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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO.31 OF 2023 REGARDING A REVIEW OF
BOUNDARIES OF THE TANA DELTA IRRIGATION PROJECT BY HON. ALI WARIO, MP

NOVEMBER 2024

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

Directorate of Legislative and Procedural Services
Clerk's Chambers
Parliament Buildings
NAIROBI



TABLE OF CONTENTS

CHAIRPERSON'S FORWARD	2
PART ONE	3
PREFACE	3
1.1 Establishment and Mandate of the Committee.....	3
1.2 Committee Membership	4
1.3 Committee Secretariat.....	5
PART TWO	6
2. BACKGROUND OF THE PETITION.....	6
2.1. Introduction	6
2.2. Prayers	6
PART THREE	8
3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION	8
3.1. Petitioner	8
3.2. County Government of Tana River	9
3.2.1. Background	9
3.2.2. Concerns by the County Government.....	9
3.2.3. Proposals by the County Government	10
3.3. Tana and Athi Rivers Development Authority	11
3.4. Ministry of EAC, Asals and Regional Development	13
PART FOUR	16
4. COMMITTEE OBSERVATIONS	16
PART FIVE.....	17
5. ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION	17
PART SIX	21
6. COMMITTEE RECOMMENDATIONS	21
ANNEXURES	22

CHAIRPERSON'S FORWARD

On behalf of the Public Petitions Committee and pursuant to provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the consideration of Public Petition No.31 Of 2023 regarding Review of Boundaries of the Tana Delta Irrigation Project. The Petition was presented on Tuesday, 13th June 2023 by the Hon. Ali Wario, MP on behalf of the residents of Garsen Constituency in accordance with Standing Order 225(2)(a).

The Petitioners prayed that the National Assembly, through the Public Petitions Committee engages the Tana and Athi Rivers Development Authority (TARDA) to review the boundaries of the land managed by the Tana Delta Irrigation Project and ensure the residents are comprehensively involved in the process.

In considering the Petition, the Committee engaged the Petitioner, the County Government of Tana River, and Ministry of EAC and ASAL. Upon considering the petition, the Committee noted the public and national interest of the project and observed that such a review will be economically unsustainable as TARDA has invested Kshs 6 billion on the project.

In response to the prayers sought by the Petitioners, the Committee recommends that the National Land Commission undertakes a survey of any community land within the Tana Delta and if there were any historical injustices occasioned to the community upon the issuance of allotment in 1987 and grant of LR No. 152049 to TARDA. Further, TARDA undertakes an extensive periodic and continuous public participation exercise on the project design and implementation to sensitize the community on the phases of the project and its impact to the community and the county.

The Committee expresses appreciation to the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support during the discharge of its duties. The Chairperson extends gratitude to the Committee Members for their devotion and commitment to duty throughout the consideration of the petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.


HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date.....20/11/2024.....



PART ONE

PREFACE

1.1 Establishment and Mandate of the Committee

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

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



1.2 Committee Membership

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

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency
United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency
United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency
Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency
Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency
United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency
United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.
Awendo Constituency
Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency
Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South
Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency
Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency
Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency
Wiper Democratic Movement-Kenya
(WDM-K)



1.3 Committee Secretariat

The Public Petitions Committee is facilitated by the following secretariat:

Lead Clerk
Mr. Ahmed Kadhi
Principal Clerk Assistant II

Ms. Anne Shibuko
First Clerk Assistant

Ms. Miriam Modo
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Ms. Patricia Gichane
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Ms. Roselyne Njuki
Senior Serjeant-at-Arms

Mr. Paul Shana
Serjeant-at-Arms

Mr. Calvin Karungo
Media Relations Officer III

Mr. Peter Mutethia
Audio Officer



PART TWO

2. BACKGROUND OF THE PETITION

2.1. Introduction

1. Public Petition No. 31 of 2023 regarding a Review of Boundaries of the Tana Delta was presented on 13th June 2023 by Hon. Ali Wario, MP on behalf of the residents of Garsen Constituency.
2. The Petitioner averred that the Tana Delta Irrigation Project was initiated by Tana and Athi Rivers Development Authority (TARDA) to enhance quality of life through sustainable utilization, environmental protection, food security and revenue generation in the Lower Tana River Basin. The project was estimated to cover eight locations in Garsen Constituency namely, Mwina, Salama, Galili, Kipao, Wachuoda, Konemamsa, Handaraku, and Didewarede.
3. The Hon. Wario stated that the project as was designed would lead to great displacement of residents of the said locations, destabilize their livelihoods economically, socially and politically and further interfere with the environmental ecosystems composed of protected forest areas that are ecological habitat for marine and terrestrial wildlife.
4. The Petitioner indicated that part of the area covered by the project was the Tana River Delta which was Kenya's Sixth Ramsar Site and the only Ramsar wetland outside the Rift as declared by the United Nations Educational, Scientific and Cultural Organization (UNESCO).
5. Further, the Petitioner averred that efforts by the residents to engage TARDA to review the boundaries before implementation of the project were unsuccessful. That the alleged reluctance by TARDA to conduct public participation on the project violated the national values and principles of governance stipulated in Article 10 of the Constitution.

2.2. Prayers

6. The Petitioner prayed that the National Assembly through the Public Petitions Committee—
 - (i) Engages the Tana and Athi Rivers Development Authority (TARDA) for review the boundaries of land managed by the Tana Delta Irrigation Project in order to, among other interventions, ensure that the Tana Delta Irrigation Project does not extend beyond the southern parts of Garsen-Lamu Road and should instead

be extended eastwards towards the border of Boni Forest to create a security buffer zone.

(ii) Facilitates clear demarcation of boundaries of TARDA land from the general community land.

(iii) Compels TARDA to comprehensively engage residents of Tana River in all aspects of the project's design and implementation.

(iv) Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

PART THREE

3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1. Petitioner

On Thursday, 3rd August 2023, Member for Garsen Constituency, the Hon. Ali Wario, MP, on behalf of the Petitioners appeared before the Committee and submitted as follows—

7. The Tana Delta Irrigation Project, initiated by the Tana and Athi Rivers Development Authority (TARDA), aimed to improve the quality of life in the Lower Tana River Basin. The project focused on sustainable utilization, environmental protection, food security, and revenue generation.
8. The project encompassed the Tana River Delta, designated as Kenya's Sixth Ramsar Site. It was the only Ramsar wetland outside the Rift, as declared by the United Nations Educational, Scientific and Cultural Organization (UNESCO) which was a migratory route for birds.
9. That a sizeable population had settled on the land by 1953 as evidenced by established amenities such as Kipao Primary School in the 1950s. The area had human settlements with the communities organized into a clan system and hosted established public amenities such as schools and hospitals.
10. The only compensation issued was to the residents of Gamba village whose land was used to set up offices of the irrigation project.
11. While the Petitioners did not oppose the project, they expressed concerns about its impact on the wetland extending southwards. The area serves as a crucial reservoir for grazing land during the dry season, despite having no human settlements and being a flood zone.
12. On the boundaries of the land and existence of a clear demarcation, the Petitioner clarified that the boundary was not clear because demarcation was done long time ago.
13. On the court case regarding the land, the Petitioner submitted that the matter had been considered by the court and ruled that the land be reverted to the community and TARDA was directed to cede farms to local community.

3.2. County Government of Tana River

On Wednesday, 25th October, 2023 the County Executive Committee Member (CECM) in charge of Lands and Physical Planning, Agriculture & Cooperative Development, Livestock, Fisheries & Veterinary Services, Ms. Mwanajuma Hiribae appeared before the Committee together with a Community Representative, Mr. Joel Ruhu and submitted as follows—

3.2.1. Background

14. The Community Representative Mr. Joel Ruhu submitted that the community was in support of the Petition. TARDA engaged the locals to acquire land for rice farming. Upon research on best rice seeds in 1986, TARDA acquired over 35,000 acres and built a protective band in form of a dyke which later became the boundary. However, the residents were left without farming lands despite the need hence the complaint for recognition as original owners of the land.
15. The Tana Delta Irrigation Scheme was completed in 1997 to develop irrigated fields and make effective use of the fertile soil and water resources of the delta area on the lower reaches of Tana River, an area highly suitable for paddy rice cultivation. The idea was to meet the demand for rice and contribute to food sufficiency thus benefit communities by improving their livelihoods and ensuring their economic wellbeing was guaranteed.
16. However, that has not been the case over the many years the project was in existence. Many communities viewed the project as a curse, leading to numerous cases of resource-based conflicts, human displacements, irreversible denial of livelihood options, underdevelopment among other violations.
17. Therefore, the County Government on behalf of its people filed Petition No. 2 of 2015 in the Environment and Land Court at Malindi to reverse the land ownership back to its people in 2015.
18. However, the County Government was not opposed to any development in Tana River County and had deliberately developed an investment policy that encouraged and provided adequate and conducive environment for both local and foreign investors. To protect the interests of the people, the County Government was in support for the petition.

3.2.2. Concerns by the County Government

19. *Public Participation:* As key stakeholders, the Tana Delta residents' concerns were not adequately sought in the decision regarding the allocation of their communal and ancestral land. Therefore, there was need for an effective public participation involving all affected communities and stakeholders even as the project starts.

The County Government should also be consulted as the primary custodians of land in Tana to ensure that any use of the land does not infringe on the rights and development aspirations of the local communities.

20. *Benefit of the project on the communities:* Such largescale developments across the country could contribute to the socio-economic development of communities but many of these including the Galana Kulalu project which was predominantly in Tana River County did not contribute anything significant to the development of the county and local communities.
21. *Rationale of owning the entire land:* TARDA owned 25,875 hectares of land in Tana River County yet since its inception in 1997, it managed to use only 4,700 acres at best even with the huge funding it received from Government and other development partners. Therefore, it had only used about 39 per cent of its land, yet most of the communities have no farming spaces.
22. *Water availability concerns:* The region experienced reduced water flows in River Tana leading to the inability of the canals to have any water flow leading to the death of the project. Further, the challenge of sea water intrusion continued to affect crop farming, livestock production and fishing activities.
23. *Protection of Tana Deltaic Ecosystem:* The Delta was a key biodiversity hotspot, an important bird area and a UNESCO designated Ramsar Site. Tana Delta was a critical dry season grazing area for majority of the pastoralists within and outside Tana River County. Effectively, the ecosystem was pivotal in reducing conflicts between pastoralists and farmers.
24. *Consideration for Tana River County Greenheart Initiative:* The initiative visualised a Green Heartland covering the entire Delta. The model would allow growers to practice environmentally friendly means to boost production of fish, livestock, and other produces. Therefore, the project by TARDA needed to consider such kind of projects.

3.2.3. Proposals by the County Government

25. The project boundary be reviewed to ensure no communities are displaced and that critical ecosystems especially the core Delta which is a Ramsar Site, a key biodiversity area and a dry season grazing refuge for pastoralists be excluded from the TARDA land.
26. Effective public participation, including consultations with the County Government, elected and opinion leaders and other stakeholders be conducted to jointly agree on the new boundaries.

27. TARDA and any developer should consider the role by the communities on production as opposed to just the large-scale privately-owned enterprise.
28. The boundaries be restricted and altered towards the insecure Boni Forest to serve as a buffer zone and for security reasons where practical.
29. **On the state of ownership of the land before TARDA was allocated the land and how TARDA acquired the land**, the community representative stated that the land was registered under the defunct County Council on behalf of the people as a trust land while there was a part owned by the national government.

3.3. Tana and Athi Rivers Development Authority

The Managing Director, TARDA deposited a written submissions vide a letter Ref. TARDA/CONF/1b Vol. XXIV (48) and dated 9th October 2023 to the Committee as highlighted below—

Review of the boundaries of the land managed by TDIP

30. TARDA opposed the proposed review of boundaries for the Tana Delta Irrigation Project (TDIP) citing that the review would have detrimental consequences for the people, particularly if the boundaries were revised to exclude the southern part of the Garsen-Lamu road for the following reasons:
- (i) The project was in a strategic position allowing access to water from the Tana River vital for its sustainability.
 - (ii) Extensive feasibility studies conducted in the area confirmed that the project was suitable for irrigating various crops like rice and sugar.
 - (iii) The government had made significant investments amounting to billions of Kenyan Shillings as the first phase was completed in October 1997 under the funding by the Overseas Economic Corporation Fund of Japan (OECF) and a local component, with a total cost of six billion Kenya shilling.
 - (iv) The project was a Vision 2030 flagship, and a medium-term plan IV aimed at improving irrigation and creating employment opportunities and contributing to food security.
 - (v) The 46 km delivery channel from Kitere Intake Bell Mouth to Sailoni Rubber Dam serves around 17 villages, supporting a population of approximately 35,000 people covering 300 acres along the channel by provision of water for domestic, livestock and farming purposes thus enhancing their livelihoods.
31. TARDA had undertaken conservation activities to mitigate potential adverse effects on the environment within TDIP. Further, the 1982 Haskoning feasibility

study pointed out that the project had negligible adverse effects on the environment ecosystem composed of protected forest area.

Demarcation of boundaries of TARDA land

32. The TDIP land area boundaries were demarcated and were widely recognised and TARDA lawfully granted a title deed LR No. 28026 measuring 28,875 Ha.
33. The project covered an area of 77,500 acres with the rice scheme taking up 4,000 acres expandable up to 30,000 acres. The proposed plan aimed to develop about 12,000 hectares of land sourcing irrigation from the river water.
34. The land had four common features including being an expansive area teeming with wildlife, an ideal refuge for banditry as it was secluded by nature, prone to heavy flooding. Only ten per cent of the area was occupied by the locals including Kulesa, Wema and Ngao communities.
35. The Authority was given mandate to utilise the land for purposes of development by the Commissioner of Lands on 3rd February 1987. Further upon meeting the necessary requirements, TARDA was issued with the grant No. IR 152049 LR No. 28026 by the Ministry of Lands.
36. That at no time did the TDIP displace residents of the said locations, destabilizing their livelihoods economically, socially or politically as alleged by the Petitioner.
37. The 46 km Water Delivery Channel from Kitere Intake to Sailoni Rubber Dam is a vital resource that serves 17 villages along its stretch, providing water for domestic, livestock and farming purposes. This channel is a collaborative effort between TARDA and the local communities. The population of these 17 villages, including *Kitere, Mnazini, Bubesa, Vinyalu, Mavueni, Mwina, Mikameni, Nguumo, Sailoni, Vumbue, Kulesa, Tawakal, Wema, Hewani, Bandi, Ndumi, and Danisa*, stands at approximately 35,000 inhabitants, consisting of both farmers and pastoralists.
38. None of the locations mentioned in the Petition were within the titled area of TDIP.

Community engagement

39. TARDA had engaged the community since inception of the TDIP with extensive consultations and public discussions in carrying out its activities. The Authority was continuously conducting community engagements.
40. On 14th to 17th September 2023, the Authority embarked on a three-day intensive community engagement program in the heart of Tana Delta for dialogue

collaboration and progress with communities on issues of water resource management for sustainable development.

3.4. Ministry of EAC, Asals and Regional Development

On Wednesday, 25th October 2023, the Cabinet Secretary, Ministry of EAC, ASALs and Regional Development Hon. Penninah Malonza, OGW accompanied by the Managing Director, TARDA appeared before the Committee and submitted as follows—

Background

41. The Petitioner claimed that the Tana Delta Irrigation Project (TDIP) would lead to great displacement of residents of the said locations, destabilize their livelihoods economically, socially, and politically and further interfere with environmental ecosystem composed of protected forest road.
42. The strategic position of the project to the River Tana allowed access to water hence vital for the project's sustainability.
43. Extensive feasibility studies were conducted in the area, confirming that TDIP was suitable for irrigating various crops like rice and sugar.
44. The Government made significant investments in the project completing the first phase in October 1997 supported by the Overseas Economic Corporation Fund of Japan (OECF) with a total cost of Kshs6 billion.
45. The TDIP was a Vision 2030 flagship project, with the goal of increasing rice production and achieving self-sufficiency. Additionally, it was part of the Medium-Term Plan (MTP) IV, aiming to develop 12,000 hectares of land for rice irrigation and produce 84,000 metric tons of milled rice annually. The project further aimed at creating employment opportunities to contribute to the Bottom-Up Economic Transformation Agenda (BETA) on food security.
46. The 46 kilometres delivery channel from Kitere Intake Bell Mouth to Sailoni Rubber Dam served around 17 Villages, supporting a population of approximately 35,000 living along the Channel covering about 300 acres. The Channel provided water for domestic use and in areas that were an ecological habitat, for marine terrestrial wildlife.

Response to the Petition

47. TARDA was opposed the proposed review of boundaries for the Tana Delta Irrigation Project (TDIP) as the review would have detrimental consequences for the people, particularly if the boundaries were revised to exclude the southern

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

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

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

PART FOUR

4. COMMITTEE OBSERVATIONS

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

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

PART FIVE

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

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

Prayer 1: **Engage the Tana and Athi Rivers Development Authority (TARDA) for review the boundaries of land managed by the Tana Delta Irrigation Project in order to, among other interventions, ensure that the Tana Delta Irrigation Project does not extend beyond the southern parts of Garsen-Lamu Road and should instead be extended eastwards towards the border of Boni Forest to create a security buffer zone.**

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

- (i) The prayers seek the allocation of public land vested in the national government to the county government of Tana River and its residents.
- (ii) Public land may be converted to community land or private land in accordance with the provisions of section 12 of the Land Act. The National Land Commission has the mandate to allocate public land.
- (iii) The Land Act section 12(2) outlines the nature of public land that cannot be allocated. This includes public land that falls within wetlands, environmentally sensitive areas, along watersheds, rivers, public land reserved for strategic public uses.
- (iv) With the consent of the national government, the National Land Commission that administers all public land, can transfer the public land from TARDA to the County Government as provided for in the National Land Commission Act section 5(2)(a).
- (v) In this case TARDA is opposed to such transfer, as the land under TDIP is a Vision 2030 flagship project set out for part of the Medium-Term Plan (MTP) IV, aiming to develop 12,000 hectares of land for rice irrigation and produce 84,000 metric tons of milled rice annually.
- (vi) In *Malindi ELC Constitutional Petition No. 2 of 2015*, the County Government of Tana River instituted suit against TARDA and the National Land Commission seeking revocation of TARDA's title to LR No. 28026, IR No. 152049. The judgment was delivered by Angote J, on 14 September 2016, which led to the revocation of this title.
- (vii) However, in the appeal *Tana and Athi Development Authority v National Land Commission & another [2023] KECA 1207(KLR)* The Court of Appeal

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

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

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

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

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

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

64. The Committee notes that—

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


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

PART SIX


6. COMMITTEE RECOMMENDATIONS

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

- (i) On the proposal for the review of the boundaries of land managed by the Tana Delta Irrigation Project in order to, among other interventions, ensure that the Tana Delta Irrigation Project does not extend beyond the southern parts of Garsen-Lamu Road and should instead be extended eastwards towards the border of Boni Forest to create a security buffer zone. The Committee rejects this prayer based on public and national interest of the project, as such a review will be economically unsustainable as TARDA has invested Kshs 6 billion on the project.
- (ii) On the proposal to facilitate the clear demarcation of boundaries of TARDA land from the general community land; The Committee recommends that the National Land Commission undertakes a survey of any community land within the Tana Delta and if there were any historical injustices occasioned to the community upon the issuance of allotment in 1987 and grant of LR No. 152049 to TARDA.
- (iii) On the proposal to compel TARDA to comprehensively engage residents of Tana River in all aspects of the project's design and implementation, the Committee recommends that TARDA undertakes an extensive periodic and continuous public participation exercise on the project design and implementation to sensitize the community on the phases of the project and its impact to the community and the county.

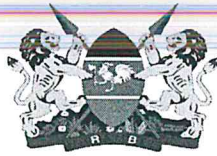
Signed:  Date: 20/11/2024

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

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

ANNEXURES

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



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

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

DATE.....9TH NOVEMBER 2024

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

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

