

REPUBLIC OF KENYA



COS

Recommended for
approval for tabling

Eg 14/09/21

THE SENATE

TWELVETH PARLIAMENT

Rt. Hon. Speaker
You may approve for
tabling

14/09/21

[Signature]
14/9/2021

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

ON

DATE	15/09/2021
TABLED BY	Sen. Kasangari
COMMITTEE	Land
CLERK AT THE TABLE	<i>[Signature]</i>

THE PETITION BY RESIDENTS OF UTHERI WA LARI ON COMPENSATION
FOR PARCELS OF LAND ACQUIRED BY GOVERNMENT TO PAVE WAY
FOR THE CONSTRUCTION OF THE STANDARD GAUGE RAILWAY

2021

DC-EG

Forwarded & recommended for
Processing for approval
14/09/2021

Contents

List of Abbreviations/ Synonyms.....	3
PREFACE	4
Committee Membership	4
ACKNOWLEDGEMENT	7
CHAPTER I	8
INTRODUCTION.....	8
LEGAL BASIS FOR PETITIONS	11
CHAPTER 2.....	12
CONSIDERATION OF THE PETITION	12
Issues for Consideration.....	12
CHAPTER 5.....	17
COMMITTEE OBSERVATIONS.....	17
CHAPTER 6.....	18
COMMITTEE RECOMMENDATIONS	18
APPENDICES.....	19
ANNEX I: MINUTES OF THE MEETINGS	19
ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS	20

List of Abbreviations/ Synonyms

CCCC	- China Communication Construction Company (Contractor)
CS	- Cabinet Secretary
ESIA	- Environmental and Social Impact Assessment
GoK	- Government of Kenya
KR	- Kenya Railways
MOLPP	- Ministry of Land & Physical Planning
NLC	- National Land Commission
RAP	- Resettlement Action Plan
SGR	- Standard Gauge Railway

PREFACE

Mr. Speaker sir,

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

Committee Membership

The Lands, Environment and Natural Resources Committee comprises of the following Members -

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

Chairperson

Vice-Chairperson

At the sitting of the Senate held on 30th May, 2018, the Honourable Speaker of the Senate reported to the Senate that a Petition has been submitted through the Clerk, by four (4) residents of Utheri wa Lari, concerning compensation for parcels of land acquired by Government to pave way for the construction of the Standard Gauge Railway.

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

1. That work on the Standard Gauge Railway has started on the Utheri Wa Lari land covering approximately more than six kilometers in length and is currently going in earnest.
2. That the owners of the Utheri wa Lari land support the project as development conscious citizens and deliberately choosing not to place any obstacles in the way of the ongoing works, instead allowed early entry to the Chinese company undertaking the construction despite several issues that remained unresolved.
3. That they have noticed with a lot of concern, laxity in protocol on the part of the government and the contractor when it comes to the handling of the matter with the stakeholders, key of whom are the Utheri wa lari land owners
4. That they have no official list and information on the specific land owners directly affected by this project despite the fact that the government has in its possession the route and design of the SGR portion passing through their land.
5. That to the concerned government ministries and agencies have not gazetted the land compulsory acquisition and hence they can rightly be considered as intruders and qualify for eviction by the land owners.
6. That the government has not made any formal commitment to compensate the affected land owners and the owners do not even know how much compensation to expect.
7. That the silence on the part of government had denied them room for negotiation and settlement on the values of compensation to be offered leaving them apprehensive that they may not be adequately compensated considering they allowed early entry before settling pertinent issues as compensation.
8. That given the sad history of Utheri Wa Lari Land where the owners have had to fight court battles to keep their land, the governments behavior does not inspire confidence

in them that the matter will be dealt with fairly and justly and that they are apprehensive that they may end up being short changed and end up with a raw deal.

9. That they are concerned that the secretive manner with which the government representatives in this project is sinister and detrimental to their genuine interests that they believe can only be safeguarded by the senate.
10. That they have made the best efforts to have this matter addressed at the National Land Commission and at the Kenya Railways level without success. Further, they believe that the senate through its transport and infrastructure committee is the appropriate body to deal with the matters raised in herein.
11. That none of the issues raised in this petition is pending in any court of law, constitutional or any other legal body.

The Petitioners namely; Mr. Steven Muiru, Mr. James Kamau Gichanga, Mr. Peter Ndungu Njihia and Ms. Lucy Njoki Wandaka therefore prayed that the Senate urgently investigates the matters raised and comes up with appropriate recommendations to ensure that their rights and interests are safeguarded as the Utheri Wa Lari land owners and that full disclosure of information pertaining to the project as it relates to their land making sure that they are involved and allowed participation in the processes that will lead to their fair compensation.

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 witnesses. The witnesses included the Ministry of Transport, Housing & Urban Development, Kenya Railways Corporation and the SGR Consultants.

The Committee now submits this Report as its Response to the Petitioner pursuant to section 5(3) of the Petition to Parliament (Procedure) Act and standing order 232 (2) of the Senate Standing Orders.

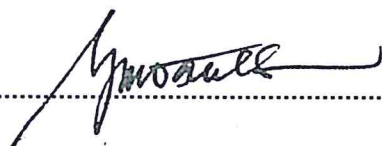
ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the parties to the matter; the Petitioners namely; Mr. Steven Muiru, Mr. James Kamau Gichanga, Mr. Peter Ndungu Njihia and Ms. Lucy Njoki Wandaka; the Principal Secretary, State department of Transport, Prof. Paul Maringa Mwangi 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 both Committees, to present this Joint Report of the Standing Committee on Land, Environment and Natural Resources and the Standing Committee on Roads and Transportation on the Petition by residents of Utheri wa Lari, concerning compensation for parcels of land acquired by Government to pave way for the construction of the Standard Gauge Railway.

Signed:



Date:

18/08/2021

SEN. MWANGI PAUL 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 30th May, 2018 the Honourable Deputy Speaker of the Senate, reported to the Senate that a Petition has been submitted through the Clerk, by four (4) residents of Utheri wa Lari, concerning compensation for parcels of land acquired by Government to pave way for the construction of the Standard Gauge Railway.
2. The Honourable Deputy Speaker of the Senate, had committed the Petition to both the Senate Committee on Land, Environment and Natural Resources and the Senate Committee on Roads and Transportation but later due to challenges experienced in considering the Petition jointly, the Petition was then recommitted on Thursday, 22nd July, 2021 to the Senate Committee on Land, Environment and Natural Resources.
3. The Committee had already met all the Stakeholders jointly with the Senate Standing Committee on Roads and Transportation earlier before the recommitment of the Petition and therefore all that was left was adoption of the Committee Report which was done on 18th August, 2021.
4. The salient issues raised in the Petition are as follows-
 - a) That work on the **Standard Gauge Railway** has started on the **Utheri Wa Lari land** covering approximately more than six kilometers in length and is currently going in earnest.
 - b) That the owners of the Utheri wa Lari land support the project as development conscious citizens and deliberately choosing not to place any obstacles in the way of

the ongoing works, instead allowed early entry to the Chinese company undertaking the construction despite several issues that remained unresolved.

- c) That they have noticed with a lot of concern, laxity in protocol on the part of the government and the contractor when it comes to the handling of the matter with the stakeholders, key of whom are the Utheri wa lari land owners.
- d) That they have no official list and information on the specific land owners directly affected by this project despite the fact that the government has in its possession the route and design of the SGR portion passing through their land.
- e) That the concerned government ministries and agencies have not gazetted the land compulsory acquisition and hence they can rightly be considered as intruders and qualify for eviction by the land owners.
- f) That the government has not made any formal commitment to compensate the affected land owners and the owners do not even know how much compensation to expect.
- g) That the silence on the part of government had denied them room for negotiation and settlement on the values of compensation to be offered leaving them apprehensive that they may not be adequately compensated considering they allowed early entry before settling pertinent issues as compensation.
- h) That given the sad history of Utheri Wa Lari Land where the owners have had to fight court battles to keep their land, the governments behavior does not inspire confidence in them that the matter will be dealt with fairly and justly and that they are apprehensive that they may end up being short changed and end up with a raw deal.
- i) That they are concerned that the secretive manner with which the government representatives in this project is sinister and detrimental to their genuine interests that they believe can only be safeguarded by the senate.
- j) That they have made the best efforts to have this matter addressed at the National Land Commission and at the Kenya Railways level without success. Further, they believe

that the Senate through its Transport and Infrastructure Committee is the appropriate body to deal with the matters raised herein.

- k) That none of the issues raised in this petition is pending in any court of law, constitutional or any other legal body.
- 5. The Petitioners, therefore, pray that the Senate urgently investigates the matters raised and comes up with appropriate recommendations to ensure that their rights and interests are safeguarded as the Utheri Wa Lari land owners and that full disclosure of information pertaining to the project as it relates to their land making sure that they are involved and allowed participation in the processes that will lead to their fair compensation.
- 6. 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

7. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.
8. 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.*”
9. 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.*
10. 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 invited the Ministry of Transport, Infrastructure, Housing and Urban Development & Kenya Railways Co-operation and the National Land Commission on 28th June, 2018.

Issues for Consideration

The Committee after interrogating the Stakeholders was able to obtain the following information to be able to respond to the concerns raised by the Petitioners.

1. Construction of SGR ongoing on Utheri wa Lari land

The Committee was informed that, indeed Nairobi - Naivasha SGR line traverses through Utheri Wa Lari Land Registered as *Longonot/Kijabe Block 2 (Utheri wa Lari)* within Nakuru County in two portions covering 6.18km approximately;

DK 66+730 - 70+960

DK 79+000 - 80+950

2. Support of the project by the petitioner

That indeed no recorded stoppage has been instituted by the Utheri wa Lari Persons affected by the project (PAPs) and the Contractor CCCC is still undertaking construction on the said land.

3. Laxity in protocol on part of Government and Contractor

The Committee was informed that there has been no laxity on the GoK side as land acquisition requires procedures to be followed as per the Constitution. Several sensitization programmes were put in place within the locality of Utheri wa Lari through various engagements namely;-

- Local administration (chiefs barazas) including political leaders were involved in the engagements;
- Environmental-Social Impact Assessment consultant- Kenya Railways undertook ESIA as a tool to guide environmental on land issues on the SGR right of way.
- The Resettlement Action Plan - RAP Consultant and Kenya Railways have undertaken a Resettlement Action Plan (RAP) to guide land acquisition and resettlement issues.

Through these exercises, KR and the Consultant scheduled consultative meetings with the persons/institutions affected by the project. Other Government Agencies such as the Ministry of Lands and Physical Planning and the National Lands Commission have been engaged fully in the project.

To confirm this, the Ministry informed the Committee that there was a publication on the same i.e. National Gazette of 22nd December, 2017 and subsequent addendum of 2nd March, 2018 (*copy attached*).

4. Claim of no official list and information on specific land owners

The Committee was informed that the official list of persons affected by the SGR Right of Way is prepared after the National Lands Commission conducts official searches in the Lands registries on parcels submitted by the acquiring agency (KR).

Parcel areas (dimension), are usually indicated in the area list submitted to NLC and acquisition maps for verification purposes. The information has been served by NLC to the individual persons/institutions affected by the project through inspection notices. The information is therefore available in the published gazette notices and the Corporation has been engaging the individual PAPs and other interested groups like Utheri wa Lari.

5. No gazettelement of land for SGR

That gazettelement of Parcels of Land earmarked for the SGR phase 2A development were published in the Gazette Notice No. 12526 of 22nd Dec 2017 and Subsequent addendum Notices 2032 and 2033 of 2nd March 2018 (*copies attached*).

6. Claim of no formal commitment to compensate affected land

The Committee was informed that, formal commitment was done through gazette notices as mentioned above, engaging the PAPs during area verification, inspection and inquiries.

The approach of this assignment was jointly undertaken by the Kenya Railways and the National Lands Commission to establish the affected acreage and developments.

7. Negotiation and settlement on values:

The NLC undertakes compulsory acquisition as provided under the Land Act 2012 Sections 107 to 162. This is in furtherance to the Constitutional requirements in Article 10 (national values and principles of governance), 27 (equality and freedom from discrimination), 47 (fair administrative action). To operationalize compulsory acquisition, Land Act 2012 Sections 107 to 150 and 162 are applied.

9. Secretive manner in which the Government and Kenya Railways is handling the process

The Committee was informed that the process had been open and transparent through public participation and engagements. The belief of the Stakeholders was that the exercise met the constitutional threshold of fairness. Any additional information requested is always available on request.

10. Engagements with the Petitioners

The Committee was informed that, Kenya Railways Surveyor, Geoffrey Wekesa has made several engagements on site and also at KR Headquarters with the leadership of Utheri wa Lari. In these engagements issues regarding construction of SGR line through Utheri Wa Lari Land and Compulsory acquisitions were discussed (pictures attached in their submissions).

In addition to the submission made above, the National Land Commission added that;

The Commission vide Gazette Notice No. 2032 and 2033 of 2nd March 2018 gazetted acquisition of the Phase 2 A Standard Gauge Railway.

The Commission has conducted inspection and valuation of the affected properties along the corridor. The Commission relied on information from;

1. Improvements-BORAQS construction rates
2. Land value-advice from the Ministry of Lands , Housing and Physical Planning
3. Trees-Kenya Forest Services
4. Crops-Ministry of Agriculture

During the above exercise, the Commission took note of the following emerging issues and the directorate is hereby formulating a policy guide for rationality of compensation;

1. Ministry of Lands advice on compensation variances in neighboring locations

Longonot Kijabe/Block neighbouring Kshs 400,000 per acre versus the neighbouring Kedong at Kshs.1 Million per acre.

2. NLC Application regularizing the compensation rates

The Commission analyzed the locational rates based on similar location and comparability of sales, use, proximity to infrastructure and social amenities vis-a-vis locational land exchange values.

Therefore for the Longonot/Kijabe section/Utheri wa Lari, the Commission increased from Kshs.400,000/= to a range of Kshs.800,000 - 1 million as one approaches Kedong Ranch towards the Maai Mahiu Road.

The Commissioners noted that the land value index is not yet law but should be used as a guide. The Directorate should apply the principle of equity in comparative location, use, size, access to infrastructure and ecological zoning.

Illustration table submitted by the National Lands Commission is attached below;

Kimuka/Ntashart	Western Grazing	Longonot/ Kijabe	Kedong Ranch	Maai Mahiu/Suswa	
3m	700,000/=	400,000/=	1m	500,000 - 800,000/=	(MOL)
8.5 to 3m	1,000,000/=	800,000-1m	1m	800,000/=	(NLC)

In this section of the SGR corridor, the Commission has duly harmonized the land market transaction indices in tandem with the MOLPP land value survey for rationality.

CHAPTER 5

COMMITTEE OBSERVATIONS

In accordance with the prayers of the Petitioners, that the Senate urgently investigates the matters raised and comes up with appropriate recommendations to ensure that their rights and interests are safeguarded as the Utheri Wa Lari land owners and that full disclosure of information pertaining to the project as it relates to their land making sure that they are involved and allowed participation in the processes that will lead to their fair compensation; the Committee hereby makes the following overall observation;

Considering that the project has since been completed, the Committee observes that;

- 1. The National Land Commission which is mandated with oversight responsibilities over land use planning throughout the country and was at the forefront of ensuring that all persons whose land was acquired by Government through the Kenya Railways during construction of the Nairobi - Naivasha SGR line ensures that all persons affected are adequately compensated; and**
- 2. The National Land Commission and the Kenya Railways should submit to the Committee a Report on the compensations done during the construction of the SGR from Mombasa to Naivasha.**

CHAPTER 6

COMMITTEE RECOMMENDATIONS

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

That;

- 1. The Kenya Railways Corporation submits to the Committee an updated compensation status report on the Nairobi to Naivasha SGR line traversing the Utheri Wa Lari Land registered as *Longonot/Kijabe Block 2 (Utheri wa Lari)* within Nakuru County by 31st October, 2021;**
- 2. The National Land Commission submits to the Committee an updated report on the status of all compensations done during the construction of the SGR from Nairobi to Naivasha including pending payments that haven't been done to the Utheri Wa Lari Land registered as *Longonot/Kijabe Block 2 (Utheri wa Lari)* with reasons thereof if any, by 31st October, 2021.**

APPENDICES

ANNEX I: MINUTES OF THE MEETINGS

(Attached separately)

ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS

(Attached separately)

MINUTES OF THE 53RD SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 18TH AUGUST, 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
6. Sen. (Dr.) Lelegwe Ltumbesi, MP

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. George Khaniri, MGH, MP - Member
2. Sen. Gideon Moi, CBS, MP - Member
3. Sen. Sylvia Kasanga, MP - Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Crispus Njogu
3. Ms. Mitchell Otoro
4. Ms. Lucianne Limo
5. Ms. Farida Kinyua
6. Mr. Erick Njogu
7. Mr. John Pere
8. Mr. James Kimiti
9. Mr. Naftali Ondiba

SECRETARIAT

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

MINUTE SEN/SCLENR/303/2021: PRELIMINARIES

The meeting was called to order at 9:00 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/304/2021: 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 the adverse effects of rock blasting for the construction of Thwake Dam (Makueni Assembly Committee on Environment and Climate Change)
 - (b) Draft Report of the Committee on the Petition by residents of Utheri wa Lari on the alleged compensation of parcels of land acquired by the Government to pave way for the construction of the Standard Gauge Railway
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLENR/305/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Committee differed the confirmation of Minutes.

MINUTE SEN/SCLENR/306/2021: ADOPTION OF THE FOLLOWING PETITION REPORTS;

- (a) **Draft Report of the Committee on the Petition regarding the adverse effects of rock blasting for the construction of Thwake Dam (Makueni Assembly Committee on Environment and 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 therefore recommended as follows:

- 1. That all blasting occurs between 8.00 am – 6.00 pm in accordance with the blasting license issued by the Government. Further, NEMA ensures that the contractor on site adheres to all environmental licenses and permits necessary for dam construction.**
- 2. That the National Environmental Management Authority urgently investigates the houses around the dam to ascertain the level of environmental effects including the alleged cracked buildings caused by blasting in the dam and reports back to the Senate by 31st October, 2021. Should it be found that buildings were affected during the construction process, the Contractor be compelled upon to compensate all persons affected.**
- 3. That as per the Environmental Management and Co-ordination Act section 108, a restoration order to be issued once National Environment Management Authority (NEMA) ascertains the contractor on site to have caused any environmental damage during the construction process, and a copy be sent to Senate within 30 days of tabling the Report in the Senate.**
- 4. 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.**
- 5. 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.**
- 6. NEMA to require the Contractor to file Audit Reports on the blasts, to include and not limited to level of noise and effects thereof.**
- 7. That NEMA causes an officer at Makueni County to be present during the blasts at the cost of the Contractor under the Polluter Pays Principle.**
- 8. An urgent evaluation be done, to confirm whether the Houses/ Residences**

along the periphery are affected by flying rocks, and urgent acquisition and relocation be done to forestall fatalities or injuries.

9. The Ministry of Water, Sanitation and Irrigation should ensure regular maintenance of the roads being used by the Contractor and watering of the earth roads is done continuously to reduce dust pollution. Further, at the end of the project the Ministry should ensure that all roads that were used in the process is repaired and improved.

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 by residents of Utheri wa Lari on the alleged compensation of parcels of land acquired by the Government to pave way for the construction of the Standard Gauge Railway

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 recommended as follows:

1. The Kenya Railways Corporation submits to the Committee an updated compensation status report on the Nairobi - Naivasha SGR line traversing through the Utheri Wa Lari Land Registered as *Longonot/Kijabe Block 2 (Utheri wa Lari)* within Nakuru County by 31st October, 2021;
2. The National Land Commission submits to the Committee an updated report on the status of all compensations done during the construction of the SGR from Nairobi to Naivasha including pending payments that haven't been done to the Utheri Wa Lari Land Registered as *Longonot/Kijabe Block 2 (Utheri wa Lari)* with reasons thereof if any by 31st October, 2021.

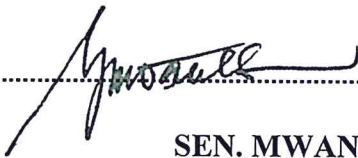
The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Ndwigwa Peter Njeru, EGH, MP and Sen. Philip Mpaayei, MP respectively.

MINUTE SEN/SCLENR/307/2021: ANY OTHER BUSINESS;

There was no other business discussed.

MINUTE SEN/SCLENR/308/2021: DATE OF NEXT MEETING;

The meeting was adjourned at 1.00 pm and the next meeting was scheduled for 18th August, 2021 at 2:00 pm

Signed: 

Date: 20/8/2021

SEN. MWANGI PAUL GITHIOMI, MP

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

MINUTES OF THE 1ST MEETING OF THE JOINT SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES AND THE SENATE STANDING COMMITTEE ON ROADS AND TRANSPORTATION HELD ON THURSDAY, 28TH JUNE, 2018 IN, THE SENATE CHAMBER, MAIN PARLIAMENT BUILDING AT 9.00AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
- **Chairperson**
2. Sen. Prengei Victor, M.P.
- **Vice Chairperson**
3. Sen. Halake Abshiro, M.P.
4. Sen. Mwaruma Johnes, M.P.

PRESENT

1. Sen. Wamatangi Kimani, MP,
- **Chairperson**
2. Sen. Steve Lelegwe, MP,
3. Sen. Sylvia Kasanga, MP,
4. Sen. (Prof.) Ekal Imana, MP,

APOLOGIES

1. Sen. Hargura Godana, MP,
2. Sen. Enoch Wambua, MP,
3. Sen. Christine Zawadi, MP,
4. Sen. George Khaniri, M.P.
5. Sen. Ndwiga Peter Njeru, M.P.
6. Sen. Boy Issa Juma, M.P.
7. Sen. Philip Mpaayei, MP,
8. Sen. Cleophas Malalah, MP,

- **Vice Chairperson**

IN ATTENDANCE

MINISTRY OF ENVIRONMENT & FORESTRY

1. Mr. Keriako Tobiko, CBS, Sc
- Cabinet Secretary
2. Mr. Wilson Tonkei
- Personal Assistant
3. Mr. Joseph Rono
- Personal Assistant

MINISTRY OF TRANSPORT, HOUSING & URBAN DEVELOPMENT

1. Prof. Paul Maringa Mwangi
- PS Transport

KENYA RAILWAYS

1. Mr. Atanas K. Maina
- Managing Director
2. Mr. Stanley Gitari
- SLO
3. Ms. Christine Macharia
- SLO
4. Mr. Geoffrey Wekesa
- Survey
5. Ms. Salome Kamau
- SLS

SGR CONSULTANTS

1. Mr. Benson Kimotho
- KR – SGR – Consultant
2. Ms. Shalini Tak
- KR – SGR – Consultant

SENATE SECRETARIAT

1. Mr. Victor Bett
2. Mr. Simon Muinde
3. Mr. Mitchell Otoro
4. Mr. Wilson Bosumet

- Committee Clerk
- Audio Recording
- Legal Counsel
- Sergeant at arms

MINUTE SEN/SCLNR&RT/001/2018: PRELIMINARIES

The meeting was called to order at 9.25am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNR&RT/002/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Halake Abshiro, M.P. and seconded by Sen. Sylvia Kasanga, M.P.

1. Preliminaries;
 - *Prayer,*
 - *Remarks by both Chairpersons*
2. Adoption of the agenda;
3. Deliberations on the Petition by residents of Utheri Wa Lari on compensation for parcels of land acquired by Government to pave way for the construction of the Standard Gauge Railway
 - **Ministry of Transport, Infrastructure, Housing and Urban Development & Kenya Railways Co-operation**
 - **National Land Commission**
4. Any other Business;
5. Date of the next meeting.
6. Adjournment

MINUTE SEN/SCLNR&RT/003/2018:

DELIBERATIONS ON THE PETITION BY RESIDENTS OF Utheri WA LARI ON COMPENSATION FOR PARCELS OF LAND ACQUIRED BY GOVERNMENT TO PAVE WAY FOR THE CONSTRUCTION OF THE STANDARD GAUGE RAILWAY

A. Ministry of Transport, Infrastructure, Housing and Urban Development and the Kenya Railways Co-operation

The matters

1. Construction of SGR ongoing on Utheri wa Lari land

Mr. Chairman, indeed Nairobi - Naivasha SGR line traverses through Utheri Wa Lari Land Registered as *Longonot/Kijabe Block 2(Utheri wa Lari)* within Nakuru County in two portions covering 6.18km approximately,

DK 66+730 - 70+960

DK 79+000 - 80+950

2. Support of the project by the petitioner

That indeed no recorded stoppage has been instituted by the Utheri wa Lari Persons affected by the project (PAPs) and the Contractor CCCC is still undertaking construction on the said land.

3. Laxity in protocol on part of Government and Contractor

We wish to state that there has been no laxity on the GoK side as land acquisition requires procedures to be followed as per the Constitution. We wish to indicate that several sensitization programmes were put in place within the locality of Utheri wa Lari through various engagements namely:-

- Local administration (chiefs barazas) including political leaders were involved in the engagements
- Environmental-Social Impact Assessment consultant- Kenya Railways undertook ESIA as a tool to guide environmental on land issues on the SGR right of way.
- The Resettlement Action Plan - RAP Consultant and Kenya Railways have undertaken a Resettlement Action Plan (RAP) to guide land acquisition and resettlement issues.

Through these exercises KR and the Consultant scheduled consultative meetings with the persons/institutions affected by the project Other Government Agencies e.g Ministry of Lands and Physical Planning, National Lands Commission have been engaged fully in the project.

- Through publication i.e. National Gazette of 22nd Dec 2017 and subsequent addendum of 2nd March 2018 (*copy attached*).

4. Claim of no official list and information on specific land owners

Mr. Chairman, the official list of persons affected by the SGR Right of Way is prepared after the National Lands Commission conducts official searches in the Lands registries on parcels submitted by the acquiring agency (KR).

Parcel areas (dimension), are usually indicated in the area list submitted to NLC and acquisition maps for verification purposes. The information has been served by NLC to the individual persons/institutions affected by the project through inspection notices. The information is therefore available in the published gazette notices and the Corporation has been engaging the individual PAPs and other interested groups like Utheri wa Lari.

5. No gazettment of land for SGR

That gazettment of Parcels of Land earmarked for the SGR phase 2A development were published in the gazette notice No. 12526 of 22nd Dec 2017 and Subsequent addendum notices 2032 and. 2033 of 2nd March 2018 (*copies attached*).

6. Claim that no formal commitment to compensate affected land

Mr. Chairman, formal commitment was through gazette notices as above, engaging the PAPs during area verification, inspection and inquiries. The approach of this assignment was jointly undertaken by V Kenya Railways and the National Lands Commission to establish/ "affected acreage and developments

7. Negotiation and settlement on values:

The NLC undertakes compulsory acquisition as provided under the Land Act 2012 Sections 107 to 162. This is in furtherance to the Constitutional requirements in

Article 10 (national values and principles of governance), 27 (equality and freedom from discrimination), 47 (fair administrative action). To operationalize compulsory acquisition the Land Act 2012 Sections 107 to 150 and 162 are applied.

9. Secretive manner in which the Government and Kenya Railways is handling the process

Mr. Chairman, the process has been open and transparent through public participation and engagements. We believe that the exercise has met the constitutional threshold of fairness. Any additional informatics requested is always available on request.

10. Engagements with the Petitioners

We wish to indicate that Kenya Railways Surveyor Geoffrey Wekesa has made several engagements on site and also at KR Headquarters with the leadership of Utheri wa Lari. In these engagements issues regarding construction of SGR line through Utheri Wa Lari Land and Compulsory acquisitions were discussed (pictures attached).

B. National Land Commission

The Commission vide Gazette Notice No. 2032 and 2033 of 2nd March 2018 gazetted acquisition of the Phase 2 A Standard Gauge Railway.

The Commission has conducted inspection and valuation of the affected properties along the corridor. The Commission relied on information from;

1. Improvements-BORAQS construction rates
2. Land value-advice from the Ministry of Lands , Housing and Physical Planning
3. Trees-Kenya Forest Services
4. Crops-Ministry of Agriculture

During the above exercise the commission took note of the following emerging issues and the directorate is hereby formulating a policy guide for rationality of compensation;

1. Ministry of Lands advice on compensation variances in neighboring locations

Longonot Kijabe/Block neighbouring Kshs 400,000 per acre versus the neighbouring Kedong at Kshs.1 Million per acre.

2. NLC Application regularizing the compensation rates

The Commission analyzed the locational rates based on similar location and comparability of sales, use, proximity to infrastructure and social amenities vis-a-vis locational land exchange values.

Therefore for the Longonot/Kijabe section/Utheri wa Lari, the Commission increased from Kshs.400,000/= to a range of Kshs.800,000-1 million as one approaches Kedong Ranch towards the Maai Mahiu Road.

The Commissioners noted that the land value index is not yet law but should be used as a guide. The Directorate should apply the principle of equity in comparative location, use, size, access to infrastructure and ecological zoning.

Kimuka/Ntashart	Western Grazing	Longonot/ Kijabe	Kedong Ranch	Maai Mahiu/Suswa	
3m	700,000/	400,000/=	1m	500,000 -	(MOL)
8.5 to 3m	=	800,000-1m	1m	800,000/=	(NLC)
	1,000,000/=			800,000/	
				=	

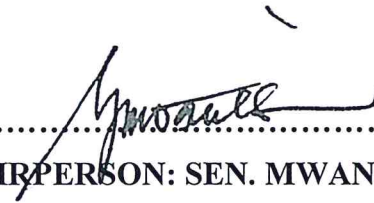
In this section of the SGR corridor, the Commission has duly harmonized the land market transaction indices in tandem with the MOLPP land value survey for rationality.

MINUTE SEN/SCLENR&RT/004/2018: ANY OTHER BUSINESS;

The Committee discusses correspondences that were sent to the Committee.

MINUTE SEN/SCLENR&RT/005/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 11.55 am and the date of the next meeting was to be called on notice.

SIGNATURE.......... DATE 20/08/2021
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

U Please see. 23/04/18

**PETITION PRESENTED TO THE SENATE PURSUANT TO
ARTICLE 119 OF THE CONSTITUTION OF KENYA AND PART
XXIV OF THE STANDING ORDERS**

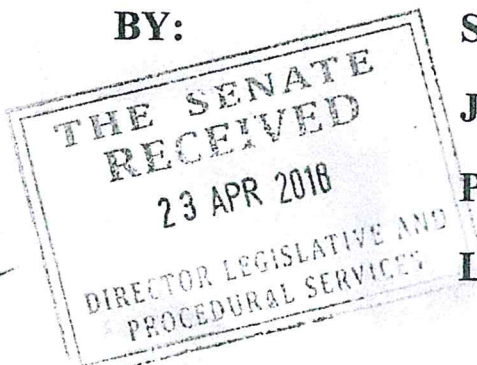
BY:

STEVEN MUIRU

JAMES KAMAU GICHANGA

PETER NDUNGU NJIHIA

LUCY NJOKI WANDAKA



*① DLPS
Please see.
28/4/18*

**CONCERNING THE COMPENSATION FOR PARCELS OF
LAND IN UTHERI WA LARI TO BE COMPUSORILY
ACQUIRED BY GOVERNMENT TO PAVE WAY FOR THE
CONSTRUCTION OF THE STANDARD GAUGE RAILWAY
(SGR)**

*③ Mr. Munyua
Kindly facilitate the
Petition.
D. Chanja
30/4/18.*

February 2018

Petition presented to the Senate concerning the compensation for parcels of land in utheri wa lari to be compulsorily acquired by government to pave way for the construction of the standard gauge railway (SGR)

We, the undersigned,

Citizens of the republic of Kenya and residents of mai mahiu utheri wa lari,

DRAW the attention of the Senate to the following:

1. **That** work on the **Standard Gauge Railway** has started on the **Utheri Wa Lari land** covering over six kilometers in length and is currently going in earnest.
2. **That** we as the owners of the Utheri wa Lari land support the project as development conscious citizens and deliberately choosing not to place any obstacles in the way of the ongoing works and instead allowing early entry to the Chinese company undertaking the construction despite several issues remaining unresolved.
3. **That** we have noticed with a lot of concern laxity in protocol on the part of the government and the contractor when it comes to the handling of this matter with the stakeholders, key of whom are the utheri wa lari land owners
4. **That** we have no official list and information on the specific land owners directly affected by this project despite the fact that the government has in its possession the route and design of the SGR portion passing through our land.
5. **That** to date the concerned government ministries and agencies have not gazette the land compulsory acquisition and hence they can rightly be considered as intruders and qualify for eviction by the land owners.
6. **That** to date the government has not made any formal commitment to compensate the affected land owners and the owners do not even know how much compensation to expect.
7. **That** this silence on the part of government has denied us room for negotiation and settlement on the values of compensation to be offered leaving us apprehensive that we may not be adequately compensated considering we allowed early entry before settling pertinent issues as compensation.
8. **That** given the sad history of **Utheri Wa Lari Land** where the owners have had to fight court battles to keep their land, the governments behavior does not inspire confidence in us

Petition presented to the Senate concerning the compensation for parcels of land in utheri wa lari to be compulsorily acquired by government to pave way for the construction of the standard gauge railway (SGR)

that this matter will be dealt with fairly and justly and that we are apprehensive we may end up being short changed and end up with a raw deal.

9. **That** we are concerned that the secretive manner with which the government representatives in this project is sinister and detrimental to our genuine interests that we believe can only be safeguarded by the senate.
10. **That** we have made the best efforts to have this matter addressed at the national commission and Kenya railways level without success. Further we believe that the senate through its transport and infrastructure committee is the appropriate body to deal with the matters raised in herein
11. **That** none of the issues raised in this petition is pending in any court of law, constitutional or any other legal body.

Wherefore, your humble petitioners pray that the senate urgently investigates the matters raised and comes up with appropriate recommendations to ensure that our rights and interests are safeguarded as the **Utheri Wa Lari** land owners and that full disclosure of information pertaining to the project as it relates to our land making sure that we are involved and allowed participation in the processes that will lead to our fair compensation.

Dated this 20th day of February 2018.

Signed by:

S/N	NAME	ID NO.	PHYSICAL ADDRESS	SIGNATURE
1	STEVEN MUIRU	4300501	P.O. BOX 84 UPLANDS	
2	JAMES KAMAU GICHANGA	3069803	P.O. BOX 84 UPLANDS	
3	PETER NDUNGU NJIHIA	3430006	P.O. BOX 84 UPLANDS	
4	LUCY NJOKI WANDAKA	4918937	P.O. BOX 84 UPLANDS	

Contact Person: Steven Muiru, Chairman Utheri wa Lari 0722335713

