

*Paper laid by
The Hon. Nimrod Mbatia MP
Chair, Public Petitions
Committee on
2/8/2023
Mbatia*



*Approved
SNA
2/8/23*

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT (SECOND SESSION)

PUBLIC PETITIONS COMMITTEE

PARLIAMENT
OF KENYA
LIBRARY

THE NATIONAL ASSEMBLY

DATE: 02 AUG 2023

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REPORT ON-

(PUBLIC PETITION NO. 8 OF 2022)

*Hon. Nimrod Mbatia, MP
Chairperson, Public Petitions
Miriam Mado*

BY PASTOR OCHIENG' ODINDO REGARDING EACC INVESTIGATION OF WEST
KANO IRRIGATION SCHEME

AUGUST 2023

CLERK'S CHAMBERS
DIRECTORATE OF LEGISLATIVE AND PROCEDURAL SERVICES
PARLIAMENT BUILDINGS
NAIROBI

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LIST OF ACRONYMS

EACC	-	Ethics and Anticorruption Commission
ESP	-	Economic Stimulus Program
JICA	-	Japan International Cooperation Agency
NGAO	-	National Government Administration Officers
NIA	-	National Irrigation Authority
NIB	-	National Irrigation Board

CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present this House the Report of the Public Petitions Committee regarding EACC Investigation of West Kano Irrigation Scheme. The Petition was presented to the House pursuant to Standing Order 225 (2) (b) by the Honourable Speaker on behalf of Pastor Ochieng' Odindo and West Kano Irrigation Scheme farmers.

The Petitioners prayed that the House uses its authority to intervene on behalf of poor farmers and beneficiaries of West Kano Irrigation Scheme by seeking conclusion of investigations by EACC Western Region office to recommend appropriate action against culpable officers.

In response to the prayers sought in the Petition, the Committee recommends that EACC to fast track their internal process and conclude on the report in the matter and report to the National Assembly.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support offered during the consideration of the Petition. The Committee also thanks Pastor Ochieng Odindo for bringing to the attention of the House the matters raised in the Petition. The Chairperson expresses gratitude to the Members of the Committee for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to table the report before the House.



Hon. Nimrod Mbithuka Mbai, M.P.
Chairperson, Public Petitions Committee

PART ONE

1. PREFACE

1.1. ESTABLISHMENT AND MANDATE OF THE COMMITTEE

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

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

1.2.COMMITTEE MEMBERSHIP

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

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency

United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency

United Democratic Alliance (UDA)

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

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency

Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency

United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency

Maendeleo Chap Chap Party (MCCP)

Hon. John Walter Owino, M.P.
Awendo Constituency

Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere North Constituency

Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South

Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency

Maendeleo Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency

Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency

United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency

Wiper Democratic Movement-Kenya (WDM-K)

1.3.COMMITTEE SECRETARIAT

The Public Petitions Committee is facilitated members of the secretariat:

Lead Clerk
Mr. Samuel Kalama
Principal Clerk Assistant

Ms. Anne Shibuko
First Clerk Assistant

Ms. Miriam Modo
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Mr. Shadrach Omondi
Legal Counsel II

Ms. Patricia Gichane
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Mr. Andrew Shangirai
Principal Sergeant at Arms

Mr. Yezel Jilo
Sergeant at Arms

Ms. Lilian Mburugu
Media Relations Officer

Ms. Rahab Chepkilim
Audio Officer

PART TWO

2. PUBLIC PETITION NO. 8 of 2022 REGARDING EACC INVESTIGATION OF WEST KANO IRRIGATION SCHEME

2.1. INTRODUCTION

1. Public Petition No. 8 of 2022 regarding the EACC Investigations of West Kano Irrigation Scheme was presented by the Honourable Speaker on Tuesday, 22nd November, 2022 on behalf of Pastor Ochieng Odindo and West Kano Irrigation Scheme farmers.
2. The Petitioner was concerned with the manner in which the EACC Western Region Office in Kisumu mishandled investigations on the alleged misuse of Government Rehabilitation Fund, Economic Stimulus Fund and Farmers Own Savings Funds by the management of West Kano Irrigation Scheme.
3. The Petitioner stated that the EACC Western Region office had failed to make conclusion on their investigations after complaints were filed in August 2015. That the officers did not provide a conclusive report on their investigations into the embezzlement of Rice Sales Funds provided by the Government of Kenya and misappropriation of thirteen tractors granted by the Government of Japan.

2.2. PETITIONERS' PRAYERS

The Petitioners prayed that the National Assembly through the Public Petitions Committee:

4. Intervenes on behalf of the poor farmers and beneficiaries of West Kano Irrigation Scheme funds to seek conclusion to the investigations of EACC and recommends appropriate action against culpable officers; and
5. Recommends financial audit of the West Kano Irrigation Scheme Revolving Fund Society between 2007 and 2021 to enhance transparency and accountability of the fund; an institutional audit of the scheme since its inception; and forensic audit of all officials involved in the period in question.

PART THREE

3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1. PETITIONER

6. The Petitioner appeared before the Committee on Wednesday, 14th December, 2022 and submitted as follows—

3.1.1. The Background of West Kano Irrigation Scheme

7. The West Kano Irrigation Scheme covers about 2,230 acres of land. It is situated in Kisumu County, Nyando Sub County, Kadibo Location, Kawino North Sub Location. The scheme stopped operating for five (5) years between 1998 and 2003. Thereafter, a private investor revived the scheme.

8. The government realized the potential of the project and took over the project. Further, the scheme received some funds between 2008 and 2021 from the Government of Kenya and the Government of the Republic of Japan, which were released in three phases of about Kshs. 116 million under the Rehabilitation Fund, about Kshs. 100 million under Farm Machineries and Accessories Fund, and about Kshs. 138 million in 2019 under Rice Sales Fund.

3.1.2. The Rehabilitation Fund

9. The Rehabilitation Fund was provided by the Ministry of Agriculture in 2009 to rehabilitate West Kano Irrigation Scheme after it had stopped operating for about five years. Over Kshs. 68 million was advanced by the government in 2008. In 2012, the government released Kshs. 18 million to strengthen the scheme production.

3.1.3. The Structure and Operations of the West Kano Irrigation Scheme Revolving Fund Society

10. The National Irrigation Authority (NIA) which was supervising the project, established the West Kano Irrigation Scheme Revolving Fund Society to manage the Rehabilitation Fund by advancing cash to farmers for transplanting, weeding, and harvesting. The NIA was also a service provider by supplying irrigation water for rice farming.

11. The society was set up by the scheme management to support rice production in West Kano and constituted six-member team drawn from three regions (southern, central, and northern) constituting two (2) members each. The team represented about fifty-nine (59) self-help groups drawn from the whole scheme with independent leadership.

3.1.4. Lack of Accountability and Transparency at the West Kano Irrigation Scheme's Revolving Fund Society

12. The Revolving Fund Society was mandated to secure and make payments for operation and maintenance of the scheme. Revolving Fund Society allocated Kshs. 30,588 per acre.
13. The West Kano Irrigation Scheme Revolving Fund Society after carrying production activities from crops 37-40 only reported/accounted for Kshs. 57, 214, 756 as total default by members according to their financial report for the year 2015. This is even though they handled about Kshs. 116 million in the same period which included the Kshs. 68 million from the Ministry of Agriculture, Livestock and Fisheries, Kshs.18 million under the Economic Stimulus Package and Kshs.18 million farmers' savings.
14. The officials of the Revolving Fund in their financial report alleged that there was 100 per cent default in pay backs of the cash advances. There were instances of financial misreporting, for example, the Adiera Self-Help Group was reported as having a debt margin of Kshs. 715,925 while in actual sense it had saved about Kshs. 462,000 in the Revolving Fund. Therefore, farmers alleged that over Kshs. 856,000 of pay backs were not accounted for by the Revolving Fund Society.

3.1.5. Operations of the Revolving Fund

15. The supervision of the Revolving Fund Society was to be done by three organs; the General Meeting of the 59 self-help groups, Special General Meeting, and the General Farmers Meeting which were rarely being held. The 59 self-help groups were required to make requisition for services and cash advances and ensure all members pay back all cash advances.
16. The farmers also made contributions to both the Revolving Fund Society and the National Irrigation Authority. The groups which failed to pay back their full amounts to the fund were to be disqualified from receiving further credit from the fund until they comply.

3.1.6. Auditing of the West Kano Irrigation Scheme Revolving Fund Society

17. The Revolving Fund Society was to be subjected to audit by the Audit department of NIA or any other audit as advised by the Chief Executive Officer. The NIA secured the services of Bon & Drew Associates auditing firm, but the audit report was never shared.

3.1.7. Lack of Conclusion of the EACC Investigations

18. On 19th August, 2015, the Petitioners reported the matter to the EACC to take up and investigate the graft allegations. Despite the matter having been reported to EACC, there were no reports on investigations. The delay in releasing the report of the investigations prompted the Petitioner to report to the Commission on Administrative Justice (CAJ) which initiated investigations on the matter. The CAJ concluded the matter by referring the Petitioner back to EACC for a legal manner of solving the issues reported.

During the site visit to West Kano Irrigation Scheme in Kisumu County held on Tuesday 30th May, 2023, the petitioners further submitted as follows-

3.1.8. *West Kano Scheme Farmers' Cooperative Society Ltd: Machineries/Accessories Aid Mismanagement from 2015*

19. After several years of inactivity, some farmers resolved to revive the West Kano Scheme Farmers' Cooperative Society Limited and recruited new members comprising of 200 farmers out of the 800 expected.
20. Election of the Cooperative Society officials scheduled for 13th July 2013 was mishandled by Kisumu East District Cooperative Officers who allowed non-members to storm the venue and subsequently conducted the election in an unprocedural manner. The unprocedural elections led to a petition to the Cooperative Department by disgruntled members vide a letter dated 19th July 2013.
21. The Cooperative Department did not act on the petition and the disgruntled members assumed office with all the assets at their disposal including the 13 tractors donated by JICA for Ahero and West Kano Irrigation Scheme.
22. In a letter dated 27th September 2017, a section of farmers leadership registered concerns over the misuse of the tractors to the cooperative management but no action was taken. The aggrieved farmers proceeded to register their complaint with the County Government of Kisumu vide a letter dated 6th July, 2019 amongst other correspondences but once again, no action was taken.
23. Consequently, the tractors ended up grounded with one razed down and many spare parts and other accessories missing or vandalized. There was an alleged arson attack on the tractors, but the investigations were never satisfactorily handled.

3.1.9. *Government Paddy Purchase and Disbursement Program*

24. The Government through the Ministry of Agriculture and Livestock Development in 2020 undertook to disburse funds under the paddy purchase and disbursement program meant to offer irrigation farmers in Mwea, Ahero and West Kano Irrigation Schemes fair price for their produce. Following the directive, West Kano Irrigation Scheme was allegedly meant to receive Kshs. 330 million earmarked for the paddy purchase.
25. Due to dismal performance of the Scheme Cooperative Society, the management of the paddy purchase fund was handled by the Kenya National Trading Corporation (KNTC) in collaboration with NIA.
26. Despite one of the directors being a representative of farmers in Western Kenya Rice Mill, brokers allegedly colluded with financiers and stopped ordinary farmers from selling their produce directly hence making the fund unavailable, inaccessible, and unaffordable to paddy users.

27. Beneficiaries of the fund are yet to be established by the KNTC or NIA up to date and farmers were left in the hands of unscrupulous middlemen offering low prices for the paddy and left farmers at the mercy of shylocks, brokers and loan sharks who imposed exploitative and exorbitant charges on farm inputs. Only ten percent of the farmers were using the farmlands because of the diminishing returns on the rice crop.

3.2.THE NATIONAL IRRIGATION AUTHORITY

During the site visit to West Kano Irrigation Scheme in Kisumu County held on Tuesday 30th May, 2023, the Committee met with officials from NIA led by the Ag. CEO NIA, Mr. Charles Muasya who submitted as follows-

3.2.1. Background of the West Kano Irrigation Scheme

28. West Kano Irrigation Scheme is located in the Kano plains between Nandi escarpment and Nyabondo Plateau on the shores of Lake Victoria in Kisumu County. The scheme was constructed in 1974 and became operational in 1976. The scheme had 837 farmers with a total area of 4,396 acres and a gross farm land area of 2,230 acres.
29. The average farm size was two (2) to four (4) acres per farmer and the irrigation water was abstracted by pumping from Lake Victoria and water drainage done through pumping back water to the lake.

3.2.2. West Kano Irrigation scheme revolving fund

30. In the Financial Year 2009/2010, the Government of Kenya initiated the Economic Stimulus Program (ESP) which was an economic recovery plan to boost economic growth and address some of the key economic challenges. One of the project components was food production whose aim was to increase availability and accessibility of maize and rice crops in national irrigation schemes. The lead players for this component were the Ministries of Agriculture and Livestock Development; Water and Irrigation; Regional Development; and Youth Affairs.
31. The Ministry of Agriculture and Livestock Development was to provide farm inputs which included fertilizers, seed and pest control chemicals while the Ministry of Water through the then National Irrigation Board was to offer operation and maintenance services such as provision of irrigation water, land preparation support and farming cash advances. This support was structured to be a one-off grant to the farmers and thus they were not required to pay back.
32. The then NIB, currently NIA, coordinated the provision of seeds, fertilizers, ploughing (rotavating) and offered operation and maintenance services which included water, electricity, puddling, transplanting, and harvesting cash advances. Although the support had been given as a grant, the Board recommended its recovery at the end of the planting season and its conversion into a revolving fund that would be used to ensure sustainability of scheme production and operation activities.

33. The West Kano Revolving Fund was formed by farmers to manage the funds and an account opened in 2010. The model of establishing and running the revolving fund collapsed as farmers did not pay back due to lack of a binding obligation for contribution and recovery of funds into the revolving fund.
34. The Petitioner reported the matter to EACC Western Region, and upon the invitation by the investigators, all the required documentation to support the position of the fund was provided. However, there was no misappropriation of the fund as alleged by the Petitioner.

3.2.3. Misappropriation of 13 Tractors and accessories granted to the Cooperative Society

35. Ahero and West Kano Irrigation Schemes through the farmers' Cooperative Societies received various farm machinery from Japan International Cooperation Agency (JICA) and Ministry of Agriculture and Livestock through the 2KR Project in 2015 to help farmers improve production by enhancing mechanization of their operations, mainly rice production. The machinery issued to the farmers in the West Kano Irrigation Scheme were in operation under the management of the West Kano Cooperative Society.
36. The NIA was not involved in management of the tractors and accessories and the information on management was under the Department of Cooperatives Development in the County Government of Kisumu.

3.3. ETHICS AND ANTI-CORRUPTION COMMISSION

37. Mr. Paschal K. Mweu, OGW, Director, Investigations appeared before the Committee on behalf of the CEO/Secretary on Tuesday 4th July, 2023 and submitted as follows—

3.3.1. Background

38. On 19th August, 2015, EACC, received a report that three officials of West Kano Irrigation Scheme had embezzled public funds which had been released to the Scheme by the Government through the then Ministries of Agriculture and Water and Irrigation under the Economic Stimulus Program (ESP) in Financial Year 2009/2010. Additional reports were later received regarding mismanagement of tractors and suspected misappropriation of rice purchase funds.

3.3.2. The Revolving Fund

39. The West Kano Irrigation Scheme was established in the year 1974 and become operational in 1976. The Scheme was owned by 837 rice farmers, organized into 59 groups in a total acreage of 2,230.
40. The Scheme received a grant of Kshs. 54,331,938 under the Economic Stimulus Programme (ESP) in the Financial Year 2009/2010 to be advanced to farmers to improve rice production. The grant was provided in form of cash disbursements and farm-inputs, which were channelled through the Ministries of Agriculture and Water and Irrigation.

41. The Scheme members received cash advances amounting to Kshs. 25,573,847 for tilling, seed-bed preparation, and transplanting; spraying, harvesting; post-harvest activities-drying of rice, packaging, and storage, based on farm acreage. The Scheme received Kshs. 11,691,680.00 for operation and maintenance meant for piping, pumping of water, dykes, water-pans, electricity, canals, and access roads. A further Kshs. 27,966.00 was provided for loading and off-loading of farm-inputs. The Scheme Farmers received farm inputs including chemicals, rice seeds and fertilizer worth Kshs17,038,445 based on farm acreage.
42. On 31st December 2010, the Scheme members formed a Revolving Fund to ensure sustainability. The Fund was composed of four officials, who included a Chairperson, Secretary, Treasurer and an official from the then NIB. The officials opened a bank account at Kenya Commercial Bank (KCB) for the Revolving Fund.
43. On 31st December 2012, the Revolving Fund received a grant of Kshs. 18,468,752.20 into its Kenya Commercial Bank account from the Ministry of Cooperative Development and Marketing. On 20th March, 2013, the Scheme Farmers met and resolved to share the grant of Kshs. 18,468,752.20 amongst themselves based on farm acreage at the rate of Kshs. 8,140 per acre.

3.3.3. Allegation of mismanagement of tractors

44. The Commission investigated and established that in 2015, West Kano Irrigation Cooperative Society and Ahero Irrigation Cooperative Society received tractors from JICA and the Ministry of Agriculture, Livestock and Fisheries at a subsidized rate. The machinery was to be paid for by the County Government of Kisumu and the two cooperative societies.
45. The investigations established that the tractors had been run down due to mismanagement and poor maintenance. A committee comprised of National Government and County Government Officials was established to provide technical advice on how to revive the machinery. The Committee prepared a report and made various recommendations including disposing off the old tractors, but the report had not been acted upon.

3.3.4. Alleged misappropriation of Rice Purchase Funds

46. In the years 2020 and 2021, the Government of Kenya through KNTC resolved to buy milled rice from farmers in Mwea, Ahero, West Kano, and Bunyala Irrigation Schemes and an amount of Kshs. 600 million was set aside for the purchases. The purchases were to be executed through farmers' cooperatives within the Schemes.
47. West Kano Irrigation Scheme reported the lowest supply to KNTC. There were cases of direct rice purchases from individuals who were not members of the cooperative society. The KNTC paid only for delivered rice.

3.3.5. Status of the Investigations

48. The field investigations into the graft allegations at the West Kano Irrigation Scheme were complete and the files were undergoing review to inform appropriate recommendations.

3.4.SITE VISIT

The Committee conducted a site visit to West Kano Irrigation Scheme in Kisumu County on Tuesday 30th March, 2023 and met various stakeholders including petitioners, official from NIA and NGAO officials and made the following observations-

49. The West Kano Irrigation Scheme had about 860 farmers who had for many years farmed the 2,240 acres comprising 16 blocks.
50. The rice farmers at West Kano Irrigation Scheme were facing various challenges including bird menace, flood disasters, dilapidated infrastructure, relocation of irrigation pumps to Ahero Irrigation Scheme and nonfunctional rice mill.
51. The infrastructure at West Kano Irrigation Scheme including the 50-kilometre road and canals were wrecked.
52. The farmers' contributions towards operation and maintenance fees meant for activities such as payment of electricity bills and casual labourers was not sufficient for the budget. Further, the budget deficit meant to be covered by the exchequer could not cover the full budgetary requirements.
53. An irrigation pump used by the West Kano Irrigation Scheme was relocated to Ahero Irrigation Scheme to assist in urgently addressing a crisis where over 1,000 acres of rice farms worth Kshs. 600 million were submerged. However, NIA undertook to procure a new and more efficient pump to be delivered to West Kano Irrigation Scheme by December, 2023.
54. The rice mill was barely functional and underutilized since most buyers mainly from Uganda were milling the husks by themselves.
55. There were poor and inadequate records of farmers, financial, and lease agreements at the Scheme in addition to the inadequate expertise to manage the Cooperative Society.
56. Farmers' actions had also contributed to the failure of the Scheme and the non-sustainability of the Revolving Fund. For instance, most farmers had leased their farmlands to investors from other regions hence the profits from the agricultural activities in the Scheme were not benefiting the local farmers.

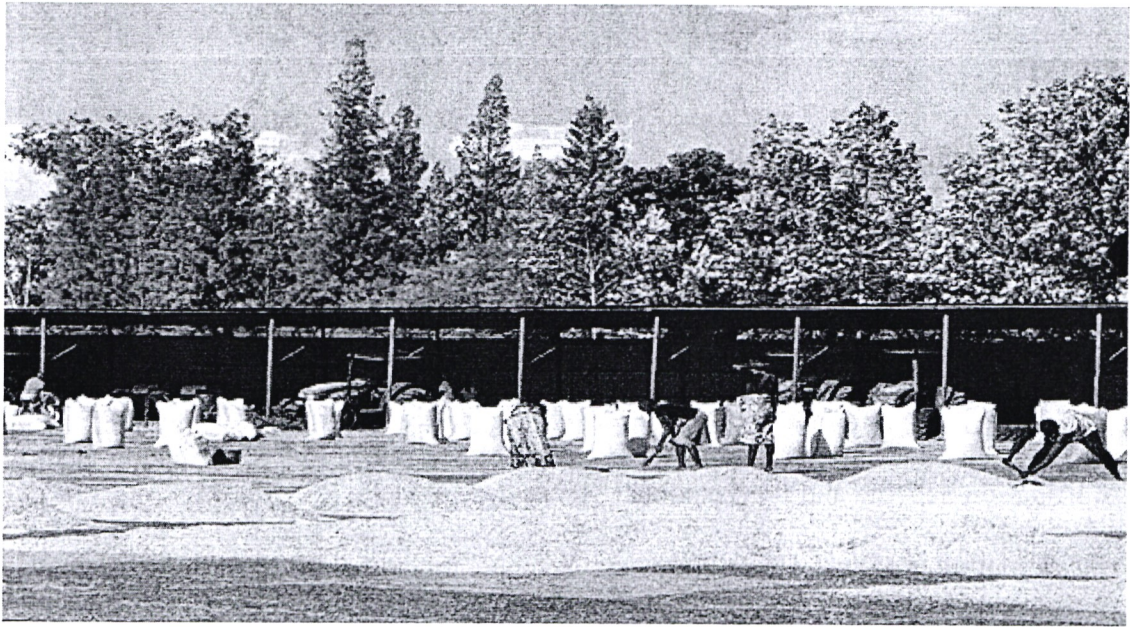


Figure 1. *Rice farmers preparing their harvest for storage and milling*

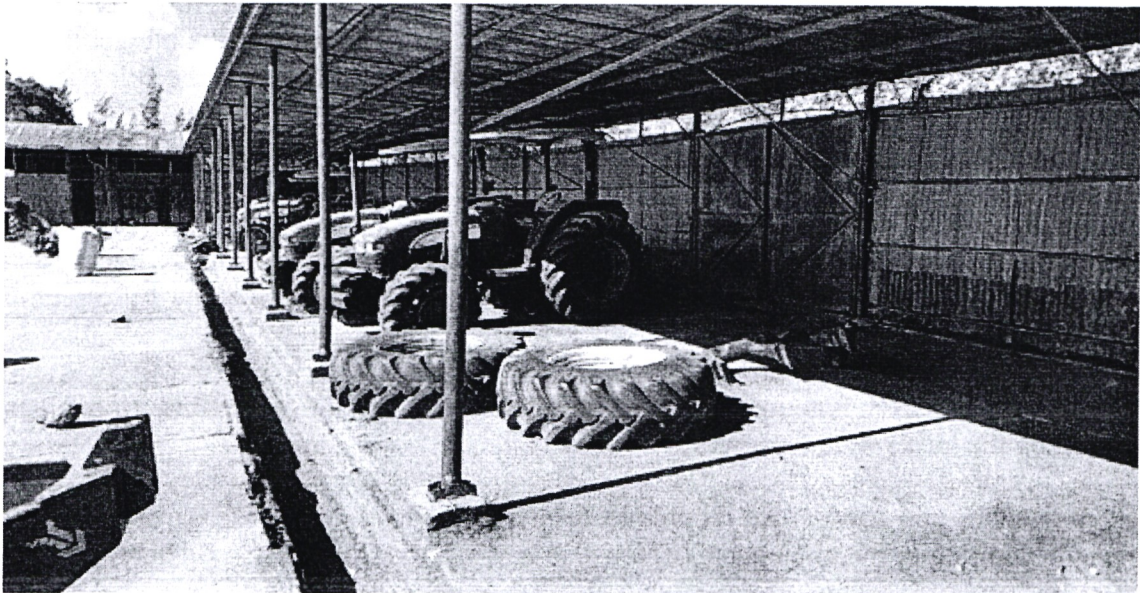


Figure 2. *A section of the tractors at West Kano Irrigation Scheme*



Figure 3: The Public Petitions Committee takes a tour at the West Kano Irrigation Scheme

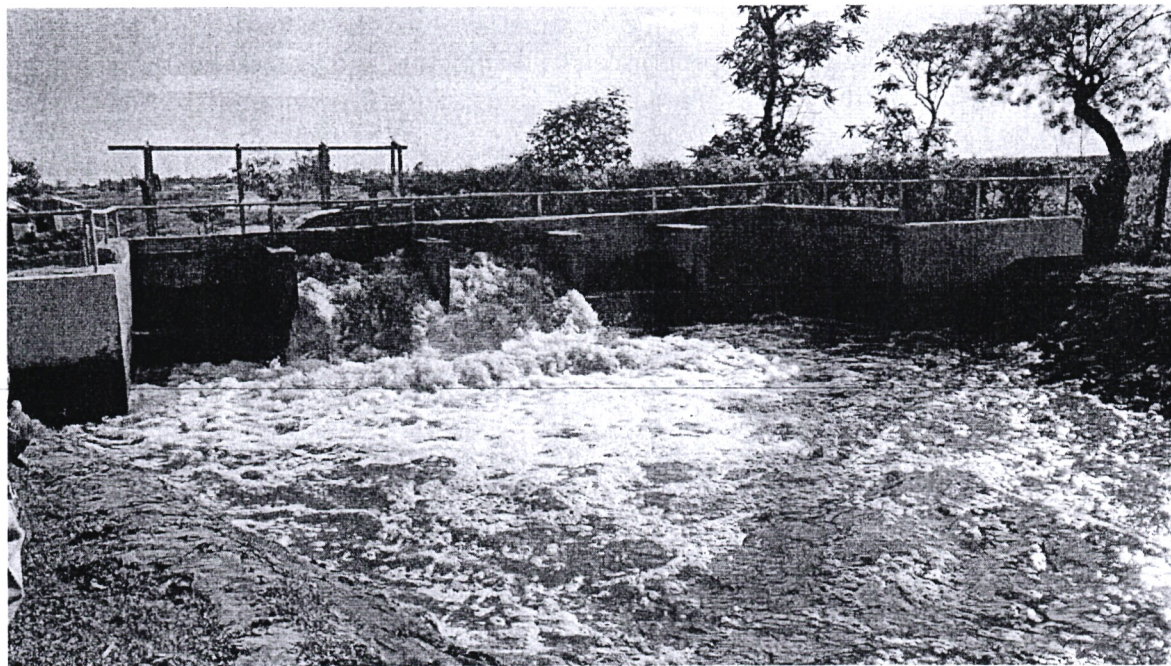


Figure 4: A water pump at the West Kano Irrigation Scheme

PART FOUR

4. COMMITTEE OBSERVATIONS

Upon hearings from the Petitioners, farmers at West Kano Irrigation Scheme, National Irrigation Authority (NIA) and Ethics and Anti-Corruption Commission (EACC) on the issues raised in the Petition, the Committee observed that-

57. About 837 rice farmers in 59 groups rely on the 2,230-acre farmland of the West Kano Irrigation Scheme for rice farming. However, most farmers meant to be the beneficiaries of the project area had leased their lands hence did not benefit much from the Scheme.
58. The first reporting of the allegation of embezzlement of funds advanced towards the Scheme regarded the Economic Stimulus Programme (ESP), Rehabilitation Fund and the farmers own saving funds (Revolving Fund) was between 2009 and 2015.
59. The second reporting of alleged graft at the Scheme involved the West Kano Cooperative Society which was accused of misappropriation of 13 tractors and accessories provided by GOK in conjunction with Japan International Cooperation Agency (JICA) but were underutilised and stalled.
60. The third reporting of alleged graft at the Scheme regarded the Rice Purchase Fund. The fund was allegedly mismanaged by the Scheme's Cooperative Society and later handed over to the Kenya National Trading Corporation (KNTC) in collaboration with National Irrigation Authority (NIA).
61. The thirteen (13) tractors in the Scheme were in poor condition hence not optimally utilised due to poor management by the West Kano Cooperative Society (*Figure 2*).
62. The Revolving Fund established by the farmers and meant for sustainability of the Scheme collapsed in 2014 due to mismanagement, poor contributions and under-utilization of the funds by farmers through the West Kano Cooperative Society.
63. The EACC investigations into the allegations of graft at the West Kano Irrigation Scheme reported on 19th August, 2015, had not been concluded due to challenges in obtaining crucial documents from West Kano Irrigation Scheme Farmers' Revolving Fund Committee following the death of the then secretary and custodian of documents. However, the investigations were since completed, and the file was undergoing review to inform appropriate recommendations by EACC.

PART FIVE

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

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

Prayer No. 1: *Intervenes on behalf of the poor farmers and beneficiaries of West Kano Irrigation Scheme funds to seek conclusion to the investigations of EACC and recommends appropriate action against culpable officers.*

64. The Committee—

- a) Invited the Petitioner, the Managing Director, NIA and the Chief Executive Officer, EACC. The Committee further conducted a site visit and noted that the first reporting of the allegation of embezzlement of funds advanced towards the Scheme regarded the Economic Stimulus Programme (ESP), Rehabilitation Fund and the farmers own saving funds (Revolving Fund) between 2009 and 2015.
- b) Noted that the second reporting of alleged graft at the Scheme involved the West Kano Cooperative Society which was accused of misappropriation of 13 tractors and accessories provided by GOK in conjunction with Japan International Cooperation Agency (JICA) but were underutilized and stalled.
- c) Noted that the third reporting of alleged graft at the Scheme regarded the Rice Purchase Fund. The committee was informed that the fund was allegedly mismanaged by the Scheme's Cooperative Society and later handed over to the Kenya National Trading Corporation (KNTC) in collaboration with National Irrigation Authority (NIA).
- d) The Revolving Fund established by the farmers and meant for sustainability of the Scheme collapsed in 2014 due to mismanagement, poor contributions and under-utilization of the funds by farmers through the West Kano Cooperative Society.
- e) Finally, noted that the EACC investigations into the allegations of graft at the West Kano Irrigation Scheme reported on 19th August, 2015, had not been concluded due to challenges in obtaining crucial documents from West Kano Irrigation Scheme Farmers' Revolving Fund Committee following the death of the then secretary and custodian of documents. However, the investigations were since complete and the file was undergoing review to inform appropriate recommendations by EACC. **Therefore, the recommends that EACC should fast track their internal process and conclude on the report in this matter.**

Prayer 2:

Recommends financial audit of the West Kano Irrigation Scheme Revolving Fund Society between 2007 and 2021 to enhance transparency and accountability of the fund; an institutional audit of the scheme since its inception; and forensic audit of all officials involved in the period in question.

65. The Committee—

- a) Noted with concern that the EACC investigations into the allegations of graft at the Scheme reported on 19th August 2015, had not been concluded.
- b) Was informed that the delay was due to challenges in obtaining crucial documents from West Kano Irrigation Scheme Farmers' Revolving Fund Committee following the death of the then secretary and custodian of the documents.
- c) Noted that despite the length of time taken in unraveling the issues in this matter by EACC, the graft body reported to the Committee that the investigations were since complete, and the file was undergoing review to inform appropriate recommendations by EACC. **Therefore, the Committee recommends that EACC be allowed time to conclude the internal review and finalize their report and recommendation. Additionally, pursuant to section 37 of the Public Audit Act No 34 of 2015, the Auditor-General should conduct a thorough forensic audit in this matter and report its findings to the House.**


PART SIX

6. COMMITTEE RECOMMENDATIONS

Pursuant to the provisions of Standing Order 227, the Committee recommends that—

- i. EACC should fast track their internal process and conclude on the report in this matter and report to the National Assembly.
- ii. Pursuant to section 37 of Public Audit No. 34 of 2015, the Auditor-General conducts a thorough forensic audit into the matter of the revolving fund for West Kano irrigation scheme and report its finding to the House.
- iii. EACC should improve on its service delivery and adopt a client centric service charter by—
 - (a) seeking and promoting customer feedback; and
 - (b) setting and communicating clear service standards.

Signed: _____



Date: _____

01/08/2023

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



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SECOND SESSION – 2023
PUBLIC PETITIONS COMMITTEE

**ADOPTION SCHEDULE OF THE REPORT ON CONSIDERATION OF PUBLIC
PETITION NO. 8 of 2022 REGARDING EACC INVESTIGATION OF WEST KANO
IRRIGATION SCHEME**

DATE.....1ST AUGUST 2023.....

We the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the Consideration of Public Petition No. 8 Of 2022 **Regarding EACC Investigation of West Kano Irrigation Scheme** to confirm our approval and confirm its accuracy, validity and authenticity: -

	NAME	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P. Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P. Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	
4.	Hon. Edith Vethi Nyenze, M.P.	
5.	Hon. Ernest Ogesi Kivai, M.P.	
6.	Hon. John Walter Owino, M.P.	
7.	Hon. Joshua Chepyegon Kandie, M.P.	
8.	Hon. Maisori Marwa Kitayama, M.P.	
9.	Hon. Bernard Muriuki Nebart, M.P.	
10.	Hon. Bidu Mohamed Tubi, M.P.	
11.	Hon. Caleb Mutiso Mule, M.P.	
12.	Hon. John Bwire Okano, M.P.	
13.	Hon. Peter Mbogho Shake, M.P.	
14.	Hon. Sloya Clement Logova, M.P.	
15.	Hon. Suzanne Ndunge Kiamba, M.P.	

REPUBLIC OF KENYA



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (FIRST SESSION)**

CONVEYANCE OF PUBLIC PETITION

(No. 8 of 2022)

**REGARDING GRAFT INVESTIGATIONS AT WEST KANO
IRRIGATION SCHEME**

Honourable Members, Article 119 of the Constitution accords any person the right to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition other than those presented by a Member.

In this regard, **Honourable Members,** I wish to report to the House that my office has received a petition from one Pastor Ochieng' Odindo of P.O. Box 25, Nyang'ande, Kisumu County calling for *investigations into alleged cases of corruption at West Kano Irrigation Scheme.*

The Petitioner is concerned about the manner in which the Ethics and Anti-Corruption Commission (EACC) Western Region Office in Kisumu mishandled investigations into alleged misuse of Government Rehabilitation Fund, Economic Stimulus Program Fund, and Farmers Own Saving Funds by the management of West Kano Irrigation Scheme.

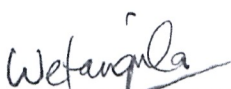
He avers that EACC Western Region officers have failed to make any conclusion on allegations of corruption filed by himself and other residents in August 2015.

The Petitioner further decries failure by the same officers to investigate misappropriation of thirteen tractors granted through collaboration with the Government of Japan, as well as embezzlement of Rice Sales Funds released by the Government of Kenya. He is thus aggrieved by EACC Western Region's failure to conclude any of the investigations and equally failing to update the complainants on any progress made thereof.

The Petitioner thus prays that this House uses its authority to intervene on behalf of poor farmers and beneficiaries of West Kano Irrigation Scheme by seeking conclusion of the aforementioned investigations by EACC Western Region office in order to recommend appropriate action against culpable officers.

Honourable Members, having established that the matter raised in the Petition is well within the authority of this House, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to Standing Order 208 A. The Committee is required to consider the Petition and report its findings to the House and to the Petitioner in accordance with Standing Order 227(2).

I thank you.


THE RT. HON. MOSES WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

..... 2022

① DLPS

⑦

to review and advise

14/10/22

THE CLERK, NATIONAL ASSEMBLY

TEL : 254 2 2221291 OR 2848000

FAX : 254 2 2243694

E-MAIL : clerk@parliament.go.ke

02/02/2022



PETITION ON EACC KISUMU GRAFT INVESTIGATION OF WEST KANO IRRIGATION SCHEME.

0010 - * * *

pro deal. approx 17/10

My attention is drawn to the above matter that over Eight years have generated Tensions, Economics Melt Down & Acrimonious Debate in West Kano Irrigation Scheme in Kawino North Location, Kadibo Division, Nyando Constituency, Kisumu County. The Social, Economic, physical, psychological, mental, emotional and Political ramifications caused by the Way Ethics and Anti - Corruption Commission (EACC) Western Regional Office, Kisumu assigned duties to Investigate and Conclude West Kano Irrigation Scheme Graft Cases is unbearable. Let me categorically highlight the most depressing and devastating, far reaching issues in West Kano Irrigation Scheme Graft Investigations.

That, EACC has a wide range of functions laid out in both chapter 6 and article 252 of the Constitution of Kenya 2010 and also in Ethics and Anti - Corruption Commission Act. A part from investigation of misappropriation of Public Funds, the Commission is given powers to investigate breaches of codes of conduct and recommend appropriate action to be taken on the state officers or public officers alleged to have engaged in unethical conduct.

That, in August 2015, we reported the First deeply entrenched West Kano Irrigation Scheme Farmer Revolving Fund Graft (EACC Report No. 52966 Sub File Covering Report I EACC/KSM/FL/NO/89/2015). This Graft involved the Government Rehabilitation Funds, Economic Stimulus Program Funds and the Farmers Own Saving Funds. The Funds dates back between 2009 - 2015 and that

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EACC Western Regional Office, Kisumu received the report and launched investigation and that the EACC Western Regional Office, Kisumu has forever continued to investigate the Graft. No conclusions yet.

And that we reported the Second West Kano Irrigation Scheme Cooperative Society Graft to EACC Western Regional Office, Kisumu (EACC Report No. 542851). This Graft involves misappropriation of tractors and accessories granted by the Government of the Republic of Kenya in conjunction with the Government of the Republic of Japan. Where West Kano Irrigation Scheme was Granted 13 tractors and a number of accessories which again was embezzled and the program stalled. And that this report is kept under the carpet in EACC Western Regional Office, Kisumu. No conclusions yet.

That, thirdly, the Government of the Republic of Kenya remembered West Kano Irrigation Scheme with Rice Sales Funds which to our amazement was again as indicators strongly Suggest, pocketed. We reported once more the third West Kano Irrigation Scheme Rice Sales Graft to EACC Western Regional Office, Kisumu. No conclusions yet. Then one wonders, who can Restore Honesty, Accountability & Transparency in West Kano Irrigation Scheme if not the investigative agencies in Kenya.

That, We have Continued Cooperating with the EACC Western Regional Office, Kisumu since Reporting the First Graft to EACC Western Regional Office, Kisumu, yet the EACC Western Regional Office, Kisumu have failed to conclude their investigation to date or even shared with us the status/ Progress report even after requesting severally for the same.

And that realising EACC Western Regional Office Kisumu is not willing to conclude the cases; we went and reported the West Kano Irrigation Scheme investigation by EACC Western Regional Office, Kisumu to the Commission on Administrative Justice (Office of the Ombudsman) Western Regional Office, Kisumu.

The Office of the Ombudsman is a Constitutional Commission established under Article 59 (4) and Chapter 15 of the Constitution of Kenya 2010 and the Commission on Administrative Justice Act 2011. The commission has a mandate inter - alia to investigate any conduct in state affairs or any act or omissions in public administrations in any sphere of Government and complaints of abuse of power unfair treatment, manifest injustices or unlawful, oppressive, unfair or unresponsive, official conduct. Further the commission has aquasi - judicial mandate to deal with maladministration through conciliation, mediation, and negotiations where appropriate. Again the commission is the oversight agency of the right to access to information as provided for by the Access to Information Act 2016.

After initial startup procedures in this case, the Office of the Ombudsman Western Regional Office, Kisumu terminated the case citing "EACC Western Regional Office confirmed having rendered to us the requisite legal advice towards resolutions of this matter". This leaves one wondering how an Investigative Resolution can be reached without a written record report? To Ombudsman the investigation is resolved by EACC Western Regional Office, Kisumu. Here the Ombudsman sided with the mighty EACC Confirming and echoing their voices and leaving the lowly (farmers) to die alone. On this West Kano Irrigation Scheme Graft case the office of the Ombudsman absconded its core responsibility of being the voice of the voiceless "Wanyonge wana Haki" slogan.

And remembering I am just a concerned Kenyan, if what I am passing through is the cost of trying to stand with EACC in fighting corruptions in Kenya, then it leaves a lot to desire in EACC preparedness, plans and organization in curbing the corruption vices in the Republic of Kenya.

COGNIZANT of the fact that this is a matter that directly attract public interest. CONSIDERING that apart from Legislation and Representation the constitution of

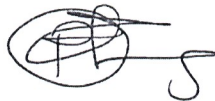


Kenya 2010 Article 95 section (5b), clearly states that the National Assembly exercises oversight of State organs either directly through PAC or delegating to Investigative agencies. CONSCIOUSLY the values and principal of public Service under Article 232(1) includes: high standard of professional ethics, efficient, effective, impartial, and equitable provision of services; accountability for administrative acts; transparency and provision of timely, accurate information to the public among others; which EACC in essence is abusing.

ON THE WHOLE: KINDLY PUT EACC ON NOTICE THAT THEIR OFFICE ARE NOW UNDER PUBLIC RADAR AND MUST NOW STOP POLITICIZING AND DELAYING GRAFT INVESTIGATION AT ALL COSTS.

I call upon the National Assembly to intervene to unlock the West Kano Irrigation Scheme Investigation process so as to bring the Untouchable culprits to book. We cannot have a beautifully blessed Country where all belongs to the Greedy and the needy get nothing. DO NOT STEAL.

PST. OCHIENG ODINDO



BOX 25-40126 NYANG'ANDE

ochiengop@gmail.com

patrickochiengo@yahoo.com

+254729312677

+254737218937

WEST KANO IRRIGATION SCHEME.



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE NINETH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON WEDNESDAY, DECEMBER 14, 2022, IN THE CONFERENCE ROOM,
HILTON GARDEN INN HOTEL, SIXTH FLOOR AT 2:30 PM

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkembai Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. Ernest Ogesi Kivai, M.P. | | |
| 5. Hon. Maisori Marwa Kitayama, M.P. | | |
| 6. Hon. Edith Vethi Nyenze, M.P. | | |
| 7. Hon. Caleb Mutiso Mule, M.P. | | |
| 8. Hon. Bernard Muriuki Nebart, M.P. | | |
| 9. Hon. Peter Mbogho Shake, M.P. | | |
| 10. Hon. Sloya Clement Logova, M.P. | | |
| 11. Hon. John Bwire Okano, M.P. | | |

APOLOGIES.

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. John Walter Owino, M.P.
3. Hon. Suzanne Ndunge Kiamba, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.

IN-ATTENDANCE

- | | | |
|----------------------------|---|------------|
| Pastor Paul Ochieng Odindo | - | Petitioner |
|----------------------------|---|------------|

SECRETARIAT

- | | | |
|-------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant II |
| 3. Ms. Willis Obiero | - | Clerk Assistant III |
| 4. Ms. Patricia Gichane | - | Legal Counsel II |
| 5. Mr. Shadrack Omondi | - | Legal Counsel II |
| 6. Mr. Martin Sigei | - | Research Officer III |

7. Ms. Eunice Jalang'o - Office Assistant
8. Mr. Yeziel Jilo - Serjeant-At-Arms

MIN./PPETC/2022/41: PRELIMINARIES

The Chairperson called the meeting to order at 2.30 p.m. The Members of the Committee introduced themselves after which the Lead Clerk introduced the secretariat. The Petitioners also introduced themselves.

MIN./PPETC/2022/41: CONSIDERATION OF A PUBLIC PETITION REGARDING EACC INVESTIGATION OF WEST KANO IRRIGATION SCHEME

1) Brief from Legal Counsel

The Legal Counsel presented a brief on the Petition (*See attached Brief on the Petition*) as follows:

a) The Petition

The Petition by Pastor Ochieng Odindo drew the attention of the House to the Ethics and Anti-Corruption Commission (EACC) graft investigations on the management of West Kano Irrigation Scheme, which he alleges have not been concluded. The Petitioner is aggrieved by the lack of action by the EACC Western Region Office and their failure to update the complainants on the progress of the investigations.

b) Analysis

The Petition raises three fundamental issues as follows:

Parliament's oversight role

That under *Article 95(5)(b)* Parliament has oversight powers over state organs including constitutional commissions and independent offices, the House can also summon any person to call for evidence under *Article 125*.

The Constitutional Right to Access to Information

Article 33(1)(a), Article 35 and the Access to Information Act provides the citizens the right to access to information. Further, The EACC Act Section 29(3) provides for limitations on the right to access information on the grounds of the request is unreasonable in the circumstances; the information requested is at a deliberative stage by the Commission; failure of payment of a prescribed fee; or failure of the applicant to satisfy confidentiality requirements by the Commission.

The Mandate of EACC

Article 252 (1)(a) and section 13 (c) the Ethics and Anti- Corruption Act vests the commission with powers to conduct investigations on its own initiative or on a complaint made by any person. The Ethics and Anti- Corruption Act section 6 (e) provides for the functions of the commissioner to include dealing with reports on delay in the conduct of investigations.

The Committee was advised to -

- (a) Seek the views of the Petitioner and the residents within the West Kano Irrigation Scheme on the graft allegations and attach the evidence of efforts to resolve the matter by the Ethics and Anti-Corruption Commission (EACC) and any redress from the Commission on Administrative Justice (CAJ).
- (b) establish the status or outcome and seek views of the Ethics and Anti-Corruption Commission (EACC), on the investigations of the three reports or complaints.
- (c) Seek the views of the Commission on Administrative Justice (CAJ), on the investigations feedback they obtained from the EACC on the same while seeking to address the concerns of the Petitioner
- (d) Seek the views of the management of West Kano Irrigation Scheme on the alleged graft cases, as part of Parliament's oversight role on state organs.
- (e) Consider amending the EACC Act section 29 to obligate the EACC to inform complainants on the outcome of investigations, as part of their rights under Article 35 to effect their right to access to information.

2) Submissions by the Petitioners

The Petitioner made his submissions before the Committee as follows:

a) The Background of West Kano Irrigation Scheme

- i. That the West Kano Irrigation Scheme covers about land acreage of 2,230 acres in Kisumu County, Nyando Sub County, Kadibo Location, Kawino North Sub Location.
- ii. The scheme that had collapsed for a period of five (5) years i.e. from 1998 to 2003 was revived by a private investor. The government later realized the potential of the project area after its revival and took over the project.
- iii. The scheme received some funds between the years 2009 and 2021 from the Government of Kenya and the Government of the Republic of Japan. These funds were disbursed in three phases as follows; Rehabilitation Fund (estimated at Kshs. 116 million), Farm Machineries and Accessories Fund (estimated at Kshs. 100 million), and Rice Sales Fund (estimated at Kshs. 138 million in 2019).

b) The Rehabilitation Fund

iv. The Rehabilitation Fund was provided by the Ministry of Agriculture, Livestock and Fisheries in 2009 to rehabilitate West Kano Irrigation Scheme after it had collapsed for about five years. Over and above an estimated Kshs. 68 million was advanced by the government of Kenya in 2008 and in 2012, the government released Kshs.18 million to strengthen the scheme production.

c) *The Structure and Operations of the West Kano Irrigation Scheme Revolving Fund Society*

v. The National Irrigation Authority (NIA) which was supervising the project established the West Kano Irrigation Scheme Revolving Fund Society to manage the Rehabilitation Fund by advancing cash to farmers for transplanting, weeding, and harvesting. The NIA was also a service provider who supplied irrigation water for rice farming. The society was set up by the scheme management to support rice production in West Kano and constituted six-member team drawn from three regions (southern, central, and northern) constituting two (2) members each. The team represented about fifty-nine (59) self-help groups drawn from the whole scheme with independent leadership.

d) *Lack of Accountability and Transparency at the West Kano Irrigation Scheme Revolving Fund Society*

vi. The Revolving Fund Society was mandated to secure and make payments to support operations and maintenance of the scheme where it allocated Kshs. 30,588 per acre for that purpose. The West Kano Irrigation Scheme Revolving Fund Society after carrying production activities from crops, 37-40 only reported/accounted for Kshs. 57, 214, 756 as total default by members according to their financial report for the year 2015. This is even though they handled about Kshs. 116 million in the same period including the Kshs. 68 million from the Ministry of Agriculture, Livestock and Fisheries, Kshs. 18 million economic stimulus package and Kshs, 18 million farmers savings.

vii. The officials of the Revolving Fund in their financial report alleged that there was 100 per cent default in pay backs of the cash advances. There were instances of financial misreporting, for example, the Adiera Self-Help Group was reported as have a debt margin of Kshs. 715,925 while in actual sense it had saved about Kshs. 462,000 with the Revolving Fund. Therefore, farmers alleged that over Kshs. 856,000 of pay backs were not accounted for by the Revolving Fund Society.

e) *Operations of the Revolving Fund*

viii. The supervision of the Revolving Fund Society was to be carried out by three organs; the General Meeting of the 59 Self-help groups, Special General Meeting, and the General Farmers Meeting which were rarely being held. The 59 self-help groups were required to make requisition for services and cash advances and ensure all members pay back all cash advances. The farmers also made contributions to both Revolving Fund Society and National Irrigation Authority. The groups which failed to pay back their full amounts were disqualified from receiving further credits from the fund until they complied.

f) *Auditing of the West Kano Irrigation Scheme Revolving Fund Society*

ix. The Revolving Fund Society was to be subjected to audit by the National Irrigation Authority (NIA) audit department or any other audit body as directed by the Chief Executive Officer (CEO). The NIA secured the services of Bon & Drew Associates auditing firm, but their Audit Report has never been shared to-date.

g) *Lack of conclusion of the EACC investigations*

x. On 19th August, 2015, they reported the matter of misappropriation to the EACC to investigate the graft allegations, but the EACC had not concluded its investigations by the time the Petitioners were meeting the Committee. The delay in releasing the report of the investigations prompted the Petitioner to report the matter to the Commission on Administrative Justice (CAJ) which initiated investigations on the matter. The CAJ concluded the matter by referring the Petitioner back to EACC.

h) *Prayers of the Petitioner*

xi. The Committee intervenes and recommends a financial audit of the West Kano Irrigation Scheme Revolving Fund Society from the year 2007 to 2021, to be carried out to enhance transparency and accountability of the fund;

a. an institutional audit of the scheme since its inception; and

b. forensic audit of all officials involved for the period in question. The Petitioner also prays that the Committee recommends oversight of the regional EACC offices especially in Kisumu to ensure compliance with the law, set rules and regulations.

3) Committee Concerns

a) *The Status of the West Kano Irrigation Scheme and the Revolving Fund Society*

The Petitioner stated that there is still a NIA operational office and offices of leaders of the scheme. However, most farmers who were meant to be the beneficiaries from the project area have been displaced and farms have been leased to outsiders. Regarding the status of the Revolving Fund, the Petitioner stated that the Revolving Fund collapsed in 2014. According to the response by EACC, one of the leaders of the Revolving Fund passed away and hence they could not access documents needed to conclude the case.

b) *The Project Affected Persons*

The Petitioner stated that there are several members of the West Kano Irrigation Scheme farming community who could be mobilized through their local networks.

4) Committee Resolutions

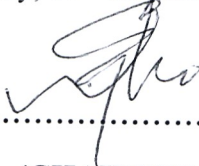
The Committee resolved as follows:

- i. Meet with the National Irrigation Authority (NIA) to provide information on the financing and respective beneficiaries of the Revolving Fund;
- ii. Meet with the EACC to get information on the status of the investigations into the matters raised in the Petition;
- iii. Meet with the Commission on Administrative Justice (CAJ) to get their views on the investigations done by the EACC; and
- iv. Undertake a site visit and meet with the key stakeholders adversely mentioned in the Petition.

MIN./PPETC/2022/42:

ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 4.30 p.m. The date of the next meeting would be on Thursday, 15th December, 2022 at 9.00 a.m.

Sign: 

(CHAIRPERSON)

Date..... 23/12/2022



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

MINUTES OF THE 40TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON SATURDAY, JULY 22, 2023 AT 10.00 A.M IN MADUNGUNI CONFERENCE ROOM, PRIDE INN HOTEL, MOMBASA

PRESENT

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

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. John Walter Owino, M.P.
3. Hon. Bidu Mohamed Tubi, M.P.
4. Hon. Peter Mbogho Shake, M.P.
5. Hon. Suzanne Ndunge Kiamba, M.P.

SECRETARIAT

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Ms. Anne Shibuko | - | Clerk Assistant I |
| 4. Mr. Willis Obiero | - | Clerk Assistant III |
| 5. Mr. Shadrack Omondi | - | Legal Counsel II |
| 6. Ms. Lilian Mburugu | - | Media Relations Officer III |

MIN./PPETC/2023/256: PRELIMINARIES

The Chairperson called the meeting to order at 10.00 a.m and Hon. Janet Jepkemboi Sitienei, M.P. said the prayers.

MIN./PPETC/2023/257: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. **Consideration of Report on Public Petition No. 008 of 2022 regarding Graft Investigations at West Kano Irrigation Scheme**
6. Any other Business
7. Adjournment & Date of Next Meeting

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

MIN./PPETC/2023/258: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/259: MATTERS ARISING

There were no matters arising.

MIN./PPETC/2023/260: CONSIDERATION OF REPORT ON PETITION REGARDING GRAFT INVESTIGATIONS AT WEST KANO IRRIGATION SCHEME

The Committee considered the Petition regarding Graft Investigations at West Kano Irrigation Scheme. The Petitioners prayed that the National Assembly through the Public Petitions Committee:

- i. intervenes on behalf of the poor farmers and beneficiaries of West Kano Irrigation Scheme funds to seek conclusion to the investigations of EACC and recommends appropriate action against culpable officers; and
- ii. recommends financial audit of the West Kano Irrigation Scheme Revolving Fund Society between 2007 and 2021 to enhance transparency and accountability of the fund; an institutional audit of the scheme since its inception; and forensic audit of all officials involved in the period in question.

The Committee made various observations key among them being that:

- i. About 837 rice farmers in 59 groups rely on the 2,230-acre farmland of the West Kano Irrigation Scheme for rice farming. However, most farmers meant to be the beneficiaries of the project area had leased their lands hence not benefiting from the Scheme.

- ii. The thirteen (13) tractors in the Scheme were in poor condition hence not optimally utilised due to poor management by the West Kano Cooperative Society (*Error! Reference source not found.*).
- iii. The Revolving Fund established by the farmers and meant for sustainability of the Scheme collapsed in 2014 due to mismanagement, poor contributions and under-utilization of the funds by farmers through the West Kano Cooperative Society.
- iv. The EACC investigations into the allegations of graft at the West Kano Irrigation Scheme reported on 19th August, 2015, had not been concluded due to challenges in obtaining crucial documents from West Kano Irrigation Scheme Farmers' Revolving Fund Committee following the death of the then secretary and custodian of documents. However, the investigations were since completed, and the file was undergoing review to inform appropriate recommendations by EACC.

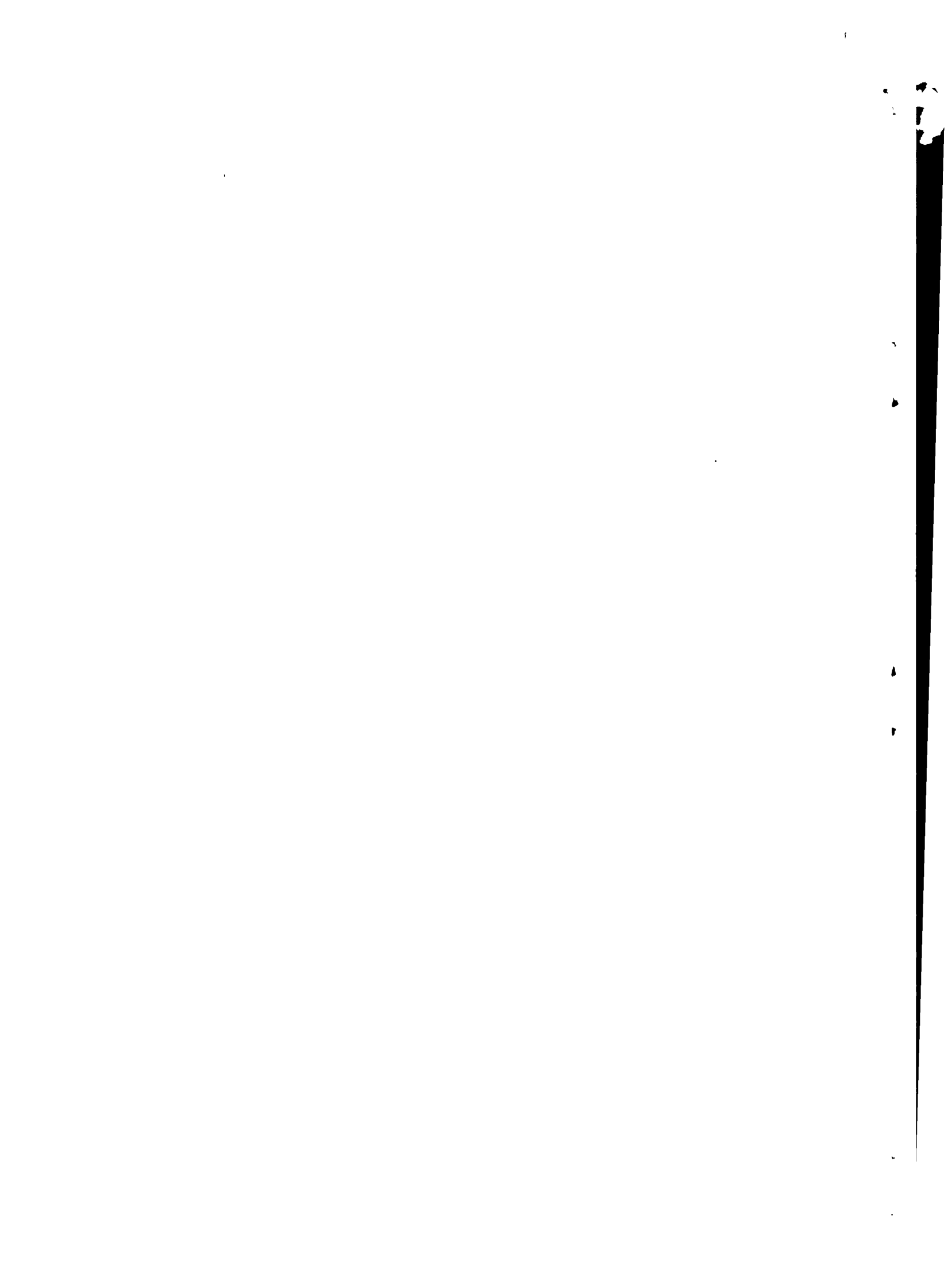
MIN./PPETC/2023/261: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 01:00 p.m. The next meeting would be held on Saturday, 22nd July 2023 at 02.00 p.m.

Sign: 

(CHAIRPERSON)

Date: 27/07/2023





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 43RD SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, JULY 27, 2023 AT 10.00 A.M IN NATIONAL ASSEMBLY CHAMBER, MAIN PARLIAMENT BUILDINGS

PRESENT

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. Joshua Chepyegon Kandie, M.P.
4. Hon. John Walter Owino, M.P.
5. Hon. Maisori Marwa Kitayama, M.P.
6. Hon. Edith Vethi Nyenze, M.P.
7. Hon. Suzanne Ndunge Kiamba, M.P.

APOLOGIES

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. Peter Mbogho Shake, M.P.
6. Hon. John Bwire Okano, M.P.
7. Hon. Sloya Clement Logova, M.P.
8. Hon. Caleb Mutiso Mule, M.P.

SECRETARIAT

1. Mr. Samuel Kalama - Principal Clerk Assistant II
2. Ms. Miriam Modo - Clerk Assistant I
3. Ms. Anne Shibuko - Clerk Assistant I
4. Mr. Willis Obiero - Clerk Assistant III
5. Mr. Shadrack Omondi - Legal Counsel II
6. Ms. Lilian Mburugu - Media Relations Officer III
7. Ms. Joyce Kakya - Hansard Reporter III
8. Mr. Collins Mahamba - Audio Officer

MIN./PPETC/2023/273: PRELIMINARIES

The Chairperson called the meeting to order at 10.00 a.m. and Hon. Suzanne Ndunge Kiamba, M.P. said the prayers.

MIN./PPETC/2023/274: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. Adoption of Reports on:
 - i. Public Petition No. 001 of 2022 regarding Safeguarding the Economic and Social Welfare of Communities Living Next to Forests; and
 - ii. Public Petition No. 008 of 2022 regarding Graft Investigations at West Kano Irrigation Scheme.
6. Any other Business
7. Adjournment & Date of Next Meeting

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by the Hon. Suzanne Ndunge Kiamba, M.P. and seconded by Hon. Suzanne Ndunge Kiamba, M.P.

MIN./PPETC/2023/275: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/276: ADPOTION OF REPORT ON PETITION REGARDING SAFEGUARDING THE ECONOMIC AND SOCIAL WELFARE OF COMMUNITIES LIVING NEXT TO FORESTS

Upon review of the submissions in the report, the Committee recommended that—

- i. the rights of forest communities as provided in the Forest Conservation and Management Act, 2016 should be respected and the participatory frameworks should be supported by Kenya Forest Service to ensure local communities benefit from forests resources. The CFA framework available should be strengthened to have decision-making powers regarding the welfare and interest of the local communities.
- ii. securing the rights and welfare of community living next to the forest can be realised in two ways—
 - a. First, the Ministry and KFS should come up with a mechanism, through regulations, to determine the total benefits accrued from the forest resources at a given period then allocate at least 30% of the same to the local community. For the avoidance of any doubt, the forest resources contemplated in this recommendation are the resources contemplated in the Act that yield forest produces that include bark, animal droppings, beeswax, canes, charcoal, creepers, earth, fiber, firewood, frankincense, fruit, galls, grass, gum, honey, leaves,

flowers, limestone, moss, murram, soil, myrrh, peat, plants, reeds, resin, rushes, rubber, sap, soil, seeds, spices, stones, timber, trees, water, wax, withies, and such other things as may be declared by the Cabinet Secretary to be forest produce for the purpose of this Act; and

- b. Secondly, in the cases where the CFAs do not have the requisite capacity to get the tenders, they should be allowed the decision-making power of qualified contractors to do the carry out the tenders on their behalf with a proper agreement on how the CFAs will benefit from the produce harvested.
 - c. The Committee further recommends that in addition, the Ministry of Environment, Climate Change and Forestry and the Kenya Forest Service should review the Participatory Forest Management Plans (PFMP) for the forests mentioned in the petition and incorporate periodic capacity building, whenever it is practically possible, on access to procurement of forest resources.
 - d. Further the Ministry and Kenya Forest Service should create regulations on measures to enhance community participation in the conservation and management of forests especially for commercial activities such as the licensing and trade of forest products; and
 - e. Finally, the Committee recommends strict adherence to climate change mechanisms that ensures sustainability in the exploitation of forest resources.
- iii. corporate social responsibility programs should be a term or condition in all forest concession agreements to ensure forest communities benefit and that the Cabinet Secretary for Environment, Climate Change and Forestry should formulates regulations on incentive and benefit sharing with local communities for forest management concession agreements. However, the CSR activities may include but are not limited to capacity building of the CFAs to enable them to participate and benefit from the forests. For the avoidance of doubt, this recommendation does not permit any use of forest land to provide for the corporate social responsibility activities contemplated under section 53 of the Act.
- iv. a review of the KFS training curriculum and culture to prepare the officers to collaborate with forest communities in conservation and management of forests. Further, KFS should enhance the number of their staff to ease the pressure on the smaller workforce that they currently have.
- v. The Committee also recommends—
- a. The review of the Kenya Forest Service training curriculum to impart knowledge and skills on public relations, respect for human rights and that KFS moves with speed to finalize and establish a KFS standard operational procedures to guide the engagement of KFS officers with the public;

- b. Kenya Forest Service should sensitize forest communities on the methods of access to capital to undertake in forest concessions and the procurement process for contracts with Kenya Forest Service. This will empower them economically; and
- c. The Cabinet Secretary for Environment, Climate Change and Forestry should formulate guidelines or subsidiary legislation that implements the provisions of the Forest Conservation and Management Act, 2016 and the Constitutional principles of public procurement and affirmative action.

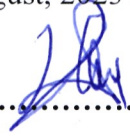
MIN./PPETC/2023/277: ADOPTION OF REPORT ON PETITION REGARDING GRAFT INVESTIGATIONS AT WEST KANO IRRIGATION SCHEME

Upon review of the submissions in the report, the Committee recommended that—

- i. EACC should fast track their internal process and conclude on the report in this matter and report to the National Assembly.
- ii. Pursuant to section 37 of Public Audit No. 34 of 2015, the Auditor-General conducts a thorough forensic audit into the matter of the revolving fund for West Kano irrigation scheme and report its finding to the House.
- iii. EACC should improve on its service delivery and adopt a client centric service charter by—
 - i. seeking and promoting customer feedback; and
 - ii. setting and communicating clear service standards.

MIN./PPETC/2023/279: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1:00 p.m. The next meeting would be held on Tuesday, 1st August, 2023 at 10.00 a.m.

Sign: 

(CHAIRPERSON)

Date..... 01/8/2023