3- Contract for Onkaru WRUA for the Implementation of SCMP Activities and Annex 4-Ondiri Wetland Tree Growing Report)**

**5. Intervenes for the Group to enable the gazettelement of Ondiri Wetland**

The Ministry has invested significantly in the conservation and protection of the Ondiri Wetland. It is intended that the wetland will be gazetted in line with the Ministry's policy direction that all water catchment and conservation be demarcated and gazetted to ensure no further proscribed activities are carried out. The Ministry is therefore in support of gazettelement of Ondiri Wetland as requested by the petitioners and it will be done in due course.

The Ministry's commitment in ensuring conservation and protection of all water catchment areas in the country for sustainable water resources availability.

**Responses by the County Government of Kiambu**

Vide a letter Ref: SEN/DCS/LENR/2/2021/(15) dated 17<sup>th</sup> March, 2021, the Committee invited the County Government in the presence of all the other stakeholders but they did not appear before the Committee.

**Responses by the County Government of Nairobi**

Vide a letter Ref: SEN/DCS/LENR/2/2021/(15) dated 17<sup>th</sup> March, 2021, the Committee invited the County Government in the presence of all the other stakeholders but they did not appear before the Committee.

## CHAPTER 5

### COMMITTEE OBSERVATIONS

**In accordance with the Prayers of the Petitioner the Committee observes as follows:**

1. Initiate a formal protection status for Ondiri wetlands in the Republic of Kenya;

#### **Committee's Observation**

**The Committee observes that the Ministry of Water, Sanitization and Irrigation was already in recognition of the same and was taking the necessary steps to initiate a formal protection status for Ondiri wetlands.**

2. Intervene in the matter with a view to ensure that the Water Resources Authority (WRA) verifies whether all of the water abstraction permits are registered or not and legalize them and delineate the boundaries of Ondiri wetland;

#### **Committee's Observation**

**The Committee notes that the Ministry of Environment and Forestry has already undertaken commendable steps towards addressing this matter as raised in the petition with the view of protecting and conserving the Ondiri wetland.**

3. Initiate the recognition of Ondiri wetland Kenya as a highland bog and a major water tower and an ecosystem site;

#### **Committee's Observation**

**The Committee observes that all the concerned government agencies that appeared before the Committee appreciated and recognized Ondiri Wetland as important and a Major water tower for Kiambu and Nairobi Counties.**

4. Initiate the process of funds allocation to carry out awareness campaigns that will involve the Government, private sector and fencing off of the wetland so that people can understand the importance of the resource, so that it can be properly managed;

### **Committee's Observation**

The Committee observes that the Ministry of Water, Sanitization and Irrigation through its Agency, the Water Resource Authority, has availed considerable financial resources to Ondiri Wetland which was meant for, among others, carry out sensitization of the local community, the fencing of the Ondiri Wetland and planting of trees in the riparian reserve.

5. Intervene for the folk group to enable the gazettelement of Ondiri Wetland as a wetland area.

### **Committee's Observation**

The Committee observes that the Ministry of Water, Sanitization and Irrigation was in support of the petitioners' prayer and has demonstrated commitment to fast track the gazettelement of the Ondiri Wetland and other riparian lands that needed the protection of the Ministry.

### **Overall Observations**

1. The Committee observes that there was a huge challenge of encroachment into the Wetland/Swamp which needed to be addressed immediately.
2. The Committee notes that the concerned Government Entities agreed with the issues raised in the petition and had already taken steps to safeguard the wetland prior to their appearance before the Committee.
3. The Committee notes that wetlands in Kenya are under threat due to human activities, deforestation and climate change.

## CHAPTER 6

### COMMITTEE RECOMMENDATIONS

In accordance with the Prayers of the Petitioner the Committee recommends as follows:

1. **THAT the Ministry of Lands and Physical Planning should fast track the development and the implementation of the relevant regulations under the Physical and Land Use Planning Act, 2019 so as to provide a detailed framework for guidance and control of land use development activities within riparian land/reserves;**
2. **The Ministry of Water, Sanitation and Irrigation through its agencies gazettes Ondiri Wetland in Kiambu County and gives to the Senate a Status report within four months of tabling of the Report in the Senate;**
3. **THAT the Ministry of Water, Sanitation and Irrigation spearheads collaborative efforts and builds synergy with all the concerned stakeholders/Government agencies including the Ministry of Environment and Forestry and Kiambu County Government in addressing all issues regarding Ondiri Wetland and avails a status report to the Senate within six months from the adoption of this report;**
4. **The Ministry of Environment and Forestry and the County Government of Kiambu should take a leading role in tackling encroachment that has affected Ondiri Wetland.**

## **APPENDICES**

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

**MINUTES OF THE 34<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON FRIDAY, 11<sup>TH</sup> JUNE, 2021 AT SAROVA WHITESANDS HOTEL, MOMBASA AT 9.00 AM.**

**MEMBERS**

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

**PRESENT**

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

**ABSENT WITH APOLOGY**

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

**IN ATTENDANCE**

1. Ms. Veronicah Kibati
2. Mr. Victor Bett
3. Mr. Crispus Njogu
4. Mr. Yussuf Shimoy
5. Ms. Mitchell Otoro
6. Ms. Lucianne Limo
7. Ms. Sakina Halako
8. Mr. John Pere
9. Mr. James Kimiti
10. Mr. Naftali Ondiba
11. Mr. Benard Oteyo

**SECRETARIAT**

- Principal Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Legal Counsel
- Media Relations Officer
- Personal Secretary
- Sergeant-At-Arms
- Audio Recording
- Finance Officer
- Office Assistant

**MINUTE SEN/SCLNDR/192/2021: PRELIMINARIES**

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

**MINUTE SEN/SCLNDR/193/2021: ADOPTION OF AGENDA**

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

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Adoption of the following Petition Reports;**
  - (a) Draft Report of the Committee on the Petition regarding Gazettement of Ondiri Wetland in Kiambu County.

- (b) Draft Report of the Committee on the Petition regarding The adverse effects of rock blasting for the construction of Thwake Dam (Makueni County Assembly Committee on Environment & Climate Change)
  - (c) Draft Report of the Committee on the Petition regarding the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County.
- 5. Any other Business;
  - 6. Date of the next meeting;
  - 7. Adjournment.

**MINUTE SEN/SCLNDR/194/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The Committee differed the confirmation of Minutes.

**MINUTE SEN/SCLNDR/195/2021: ADOPTION OF THE FOLLOWING PETITION REPORTS;**

- (a) **Draft Report of the Committee on the Petition regarding Gazettement of Ondiri Wetland in Kiambu County.**

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

**The Committee there recommends as follows:**

- 1. **THAT the Ministry of Lands and Physical Planning should fast track the development and the implementation of the relevant regulations under the Physical and Land Use Planning Act, 2019 so as to provide a detailed framework for guidance and control of land use development activities within riparian land/reserves.**
- 2. **THAT the Ministry of Water, Sanitation and Irrigation spearheads collaborative efforts and builds synergy with all the concerned stakeholders/ Government agencies including the Ministry of Environment and Forestry and Kiambu County Government in addressing all issues regarding Ondiri Wetland and avails status report to the Senate within six months from the adoption of this report.**

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

- (b) **Draft Report of the Committee on the Petition regarding The adverse effects of rock blasting for the construction of Thwake Dam (Makueni County Assembly Committee on Environment & Climate Change)**

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby **adopted its report** with



the following recommendations in accordance with the Prayers of the Petitioner—

**The Committee there recommends as follows:**

1. That all blasting occurs between 6.00 am – 6.00 pm in accordance with the blasting license issued by the Government.
2. That the National Environmental Management Authority investigates the houses around the dam to ascertain the level of environmental effects caused by blasting in the dam and reports back to the Senate by 30<sup>th</sup> September, 2021.
3. That as per the Environmental Management and Co-ordination Act section 108, a restoration order be issued should National Environment Management Authority (NEMA) find the contractor on site to have caused any environmental damage during the construction process.
4. That the NEMA ensures that the contractor on site adheres to all environmental licenses and permits necessary for dam construction.
5. That the contractor onsite ensures that they adhere to the work injuries and benefits act when dealing with all employees injured while on duty. Further, the Committee directs the Ministry of Water, Sanitation & Irrigation to find out whether anyone was hurt during the line of duty and that they are adequately compensated by the Company doing the Construction of the Dam.
6. The Committee urges the Ministry of Water, Sanitation and Irrigation to do follow ups and ensure that all the CSR activities promised for the Community is fulfilled.


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

**(c) Draft Report of the Committee on the Petition regarding the alleged encroachment of land belonging to Mkamunyi residents by Voi Point Limited in Taita Taveta County.**

The Committee noted that consideration of the draft report on this Petition be differed until the Committee has heard from the Registrar of Companies on the ownership of Voi Point Limited and that invitations are done to the Directors of the Company.

**MINUTE SEN/SCLNR/196/2021: ANY OTHER BUSINESS;**  
There was no other business discussed.

**MINUTE SEN/SCLNR/197/2021: DATE OF NEXT MEETING;**  
The meeting was adjourned at 1.00 pm and the next meeting was scheduled to follow in the afternoon.

Signed:  Date: 23/6/2021

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



**ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS**

*(Attached separately)*



**MINUTES OF THE 8<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 10<sup>TH</sup> MARCH, 2021 VIA ZOOM ONLINE PLATFORM AT 10.00 AM.**

**MEMBERS**

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

**PRESENT**

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

**ABSENT WITH APOLOGY**

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

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

**IN ATTENDANCE**

**A. STAKEHOLDERS – MINISTRY OF ENVIRONMENT AND FORESTRY**

1. Mr. Keriako Tobiko, CBS, SC, - CS, Ministry of Environment and Forestry
2. Mr. Mamo Boru Mamo - Ag. DG, NEMA
3. Mr. Joel Kitili - Ministry HQ
4. Dr. John Chumo - CEO, NECC
5. Mr. Stephen Katuko - NEMA

**B. SECRETARIAT**

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

**MINUTE SEN/SCLNENR/40/2021: PRELIMINARIES**

The meeting was called to order at 11.08 am by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLNENR/41/2021: ADOPTION OF AGENDA**

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

1. Preliminaries - *Prayer*
2. Confirmation of Minutes of Previous Sitzings;
3. Matters Arising;
4. **Meeting with the CS Environment and Forestry on a Petition and Statement as follows:**

- **Petition concerning the gazettelement of Ondiri Wetland, Kiambu County; and**
  - **Statement requested by Sen. Beatrice Kwamboka, MP, on 23<sup>rd</sup> September, 2020, regarding Pollution of the environment by industrial emissions.**
5. Any other Business;
  6. Date of the next meeting;
  7. Adjournment.

**MINUTE SEN/SCLN/42/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The confirmation of Minutes was differed to the next housekeeping meeting.

**MINUTE SEN/SCLN/43/2021: MEETING WITH THE CS ENVIRONMENT AND FORESTRY ON A PETITION AND STATEMENT AS FOLLOWS:**

**a) Petition concerning the gazettelement of Ondiri Wetland, Kiambu County; and**

**Presentation by the Cabinet Secretary (CS)**

**Background**

Ondiri Swamp is located in Kiambu County. It covers 34.5 ha with a perimeter of 3.5 km and a depth range of 2 to 3 meters. It is a wetland of great importance as it forms the headwaters of Nairobi River where it is fed by Nyongera River. It also recharges the Kikuyu springs through a subterranean passage. The swamp is a source to 40 other springs, which provides water to the local community. Ondiri wetland supports biodiversity ranging from aquatic and semi aquatic plants, birds, mammals, amphibians, reptiles and insects. It also provides critical ecosystem services from provisioning, regulatory, supporting and cultural. It is the main source of water for the Nairobi River and surrounding local communities.

However, just like other wetlands in the country, Ondiri continues to face many challenges and threats. Mainly:

- (a) Land ownership issues and unclear swamp boundary
- (b) Uncoordinated stakeholder efforts
- (c) Weak law enforcement
- (d) Unregulated water abstraction
- (e) Pollution (industrial, infrastructure, agricultural and domestic waste)
- (f) Growing of exotic trees
- (g) Over-exploitation of the wetland resources
- (h) Siltation
- (i) Inadequate community participation

**1: Initiate a formal protection for Ondiri Wetland in the Republic of Kenya**

The National Environment Management Authority (NEMA) has continued to engage stakeholders through sensitization programmes, coordinating tree planting and cleanups to safeguard the ecosystems. Other interventions that NEMA has put in place is through ensuring that developments in the neighbourhood are undertake Environmental Impact Assessment and environmental audits as provided for by

EMCA1999 and they are compliant with water quality as well as waste management Regulations.

Protection of Ondiri wetland requires a multi sectoral approach involving all stake holders coordinated by National Environment Management Authority (NEMA) through the County Environment Committee (CEC).

**2: Initiate the recognition of Ondiri wetland Kenya as a highland bog and a major water tower and an ecosystem site**

Gazettement of Ondiri wetland under section 42 of the Environmental Management and Coordination Act Cap 387 laws of Kenya as a protected wetland will ensure recognition of the natural resource as a national resource. In addition, the Wetlands regulation (2009) empowers the minister by a gazette notice to declare an area as a protected wetland. NEMA will spearhead the process of gazettement as a protected area.

**3: Intervene in the matter with a view to ensure that WRA verifies weather water abstraction permits are registered or not and legalize them and delineate the boundaries of the wetland.**

This can best be handled by Water Resources Authority as the lead agency in this matter; In the coordination and supervisory role of NEMA, the CEO WRA shall be notified through writing to provide information on the abstraction permits as well as the boundary maps

**4. Initiate the process of funds allocation to carry awareness campaigns that will involve the government and private sector to understand the importance of the wetland and how it can be managed:**

- (a) NEMA can collaborate with the friends of Ondiri Wetland Kenya to undertake awareness campaigns on the importance of the wetland;
- (b) NEMA can be facilitated to undertake conservation programmes
- (c) NEMA to undertake stakeholder analysis within Ondiri to ensure inclusivity which has been lacking in an effort to conserve the wetland

**5. Intervene for the group to enable the Gazettement of Ondiri wetland**

Gazettement of a wetland is a multispectral and a lengthy process that requires comprehensive consultations and resources. NEMA will spearhead gazettement of the wetland in collaboration with County Environment Committee of Kiambu County. Gazettement process as outlined in the Wetlands Regulations sec 9 (2);

- (a) By notice in the gazette, notify the public of the intention to declare an area to be protected wetland
- (b) Setup a taskforce to prepare a management plan by incorporating views of people inhabiting the area adjacent to the wetland
- (c) Cause a SEA of the management plan in accordance with the Act
- (d) Where the Authority is satisfied with the findings, submit to the Minister for gazettement.

**Hon. Chair**, I would like to share with you two reports that have been prepared by Agencies of the Ministry and their recommendations that in our view will go a long way in sustainable management of this important resource.

- i). Special report on the degradation of Ondiri Swamp in Kikuyu sub-county, Kiambu County of September, 2018 by the National Environment Complaints Committee (NECC). (**Annex 1**).
- ii). Report on the status of Ondiri Swamp of May 2020 prepared by Kenya Water Towers Agency among others. (**Annex 2**)

To conclude, he assured the Committee of the Ministry's commitment to working towards a sustainable management of these very important natural resources together with the relevant stakeholders.

The Cabinet Secretary informed the Committee that he fully supports the Petition and that something needs to be done by all players involved.

**The Committee made the following resolutions:**

- Meeting within the next 10 days with the following stakeholders on board;
  - CS, Ministry of Environment and Forestry;
  - CS, Water, Sanitation & Irrigation;
  - CS, Lands and Physical Planning;
  - Nairobi County Government; and
  - Kiambu County Government;
- In that meeting the Committee further resolved that once a meeting has been conducted with the stakeholders then a site visit to Ondiri Swap can be conducted.

**b) Statement requested by Sen. Beatrice Kwamboka, MP, on 23rd September, 2020, regarding Pollution of the environment by industrial emissions.**

**Presentation by the DG, NEMA**

*(Presentation to be attached and further forwarded to the Office of Sen. Beatrice Kwamboka, MP)*

**The Committee acknowledged the response provided by the Ministry of Environment and Forestry, and thanked them for the commitment that has demonstrated in providing responses to the Committee.**

**MINUTE SEN/SCLN/44/2021: ANY OTHER BUSINESS**

There was no other business discussed

**MINUTE SEN/SCLN/45/2021: DATE OF NEXT MEETING**

The meeting was adjourned at 12.31 pm and the date of the next meeting was to be called on notice.

Signed:.....

Date:.....**30/6/2021**.....

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

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



**MINUTES OF THE 58<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 2<sup>ND</sup> DECEMBER, 2020 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.**

**MEMBERS**

1. Sen. Ndwiga Peter Njeru, EGH, MP
2. Sen. Gideon Moi, CBS, MP
3. Sen. Sylvia Kasanga, MP
4. Sen. Mwaruma Johnes, MP
5. Sen. (Dr.) Lelegwe Ltumbesi, MP

**PRESENT**

- Member (**Ag. Chairperson**)
- Member
- Member
- Member
- Member

**ABSENT WITH APOLOGY**

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

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

**IN ATTENDANCE**

**A. SENATORS**

1. Sen. Mutula Kilonzo Jnr. - Senator, Makueni County

**B. SECRETARIAT**

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

**C. MINISTRY OF ENVIRONEMNT AND FORESTRY**

1. Mr. Keriako Tobiko, CBS, SC, - CS, Ministry of Environment and Forestry
2. Mr. Mamo Boru Mamo - Ag. DG, NEMA
3. Mr. Julius W. Kamau, - Chief Conservator of Forests
4. Mr. Patrick Kariuki - Deputy, Chief Conservator of Forests, KFS
5. Dr. Pacifica Achieng - Director Climate Change
6. Mr. Joel Kitili - Ministry HQ
7. Mr. Rodney Omari - Ministry HQ
8. Dr. John Chumo - CEO, NECC

**MINUTE SEN/SCLN/321/2020: PRELIMINARIES**

The meeting was called to order at 11.30 am by the Acting Chairperson followed by a word of prayer.

**MINUTE SEN/SCLN/322/2020: ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. Gideon Moi, CBS, MP as follows –

1. Preliminaries - *Prayer*
2. Adoption of the agenda;

3. Confirmation of Minutes of Previous Sittings;
4. Matters Arising;
5. Meeting with the Cabinet Secretary, Ministry of Environment and Forestry on Petitions & Statements as follows:
  - a) Statement requested by Sen. Beatrice Kwamboka, MP, regarding Pollution of the environment by industrial emissions.
  - b) Petition presented by Sen. Paul Mwangi Githiomi, MP, concerning the resettlement of Internally Displaced Persons in Nyandarua County;
  - c) Petition concerning the gazettement of Ondiri Wetland, Kiambu County; and
  - d) Petition concerning the adverse effects of rock blasting for the construction of Thwake Dam, Makueni County.
6. Any other Business;
7. Date of the next meeting;
8. Adjournment.

**MINUTE SEN/SCLNR/323/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The confirmation of Minutes of the previous sittings was differed to the next housekeeping meeting.

**MINUTE SEN/SCLNR/324/2020: MEETING WITH THE CABINET SECRETARY, MINISTRY OF ENVIRONMENT AND FORESTRY ON PETITIONS & STATEMENTS**

**a) Petition concerning the adverse effects of rock blasting for the construction of Thwake Dam, Makueni County.**

The Committee requested the CS to make his presentation and he requested the National Environment Management Authority (NEMA) to make submissions and presented as follows:

1. The Ministry through the National Environment Management Authority (NEMA) is aware of the issues raised. NEMA has coordinated other relevant stakeholders to address the issues and is continually doing so since the project is still ongoing.
2. **THAT** the issues raised by the petitioner were brought to the knowledge of the County Environment Committee (CEC) and deliberated accordingly.
3. **THAT** in a County Environment Committee meeting held on 3<sup>rd</sup> September, 2020 deliberated on the issues surrounding Thwake Dam, among them, complaints on blasting of rocks (**Minutes attached, Annex I MIN 2: 3/9/2019**) and established a technical committee to visit the site and investigate on the issues raised
4. **THAT** the Technical Committee visited the site on 5<sup>th</sup> September, 2020 and prepared a report on that course (**Technical Committee Report Attached Annex II**).
5. **THAT** the technical committee which visited the site on 5<sup>th</sup> September found that the contractor has acquired all the relevant documentation and also addressed issues of sanitation and safety.

6. **THAT** the committee **did not** also establish the cracks in buildings as claimed to have been caused by the blast and vibrations.
7. **THAT** another Environment Committee chaired by the County Commissioner was held on 18<sup>th</sup> September, 2020 and issues affecting workers and the community around the project area were discussed and addressed in the meeting (**Minutes Attached, Annex III**).
8. **THAT** on 1<sup>st</sup> November, 2019 a County Environment Committee meeting was held at Thwake Dam and the Hon. Members of the County Assembly Committee on Environment and Climate Change were invited and participated in the meeting (**Minutes Attached, Annex IV**).
9. **THAT** on 13<sup>th</sup> March, NEMA conducted a site inspection on the project site and issued an improvement notice to the proponent to undertake Environmental Audit which will provide more clarity on compliance level to the licensing condition. (**Copy attached Annex V**).
10. **THAT** the recommendations made by the Technical Committee on its report (**Annex II**) and the joint meetings held on 1/11/2019 (**Annex IV**) were not fully implemented due to COVID-19 Public Health Guidelines and Government directive on measures to control the spread of the pandemic and there were no other physical meetings held from December 2019 until 10 November, 2020 when the first CEC meeting for 2020/2021 was held.
11. **THAT**, the County Environment Committee, in a meeting held on 10<sup>th</sup> November, 2020 resolved to make a joint site inspection to monitor the compliance level on the issues jointly agreed with the proponent during the Technical Committee site visit on 5<sup>th</sup> September, 2019 (**Annex II**).
12. **THAT** the Ministry through NEMA will continue to closely monitor the implementation of the Environmental Management Plan and compliance to Environmental Impact Assessment license conditions.
13. The Ministry will involve relevant lead agencies to ensure the ongoing project is implemented while ensuring sustainable environmental management.

**The Committee made the following interventions and deliberations:**

That the Ministry should approach such matters with a human face noting that innocent Kenyans are affected by such cases of pollution.

Both the Cabinet Secretary and the Committee were in agreement that, since the matter is a devolved function, going forward it would be important to bring on board and build the Capacity of County Governments to handle such matters.

The Cabinet Secretary prevailed upon the National Environmental Complaints Committee (NECC) to file a report within 7 days before the Committee embarks on a site visit.

The Committee resolved to organize a site visit to the residents of Makueni County within the next 14 days together with a team from the Ministry of Environment and Forestry.

- b) Statement requested by Sen. Beatrice Kwamboka, MP, regarding Pollution of the environment by industrial emissions.
- c) Petition presented by Sen. Paul Mwangi Githiomi, MP, concerning the resettlement of Internally Displaced Persons in Nyandarua County;
- d) Petition concerning the gazettement of Ondiri Wetland, Kiambu County;

The Committee resolved to have the Cabinet Secretary submit written responses on the pending Statement and Petitions and should there be any matters that require the attention of the Cabinet Secretary in person then the Committee can re invite the Ministry of Environment and Forestry.

**MINUTE SEN/SCLNR/325/2020: ANY OTHER BUSINESS**

The Cabinet Secretary, Ministry of Environment and Forestry requested the Committee to have a meeting with the Ministry to discuss Climate Change NDC UPDATE UNDER UNFCCC (PARIS AGREEMENT). The Committee acceded to this request and resolved to have the meeting on 3<sup>rd</sup> December, 2020 at 11.00am virtually.

**MINUTE SEN/SCLNR/326/2020: DATE OF NEXT MEETING**

The meeting was adjourned at 12.30 pm and the date of the next meeting was scheduled for Thursday, 3<sup>rd</sup> December, 2020 at 11.00 am on the Zoom Online Platform.

Signed:.....

Date:..... 10 /2 /2021.....

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

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

**RESOURCES**

**MINUTES OF THE 47<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 28<sup>TH</sup> OCTOBER, 2020 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.**

**MEMBERS**

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. (Dr.) Lelegwe Ltumbesi, MP
4. Sen. Sylvia Kasanga, MP
5. Sen. Mwaruma Johnes, MP
6. Sen. Boy Issa Juma, MP

**PRESENT**

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

**ABSENT WITH APOLOGY**

1. Sen. Philip Mpaayei, MP
2. Sen. Ndwiga Peter Njeru, EGH, MP
3. Sen. Gideon Moi, CBS, MP

- **Vice Chairperson**
- Member
- Member

**IN ATTENDANCE**

**A. SENATORS**

- Sen. (Dr.) Isaac Mwaura, CBS, MP - Nominated Senator

**B. PETITIONERS - PETITION ON THE ACQUISITION OF KARARE LAND IN MARSABIT COUNTY BY THE KENYA DEFENCE FORCES**

1. Mr. Sunya Ore - Chair, Rendille and Samburu Community Representatives
2. Mr. Stephen Gambare - Rendille and Samburu Community Representatives
3. Hon. Bernard Leakono - MCA – Logo Logo Ward

**C. PETITIONERS - PETITION CONCERNING THE GAZETTEMET OF ONDIRI WETLAND, KIAMBU COUNTY**

1. Prof. David Ngugi - Chair, ONKARU (Ondiri, Nyongara, Kabuthi and Rungiri)
2. Mr. David Wakoga - Coordinator, Friends of Ondiri Wetland
3. Mr. Robert Gacheru - Petitioner
4. Ms. Hildah Wangui - Petitioner

**D. SECRETARIAT**

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Clare Kidombo - Researcher
3. Mr. John Ngang'a - Audio Recording

**MINUTE SEN/SCLENR/253/2020: PRELIMINARIES**

The meeting was called to order at 11.30 am by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLENR/254/2020: ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. (Dr.) Lelegwe Ltumbesi, MP as follows –

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Meeting with Petitioners on the **Petition regarding the acquisition of Karare land in Marsabit County, by the Kenya Defence Forces;**
5. Meeting with Petitioners on the **Petition concerning the gazettement of Ondiri Wetland, Kiambu County;**
6. Any other Business;
7. Date of the next meeting;
8. Adjournment.

**MINUTE SEN/SCLNENR/255/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The Committee differed the confirmation of Minutes to the next meeting.

**MINUTE SEN/SCLNENR/256/2020: MEETING WITH PETITIONERS ON THE PETITION REGARDING THE ACQUISITION OF KARARE LAND IN MARSABIT COUNTY, BY THE KENYA DEFENCE FORCES;**

The Petitioners presented as follows:

**The Part 1: Background**

1. The Rendille and Samburu communities of Marsabit are indigenous peoples of Kenya whose livelihoods and culture are dependent on livestock production. The community occupies Laisamis Sub County and Karare Ward of Saku sub County.
2. The habitat of the Rendille and Samburu Communities of Marsabit is arid and semi arid and therefore highly dependent on mobility of their livestock to track water and pasture.
3. The ecosystems of such arid environment are interlinked and interdependent and for that reason any new development must take into account the environmental and socio-economic impact of such proposals.
4. The rangeland rainfall is known to be low in amounts and patchy. It is for this reason that mobility and free movement of livestock in search of pasture is essential.
5. The Colonial Government and the early Kenya Governments understood very well functionality of rangelands and the culture and livelihoods of the pastoral communities.
6. In order to manage the rangelands the early Kenya Governments established reserves where people, livestock and wildlife coexisted. These reserves were established through a 60 day gazette notice by the Director of wildlife. Such reserves cover the entirety of all areas that receive at annual rainfall of least 300 mm and which therefore can support perennial vegetation and where therefore wildlife and livestock can survive on during the dry season.

7. The flexibility of movements of pastoralists have allowed for sustainable production of livestock and therefore the survival of the people in such harsh environment. The ecosystem according, according 2018 livestock production report currently support 160,000 cattle, 97,000 camels, 675,000 sheep, 684,00 goats and 49,000 donkeys. This wouldn't have been possible if the upper rangelands which are also national reserves did not exist.
8. Such reserves are therefore on community land but the use is for both livestock/people and the wildlife. It is for that reason that the Wildlife Conservation and Management Act, 2016 and the Community Land Act provide for clear procedures for change of use of any part of such land.

## **Part2: The Karare Land issue**

1. *The Rendille Community being good citizens appreciate the role of security forces and has in 2012 given land at Mata Lama to KDF in Good faith.* Mata Lama borders borana and Gabra community land which could explain why KDF was pushed to the land where community which lacks political and economic power. Please see attached petition by the Saku MP where the jinx of the petition is settlement of 50 people from North Horr sub county in Saku Sub county and the resultant insecurity associated with handling of land matters in the county. The impact of **12,300 acres** excised from the only Rendille pristine and economic pillar could have a million-fold impact on the Rendille community. The land in question is over **270 kilometers** away from the international borders. Must KDF get this particular land even if that means causing harm to a community in Kenya?
2. The Community has just recently lost another **150,000 acres** to Lake Turkana Wind power project despite objection by the people.
3. In a public participation report another 24,600 acres of land which was a Rendille traditional grazing land has also been allocated to KDF. However, the community's main concern is Karare land due to its centrality in its survival and cultural value.
4. The land currently in dispute is culturally sensitive and is the pillar of Rendille pastoralism. The land is owned communally (control and Access) by entire Rendille and Samburu communities of Marsabit and Samburu North Sub County because of its grazing and cultural value, at minimum all the six wards of Marsabit should have been engaged which was ignored despite the fact the county Government has this knowledge.
5. The Governor of Marsabit, notwithstanding the fact that he doesn't have powers to allocate a National Reserve on <sup>2nd</sup> July, 2019 allocated 5,000 ha of land to the second respondent.
6. Six (6) months later, in January, 2020, the KDF claims to have done a public participation exercise to perhaps regularize an illegality.
7. The fourth schedule of Wildlife Management and Conservation Act, 2013 has spelt out elaborate procedures for excising a national reserve some of such procedures include;

- (a) the responsible authority shall publish a notice in relation to the proposal – (a) in the Gazette; (b) in at least three national newspapers; (c) in at least one newspaper circulating in the locality to which the proposal relates; and (d) in at least one Kenyan radio station broadcasting in the locality.
  - (b) The notice shall in each case – (a) set out a summary of the proposal; (b) state the premises at which the details of the proposal may be inspected; (c) invite written and or oral presentations and comments on the proposal; (d) specify the person or body to which any such presentations and comments are to be submitted; and (e) specify a date and place by which any such comments are required to be received, not being a date earlier than sixty days after publication of the notice.
  - (c) The responsible authority shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the proposal which are in the possession of the responsible authority.
  - (d) The responsible authority shall consider – (b) any written comments or objections received on or before the date specified under paragraph 1(2) (e); and (c) any comments whether in writing or not, received at any Wildlife Conservation and Management 2013.
  - (e) That any such proposal shall not endangers any rare ,threatened or endangered species or interferes with the migration and critical habitat of the wildlife or adversely affects its value in the provision of environmental goods and services ,or prejudices biodiversity conservation ,cultural site protection or its use for educational ,ecotourism ,recreational ,health and research purposes ,then the national lands commission will not recommend such a proposal and the same cannot be published.
  - (f) The purported public participation exercise carried out on the 21<sup>st</sup> day of January 2020 is a sham and does not meet the criteria set out in the fourth schedule of the wildlife conservation and management act 2013
8. Considering that no environmental and socio-economic impact assessment was done as required by Environment Management and Coordination Act and Wildlife Conservation and Management Act, 2013, how did KDF and county Government make such a decision? Was KWS involved in this matter
  9. **There was no National Assembly resolution that has approved the excision of the land as required by Wildlife Conservation and Management Act.**
  10. The public participation as enshrined in the Constitution is not mere formality. **No**, it is not a formality the KDF and County Government are fully aware that the land in dispute is community land is demonstrated by para 17 of the purported public participation report which states that ‘Land in Marsabit is communally owned and held in trust by the County Government’ and that declaration of community land as a national reserve does not extinguish community ownership of their land.
  11. The KDF and the County Government the resolutions passed by the community declining to give away any land within Karare ward. However, the purported public participation report indicates unanimity by the community in welcoming



allocation of the Land to KDF. The purported public participation report, rightly reported that these communities depend on grazing areas, livestock corridors and water points that are well within the designated areas – it is very unfortunate that resource mapping was not considered in the process of ascertaining range for military settlement. These rangelands are not open spaces, they are not unoccupied, pastoralist structures their livelihoods through mobility and opportunistic exploitation of continuous unfragmented landscape; so without a thorough understanding of community livelihoods it's unreasonable to propose and urge non-productive developments.

12. Considering that all Rendilles and Samburu people of Marsabit have right of access and control of the land in question which of great cultural and economic significance and that they have not been consulted on any proposed change of use. Please see attachment.
13. The declaration of community land as a national reserve does not convert it into public land. The County Government has the mandate of managing areas declared as national reserves as trustees of the community and cannot make unilateral decisions with respect to that land as is the case herein.
14. That the respondent has not provide any prove of environmental and socio-economic impact assessment which is a requirement under the National Environment and Management Act, 1999 and Wildlife Management and Conservation Act, 2013
15. That the KDF did not provide any evidence of the intention to excise through Gazette Notice by the Cabinet Secretary responsible for Wildlife, the National Assembly approval and documentation of public participation process except a report purported 'public participation' report which has been rejected by the community.
16. THAT the respondent cannot ignore the fact that over 110,00 people of 75% live below poverty line and over 90% illiterate whose culture and livelihoods will be permanently and irreparably affected are indeed Kenyans are part of the **public** and enjoy protection of law.
17. The public participation exercise purportedly carried out by the respondents was a sham and cannot by any standards qualify as a public consultation, as consultations are carried out before any action is taken and not the other way around as was the case herein.
18. THAT, in para 43 of purported public participation report, the County Government of Marsabit was asked to fast track formal allocation of land to MoD" despite already possessing an allocation later. One wonders is this a fresh allocation? If not, how why did the Ministry of Defense set camps in Karare post ante during times of Corona. Could the Ministry of Defense be holding an irregularly acquired Title Deed already?
19. The KDF mobilized during the duration (from 29<sup>th</sup> May 2020 to date) of the COVID-19 and set a camp at KWS camp at Karare despite resistance by the community. This was done without sufficient precautions; servicemen were seen

to walk without masks and had encouraged the sale of cheap canteen liquor to youths and old men who are now hooked to the habit.

**20. The opening up of access road and disturbance of the wildlife migratory corridor and dispersal area has already contributed to increased human-wildlife conflict although no human deaths were reported yet. This situation would worsen once the land is fenced and developed.**

21. The petitioners despite being marginalized, minorities and vulnerable enjoy protection of the Constitution under the Bill of Rights, Wildlife management and Conservation Act, 2013 and the Community Land Act, 2016

22. If the actions of KDF and County Government of Marsabit are not stopped by the intervention of this court then the Petitioners' livelihoods which is dependent on migration of livestock to rangelands of equilibrium of at foot of Mt. Marsabit will be irreparably damage to the extent that it would be impossible to compensate the in monetary terms.

23. All the existing laws and the constitution were ignored as well articulated perhaps due to the fact that the Rendilles do not wield economic and political power. What is the use the laws if they only protect the mighty?

**24. KDF being our agents of security ought to be the first persons to respect and follow the rule of law in this country notwithstanding the fact that the minority status of the Rendille community.**

### **Part 3 Effort by the community get the matter resolved administratively.**

25. We to National Land Commission, KDF, KWS, Cabinet Secretary responsible for Wildlife matters, County Governor Marsabit and the County Commissioner. None of these public entities responded to the request to give the community a hearing contrary to public expectation.

26. The Community gave an alternative land

27. Protest by the community and Laisamis sub county MCAs and Karare MCA

### **Part 4: Prayers**

28. We pray to the Senate to summon KWS, the County Government, the KDF, the National Land Commission to explain their role in the illegality.

29. We pray the Honorable Senate to protect the land of the vulnerable people of Kenya with little political or economic power.

30. The Senate to demand cessation of any physical development of the land in dispute.

31. The petitioners insisted that the KDF utilize the land given to them in good faith in 2012 instead of forcefully, unlawfully and in collision with the 1<sup>st</sup> respondent forcefully taking away the pillar of Rendille pastoralism and their culture.

**32. The Constitution of Kenya and Acts of Parliament are not passed in vain but should apply to the mighty and the weak equally.**

33. The Senate to declare that public entities must comply with the Constitution and applicable laws in the compulsory acquisition on community lands

The Committee sought clarifications on the actual acreages in question and whether title deeds existed and were informed by the Petitioners that the County government had surrendered 12,300 acres instead of the agreed 2,500 acres and that their lands were community land and therefore didn't have title deeds.

The Committee proceeded to thank the Petitioners for having their confidence the Senate, and that the Committee shall ensure justice is served.

The Committee resolved to invite the:

- **County Government of Marsabit;**
- **National Land Commission;**
- **Ministry of Lands and Physical Planning;**
- **Ministry of Defence**
- **Kenya Wildlife Service**

**MINUTE SEN/SCLNDR/257/2020: MEETING WITH PETITIONERS ON THE PETITION CONCERNING THE GAZETEMENT OF ONDIRI WETLAND, KIAMBU COUNTY;**

The Petitioners presented as follows:

Background:

Ondiri Wetland is the only Highland bog in the Republic of Kenya and is part of ONKARU (Ondiri, Nyongara, Kabuthi and Rungiri) Sub-Catchment Management plan which covers an area of 118 square kilometers. The main direction of outflow of the Wetland is to the South and East where several small streams join downstream to form larger streams that make the headwaters of Nairobi and Athi Rivers. The Wetland is also linked to Kikuyu Springs which are a major source of water to Kikuyu and Nairobi throughout the year. Kikuyu Springs is the oldest source of piped water for the city of Nairobi which was connected in 1906.

The Petitioners prayed that the Senate intervenes to ensure that they achieve official gazetement of Ondiri Wetland to protect it from further encroachment.

The Committee proceeded to thank the Petitioners for having their confidence the Senate, and that the Committee shall ensure justice is served.

The Committee resolved to invite the:

- **Ministry of Environment and Forestry**
- **Ministry of Water**

**MINUTE SEN/SCLNDR/258/2020: ANY OTHER BUSINESS;**

There was no other business discussed.

**MINUTE SEN/SCLNDR/259/2020: DATE OF NEXT MEETING;**

The meeting was adjourned at 1.35 pm and the date of the next meeting was scheduled for Thursday, 28<sup>th</sup> October, 2020 at 11.00 am via zoom online platform.

Signed: **For:**  .....

Date: 19/11/2020

**SEN. MWANGI PAUL GITHIOMI, MP**

**CHAIRPERSON**

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

**PETITIONERS  
SUBMISSIONS**



## ESTABLISHMENT OF WETLAND INFORMATION CENTER AT ONDIRI WETLAND, KIKUYU.

Ondiri Wetland is the only Highland bog in the Republic of Kenya and is part of ONKARU (Ondiri, Nyongara, Kabuthi and Rungiri) Sub-Catchment Management plan which covers an area of 118 square kilometers. The main direction of outflow of the Wetland is to the South and East where several small streams join downstream to form larger streams that make the headwaters of Nairobi and Athi Rivers. The Wetland is also linked to Kikuyu Springs which are a major source of water to Kikuyu and Nairobi throughout the year. Kikuyu Springs is the oldest source of piped water for the city of Nairobi which was connected in 1906.

The Wetland is an interesting natural phenomenon that is shrouded in mystery and myths. For instance, the locals say if you sink in, you will be found at Lake Naivasha. Nevertheless, the locals use the Wetland for recreation, farming and even drawing water for home use. Others go there to enjoy the serenity of the place or for meditation. According to former Kikuyu Ward MCA, Francis Wainaina, "the natural springs are believed to contain healing powers." As a result, traditional religious groups, some from as far places as Turkana go there to bathe in the waters as they pray. Groups and individuals are most often seen washing their faces, hands and feet with deep reverence. Local lore has it that the Wetland was initially an open lake, and that one of the early white explorers "discovered" and named it the "Old Lake," and which locals corrupted to Ondiri. Another myth that features in the local folklore is that there is a great snake which the locals call "*Ndamathia*" or the beast.

The folklore that have been passed orally for generations with a likely aim of keeping the children away from the Wetland due to its enticing attraction such as the presence of the quacking bog that gives an experience of a trampoline which is formed by the floating peat that covers the one former lake which the locals called "*kihenia*" However as deforestation and subsequent erosion accelerated, the lake came to be covered with floating reeds on peat such that now it has an extensive reed mat that covers more than 99 percent of the wetland to form a quacking bog.

A lot of research has been done on this important fresh water reservoir that sustains thousands of lives. Researchers from virtually many institutions of higher learning have done their research on the Wetland.

Other organizations such as Nature Kenya have done bird counts of the species of birds found at the Wetland, with the most unique ones being the Crested Crane birds (The Grey Crowned Crane is listed as Endangered by the IUCN Red List of Threatened Species). According to the nature Kenyan's bird count carried out on the 15<sup>th</sup> December 2019, there were 76 species of birds at the Wetland thus making it one of the most bird rich areas in the Republic of Kenya.

The Wetland provides crucial breeding sites for insects, crustaceans and amphibians. These provide adequate food for birds during breeding and migration. An earlier study also noted the huge presence of Storks, Egrets, Ibises, Hamerkops, Kingfishers, Plovers and painted snipes feeding on frogs, tadpoles and other aquatic fauna during the dry seasons. The marabou stork is also a rare visitor to the Wetland. Jackson's widowbirds have also been spotted breeding in the tall grass in the Wetland, the tall grass provided security for small carnivores such as mongoose and wildcats, there was a presence of Sitatunga antelope (a species that lives in swampy habitats). However, that was before the harvesting of the grass and other human activities became intensive and frequent.

Some of these birds have a vibrant community at the giant Oak (*Mugomo*) tree at the heart of Kikuyu town. The Kikuyu tree has a special significance and is inextricably intertwined with the Ondiri Wetland. This is so because hundreds of birds that breed and forage in the Wetland have made the tree their second home.

Every evening, between 5 and 7 pm Kenyan time, these birds fly from the Wetland and surrounding areas and congregate atop the tree where they spend the night. It is a ritual that is repeated with clockwork precision. Among the birds that nest here are herons, sacred ibises and egrets. The occasional marabou stork has also been sighted.

These interesting features have never been documented and that may explain why despite the lifeline it gives to many households, it has not been listed among Wetlands of national importance or protected as a Ramsar Site. Ondiri Wetland is one of the few perennial Highland bogs in Africa. It is a resource that draws interest in various quarters, which include government departments, local authority, farmers and private developers. The fact that it is not protected and its other resources controlled, multiplicity of stakeholders present a situation where each individual seeks to maximize their benefits; "a pure case of the tragedy of the commons." This complicates the position of management and conservation agencies. That is the reason why Friends of Ondiri Wetland Kenya has come up with an Information Centre and it shall no doubt be a game changer.

This Information Centre is one of a kind; it will provide a platform for Wetland knowledge not only for Ondiri Wetland but also for other Wetlands around Nairobi and Kiambu Counties. It will play an important role in the dissemination of Wetlands information, it shall also provide access to information for visitors who come to Ondiri Wetland for leisure or those who come to study and conduct their research.

The establishment of the Wetland Information Centre has coincided with the fencing of Ondiri Wetland which has a circumference of 3.3 kilometers stretching from the East towards the West. Ondiri borders Southern Bypass and Alliance High School on the East while on the West side there are farm lands that are known for horticultural produce.



The members from Friends of Ondiri Wetland contributed towards the establishment of this Information Centre which is a clear manifestation that communities around the Country can unite for a common good and to things that add value

By

David Wakogy  
Coordinator,  
**Friends of Ondiri Wetland**  
0721373871  
[www.friendsofondiriwetland.org](http://www.friendsofondiriwetland.org)



**OBJECTIVES:**

TO WORK TOWARDS CONSERVATION AND SUSTAINABILITY OF ONDIRI WETLAND IN KIKUYU AND ALL TRIBUTARIES AND WATER BODIES WHOSE RECHARGE IS ONDIRI SWAMP  
TO EDUCATE AND SUPPORT PEOPLE, BUSINESSES AND SCHOOLS IN TAKING ACTION TO PRACTICE MORE ENVIRONMENTALLY SUSTAINABLE HABITS AROUND ONDIRI WETLAND AND ALL ITS CATCHMENT AREAS INCLUDING THE RIPARIAN, ITS TRIBUTARIES AND OTHER WATER BODIES WHOSE RECHARGE IS ONDIRI WETLAND



Republic of Kenya

Certificate No. 48691

**MINISTRY OF EAST AFRICA COMMUNITY, LABOUR AND SOCIAL PROTECTION**

**DEPARTMENT OF SOCIAL DEVELOPMENT**

**Certificate of Registration of Community Based Organization (CBO)**

**FRIENDS OF ONDIRI WETLAND KENYA**

DSDD/KEY/CBO/2016/01

Group Name / Project  
KIKUYU

16<sup>TH</sup> MARCH, 2016

Registration No.  
KIKUYU

Division  
KIKUYU

Date of Registration  
KIKUYU

Sub-location / Ward  
KIKUYU

Constituency

Sub County  
KIAMBU

Location

is registered with the Department of Social Development Office as a Community Based Organization (CBO)

County

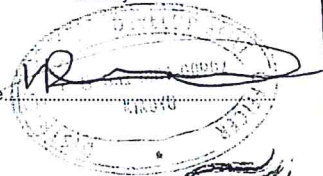
Name  
ROSE MWANGANGI

County / Sub County Social Development Officer

16<sup>TH</sup> MARCH, 2016

Date of Issue

Signature



**KENYA VISION 2030**

Note: The Contents of this Certificate should not be erased, altered or defaced in any way.



# **STAKEHOLDER'S SUBMISSIONS**





REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

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RESPONSE TO THE SENATE STANDING COMMITTEE ON LAND,  
ENVIRONMENT AND NATURAL RESOURCES

Honourable Chair,

Pursuant to a letter Ref. **SEN/DCS/LENR/2/2021/(15)** dated March 17, 2021, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning to respond in detail to the Petition concerning the Gazettement of Ondiri Wetland in Kiambu County.

1.1 The Petition

Honourable Chair,

The Petition dated June 23, 2020 was presented by Friends of Ondiri Wetland Kenya (FOWK) and the residents of Kikuyu Constituency in Kiambu County. The Petitioners state that the Ondiri wetland in Kiambu County is facing a myriad of threats and challenges including pollution, encroachment, overgrazing and infrastructural development on its riparian reserve. According to the Petitioners, the continued degradation of the ecosystem is attributed to the lack of a formal protection status.

The Petitioners therefore request the Committee to-

- i) Initiate a formal protection status for Ondiri Wetland
- ii) Intervene with a view to ensure that the Water Resources Authority (WRA) verifies whether all the water abstraction permits are registered or not and legalise them, and delineate the boundaries of Ondiri Wetland
- iii) Initiate the recognition of Ondiri Wetland as a highland bog and a major water tower and an ecosystem site
- iv) Initiate the process of funds allocation to carry awareness campaigns that will involve the government and private sector to understand the importance of this wetland and how it can be managed.
- v) Intervene for the group to enable gazettelement of Ondiri Wetland

## Response

**Honourable Chair,** I wish to respond as follows-

The Ministry of Environment and Forestry through its agencies has spearheaded a number of initiatives to address the prayers of the petitioners. Some achievements of these initiatives include formulation of the Report on the Status of Ondiri Swamp of May 2020 prepared by the Kenya Water Towers Agency, which the Ministry of Lands participated in.

**Honourable Chair,**

Sessional Paper No. 1 of 2017 on National Land Use Policy acknowledges the challenges facing surface and underground water bodies in the country, which include those that have been observed in the Ondiri wetland area. These challenges include increased population settlement on riparian reserves, pollution and over-abstraction of water, creation of land parcels onto riparian areas, and increased cultivation on catchment areas causing sedimentation.

To address these challenges, the NLUP policy adopts a number of approaches including, but not limited to:

- i. Map, restore and reclaim riparian areas along lakes, rivers, swamps and other wetlands
- ii. Map and ascertain the state and extent of aquifers and groundwater resources and plan for their sustainable exploitation
- iii. Promote and protect sustainable utilisation of inland water bodies' resources
- iv. Set up a special fund for management and reclamation of wetlands under Ministry of Lands and Physical Planning

The NLUP further acknowledges that a key challenge to the management of riparian reserves has been the lack of a coordinated legal framework. Different statutes have offered varied, conflicting interpretations of the definition and standards of measurement applicable to riparian reserves.

In light of these inconsistencies, the Ministry of Land and Physical Planning prepared a Cabinet Memo which has been approved by Cabinet with a view to:

- i. Review and introduce standard measurements for riparian reserves around wetlands to deal with the conflicts and inconsistencies in various sectoral laws governing riparian areas
- ii. Review and amend respective laws and regulations in line with the new, harmonised standards of measurement for riparian reserves



- iii. Establish multi-agency teams to deal with the profiling, mapping and delineation of riparian land along all water courses, starting with the Nairobi and eventually in all counties
- iv. Inspect and profile all developments, properties and structures that have been illegally created within riparian land with the view to remove them and restore wetlands

Further, the Ministry is at an advanced stage of preparing regulations under the Physical and Land Use Planning Act 2019 to provide a detailed framework for guidance and control of land use development activities within riparian land/reserves.

Given the challenges observed in Ondiri Wetland, it is the Ministry's position that a Riparian Reserve Management Plan be prepared by a multi-agency team, through coordination of the Water Resources Authority. Such a plan will help to delineate the boundaries of the wetland for purposes of its conservation, protection and gazettement.

To this end, the Ministry affirms its continued commitment to work together with the relevant MDAs and the County Government of Kiambu in the activities pursuing protection and gazettement of Ondiri Wetland.

**Honourable Chair**, I submit.



Nicholas Muraguri, CBS  
**PRINCIPAL SECRETARY**

March 24, 2021





Handwritten signature and date: *Handwritten signature*  
10/03/21.

**MINISTRY OF ENVIRONMENT AND FORESTRY**

**MINISTERIAL RESPONSE BY THE CABINET SECRETARY TO A PETITION  
CONCERNING THE GAZETTEMET OF ONDIRI WETLAND IN KIKUYU  
SUBCOUNTY OF KIAMBU COUNTY BY THE FRIENDS OF ONDIRI WETLAND  
KENYA (FOWK)**

The Senate Standing Committee on Land, Environment and Natural Resources through letter Ref. No. SEN/DCS/LENR/2/2020/(70) dated 17<sup>th</sup> November, 2020 by the Clerk of the Senate invited the Cabinet Secretary, Ministry of Environment and Forestry to a meeting to respond to a petition to the senate concerning the gazettement of Ondiri wetland Kenya as follows:-

**Petition**

1. **THAT**, there are myriad of threats and challenges that the wetland has been facing which has resulted to its continued degradation and over-exploitation of its resources; this include but not limited to pollution, water abstraction, encroachment, overgrazing, plantation of eucalyptus on its riparian reserve, i
2. **THAT**, the wetland lacks formal protection status which threatens the wetland and attributes to low environmental literacy among the surrounding community and poor coordination among the stakeholders.
3. **THAT**, there is continued operation of greenhouses which lack proper waste management practices and this has led to release

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of chemical effluents into the wetland which is in violation of rule 81 of the Water Resource Management (water) rules 2006, which prohibits discharge or application of any poisonous, toxic, noxious or obstructing matter, radioactive waste or other pollutants into a water body.

4. **THAT**, some of the land owners surrounding the wetland have encroached into the wetland for agricultural expansion and construction of residential homes. The riparian land owners have built permanent structures and have cultivated horticultural crops beyond the setback line, the eroded soil causes sedimentation of the wetland not forgetting the realization of group seepage of sewage effluent into the wetland.
5. **THAT**, there has been abstraction of unregulated water from the wetland. There are over 40 permanent water pumps drawing water from the wetland, out of which 50% lack permits and are unmetered making it difficult to monitor water abstracted from the wetland these contravenes section 36 of the Water Act 2016 which requires the issuance of permits for abstraction of water with works of water source.
6. **THAT**, 1/we have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response.

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## Background

Ondiri Swamp is located in Kiambu County. It covers 34.5 ha with a perimeter of 3.5 km and a depth range of 2 to 3 meters. It is a wetland of great importance as it forms the headwaters of Nairobi River where it is fed by Nyongera River. It also recharges the Kikuyu springs through a subterranean passage. The swamp is a source to 40 other springs, which provides water to the local community. Ondiri wetland supports biodiversity ranging from aquatic and semi aquatic plants, birds, mammals, amphibians, reptiles and insects. It also provides critical ecosystem services from provisioning, regulatory, supporting and cultural. It is the main source of water for the Nairobi River and surrounding local communities.

However, just like other wetlands in the country, Ondiri continues to face many challenges and threats. Mainly:

- (a) Land ownership issues and unclear swamp boundary
- (b) Uncoordinated stakeholder efforts
- (c) Weak law enforcement
- (d) Unregulated water abstraction
- (e) Pollution (industrial, infrastructure, agricultural and domestic waste)
- (f) Growing of exotic trees
- (g) Over-exploitation of the wetland resources
- (h) Siltation
- (i) Inadequate community participation



**1: Initiate a formal protection for Ondiri Wetland in the Republic of Kenya**

The National Environment Management Authority (NEMA) has continued to engage stakeholders through sensitization programmes, coordinating tree planting and cleanups to safeguard the ecosystems. Other interventions that NEMA has put in place is through ensuring that developments in the neighbourhood are undertake Environmental Impact Assessment and environmental audits as provided for by EMCA1999 and they are compliant with water quality as well as waste management Regulations.

Protection of Ondiri wetland requires a multi sectoral approach involving all stake holders coordinated by National Environment Management Authority (NEMA) through the County Environment Committee (CEC).

**2: Initiate the recognition of Ondiri wetland Kenya as a highland bog and a major water tower and an ecosystem site**

Gazettement of Ondiri wetland under section 42 of the Environmental Management and Coordination Act Cap 387 laws of Kenya as a protected wetland will ensure recognition of the natural resource as a national resource. In addition, the Wetlands regulation (2009) empowers the minister by a gazette notice to declare an area



as a protected wetland. NEMA will spearhead the process of gazettelement as a protected area.

- 3: **Intervene in the matter with a view to ensure that WRA verifies weather water abstraction permits are registered or not and legalize them and delineate the boundaries of the wetland.**

This can best be handled by Water Resources Authority as the lead agency in this matter;

In the coordination and supervisory role of NEMA, the CEO WRA shall be notified through writing to provide information on the abstraction permits as well as the boundary maps

4. **Initiate the process of funds allocation to carry awareness campaigns that will involve the government and private sector to understand the importance of the wetland and how it can be managed:**

- (a) NEMA can collaborate with the friends of Ondiri Wetland Kenya to undertake awareness campaigns on the importance of the wetland;
- (b) NEMA can be facilitated to undertake conservation programmes
- (c) NEMA to undertake stakeholder analysis within Ondiri to ensure inclusivity which has been lacking in an effort to conserve the wetland

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**5. Intervene for the group to enable the Gazettement of Ondiri wetland**

Gazettelement of a wetland is a multispectral and a lengthy process that requires comprehensive consultations and resources. NEMA will spearhead gazettelement of the wetland in collaboration with County Environment Committee of Kiambu County.

Gazettelement process as outlined in the Wetlands Regulations sec 9 (2);

- (a) By notice in the gazette, notify the public of the intention to declare an area to be protected wetland
- (b) Setup a taskforce to prepare a management plan by incorporating views of people inhabiting the area adjacent to the wetland
- (c) Cause a SEA of the management plan in accordance with the Act
- (d) Where the Authority is satisfied with the findings, submit to the Minister for gazettelement.

**Hon. Chair,** I would like to share with you two reports that have been prepared by Agencies of the Ministry and their recommendations that in our view will go a long way in sustainable management of this important resource.





- (i) Special report on the degradation of Ondiri Swamp in Kikuyu sub-county, Kiambu County of September, 2018 by the National Environment Complaints Committee (NECC). **(Annex 1).**
- (ii) Report on the status of Ondiri Swamp of May 2020 prepared by Kenya Water Towers Agency among others. **(Annex 2)**

To conclude, I assure this Committee of the Ministry's commitment to working towards a sustainable management of this very important natural resources together with the relevant stakeholders.

Thank you Chair



Keriako Tobiko, SC, CBS  
Cabinet Secretary  
Ministry of Environment and Forestry

