



COUNTY ASSEMBLY OF BOMET

**REPORT OF THE COMMITTEE ON COUNTY PETITIONS ON
PETITION NO.1 OF 2022 ON THE ENACTMENT OF A
LEGISLATION ON THE PROTECTION AND SUSTAINABLE
MANAGEMENT OF WATER SOURCES AND RIPARIAN ZONES IN
THE COUNTY OF BOMET**

SEPTEMBER, 2023

② Deputy speaker
Approved for tabling
today.
[Signature]
20/9/2023

① Hon speaker

You may approve
for tabling

[Signature]
19/9/23

③ Presented to
Assembly on
20/09/2023.
[Signature]

PREFACE

1.0 Executive Summary

The Committee on County Petitions is one of the select committees established under the Standing Order 200(1) of the County assembly Standing orders.

1.1 Committee Membership

The Committee on County Petitions comprises of the following Honourable Members: -

- | | | |
|--------------------------|---|------------------|
| 1. Hon. Josphat Kipkirui | - | Chairperson |
| 2. Hon. Emily Cheruiyot | - | Vice Chairperson |
| 3. Hon. Peter Rono | - | Member |
| 4. Hon. Japhet Cheruiyot | - | Member |
| 5. Hon. Joseah Samoei | - | Member |
| 6. Hon. Chemutai Naomi | - | Member |
| 7. Hon. Nathan Kibet | - | Member |

1.2 Mandate of the Committee

The Select Committee on County Petitions derives its mandate from provisions of Standing order 200(3) of the County assembly standing orders which provides that the committee shall consider and report on all public petitions presented to the Assembly.

1.3 Petition No.1 of 2022

Pursuant to Standing order 200(3) of the County assembly standing orders, the County petitions Committee shall consider and report on all public petitions presented to the Assembly.

The Committee on County Petitions formally received a petition from five petitioners namely: Chepngeno Siele ID No. 28606572, Richard Towett ID No. 3829237, Edna Chelangat Mibei ID No. 2417830, Zephania Kirui ID No. 25419153 and Simion K. Mitei ID No. 12928781, residents of Bomet County and civic educators on the Constitution of Kenya working under the supervision of the URAIA Trust, a Non-Governmental Organization that empowers Kenyans on the good governance, human rights and cross-cutting issues including matters environment.

In dealing with the matter, the committee held a number of sittings during which the committee was able to engage the Petitioners, the Bomet County Director National Environment Management Authority (NEMA) and the County Executive Committee Member for Water, Sanitation, Environment, Natural Resources and Climate Change.

Upon deliberations in the said sittings and based on the submissions from the petitioners, Director NEMA and the County Executive Committee Member, the committee came up with a report in response

to the petition as provided for under the Standing Order 213 (2) of the County Assembly Standing Orders.

It is therefore my pleasant duty and privilege, on behalf of the Committee on County Petitions to table this report on the Petition.

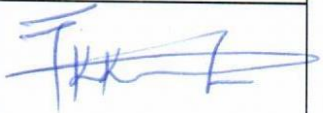
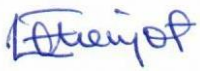

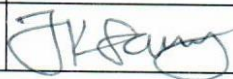
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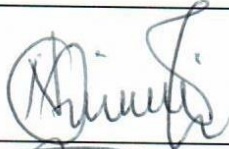

Date 18/09/2023

Hon. Josphat Kipkirui
Chairperson, Committee on County Petitions

1.4 ADOPTION OF THE REPORT

We, the Hon. Members of Committee on County Petitions do hereby append our signatures to this report to affirm our approval and confirm its accuracy, validity and authenticity: -

No.	Name	Designation	Signature
1.	Hon. Josphat Kipkirui	Chair	
2.	Hon. Emily Cheruiyot	V/Chair	
3.	Hon. Peter Rono	Member	
4.	Hon. Japhet Cheruiyot	Member	
5.	Hon. Joseah Samoei	Member	

6.	Hon. Chemutai Naomi	Member	
7.	Hon. Nathan Kibet	Member	

1.0 Introduction

A. Background

Petition No.1 of 2022 was tabled and committed to the committee on county petitions on 18th October 2022. The committee however noted that the petition lacked a number of components of a formal petition and its prayers were not clear. The committee therefore advised the petitioners to review their petition and submit it to the committee which they subsequently did.

In the petition, the Petitioners sought to draw the attention of the County Assembly to the following:

1. **THAT**, water catchment areas and other wetlands are receding at an alarming rate due to human encroachment.
2. **THAT**, these wetlands are at looming risk as a result of man's uncontrolled encroachment and exploitation resulting in problems like loss of biodiversity, degradation of life support systems and climate change.
3. **THAT**, the encroachment by settlement, wetland reclamation and conversion of change of use, pollution, poor methods of farming and the encouragement of exotic species particularly

eucalyptus have degraded the drainage of streams, rivers and all other water bodies within our county.

4. **THAT**, the County Government of Bomet has watched the degradation and drainage of these wetlands without doing anything meaningful to protect the destruction of the water environment and its sources.
5. **THAT**, the laws governing the protection and conservation of the water sources are scattered in Acts of Parliament including Water Act, 2016, Forest Act, EMCA, Agriculture Act among other enabling provisions of law hence making it difficult to enforce the provisions since there is no single accountable institution.
6. **THAT**, the County Government of Bomet has not put in place any legislative framework to define their water sources, water resources and riparian zones.
7. **THAT**, if the current activities along the rivers and water catchment areas are not contained, most parts of our county will be semi-arid in the next five years and eventually turn a desert.
8. **THAT**, the riparian zone has remained unprotected from poor agricultural practices, residential and commercial construction, landscaping and logging.
9. **THAT**, the County Government of Bomet has no approval and enforcement agencies for the protection of the riparian zones hence presenting a challenge on the preservation, protection and management of these areas endowed with a number of natural resources.

10. **THAT**, an all-inclusive county legislation on water sources and riparian zones needs to be enacted with a view to having enforceable regulations.
11. **THAT**, they have made efforts to have these matters addressed by the relevant authorities all of which have failed to give satisfactory response.
12. **THAT**, the issues raised in the petition are not pending before any court of law, constitutional or legal body.

B. LEGAL BASIS FOR PETITIONS

The Legal Framework

Petitions

The right of citizens to petition public authorities is enshrined in the Constitution. **Article 37 of the Constitution** provides that; ***‘Every person has a right, peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to public authorities’***

Section 15(1) of the County Governments Act, 2012 makes a provision for citizens’ right to petition the County assembly. The said section provides that; ***“A person has a right to petition a county assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.”***

The Standing Order 213(1) of the County Assembly Standing Orders provides that every Petition presented or reported pursuant to this Part, shall stand committed to the County Petitions Committee.

Standing Order 213(2) further provides that whenever a Petition is committed, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the County Assembly and no debate on or in relation to the report shall be allowed, but the Speaker may, in exceptional circumstances, allow comments or observations in relation to the Petitions for not more than twenty Minutes.

CHAPTER 2

CONSIDERATION OF PETITION

2.0 Specific Prayers of the Petitioners

The specific prayer of the Petitioners to the County Assembly was to implore/request the County Assembly to enact a county legislation on the protection and sustainable management of water resources, water sources and riparian zones in the County of Bomet including establishment of a centralized body with statutory powers to enforce compliance with the said law.

Approach taken by the committee

1. In considering the petition, the committee observed that it would be important to verify the facts alleged in the petition. The

committee therefore resolved to conduct an inquiry on the issues raised in the petition.

2. In this regard the committee received the petition on 18th October, 2022 after being tabled and committed to it.
3. Thereafter the committee pursuant to Standing Order 196, invited the Director NEMA on 7th March, 2023 to shed more light on the issues raised and assist the committee prepare a comprehensive report.
4. The Committee invited the petitioners on 20th March, 2023 to clarify the issues raised in the petition.
5. The Committee then later invited the County Executive Committee Member for Water, Sanitation, Environment, Natural Resources and Climate Change on 9th May, 2023 to respond to the issues raised in the petition.

A. SUBMISSIONS FROM THE DIRECTOR NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)

Standing Order 196 provides that a committee may, with the approval of the Speaker, engage such experts as it may consider necessary in furtherance of its mandate. Pursuant to that Standing order, the committee engaged the technical expertise of the Bomet County Director NEMA. The Director appeared before the Committee on 7th March, 2023 and presented as follows;

WATER CATCHMENT AREAS

THAT, the main water catchment areas in Bomet County include: Mau forest complex which is the largest indigenous montane forest in East Africa and covers an area of 273,300 hectares (675,000 acres) and is shared by four counties namely: Narok, Bomet, Kericho and Nakuru.

THAT, Mau Forest is also the largest drainage basin in Kenya and the other key water catchment areas include the various forests in the county, both private and government, tea farms (60,702.8 ha) and several geographical features such as the numerous hill-slopes and hilltops and plateau landscapes.

THAT, the County is well endowed with water resources and the permanent rivers originating from the Mau Forest and flowing through the County are Oinab Ng'etunyet, Nyongores, Kipsonoi, Itare, Kiptiget, Chemosit, Amalo and Maramara.

THAT, Sisei River originates from several swamps in Bomet Central Sub-county and is fast diminishing due to intensified cultivation along its banks and catchment areas.

THAT, a majority of the population draw water from rivers, water pans and springs. Rain water harvesting is practiced by the households that have corrugated iron roofs.

THAT, the County Government has protected a total of 27 springs since 2013.

THAT, dams are found in the drier zones of Chepalungu, parts of Sotik Sub-County and Longisa in Bomet East Sub-County.

THAT, in terms of Water resources use /accessibility, the number of households with access to piped water is 2,200 (3.1%), portable water is 1,500 (2.1%) and water from the rivers is 56.4% of the population. He also stated that the number of wells are 1,040, protected springs are 30, boreholes are 10, dams are 59, ponds are 200 and the number of households with roofed catchments is 750 (1.1%). He further stated that the average distance to the nearest portable water point in Bomet County is 4Km.

THAT the environmental threats to water resources in the County include:

- Pollution threats- from pesticides and agrochemicals and poor waste management especially in urban areas.
- Loss of biodiversity as a result of pressure from increasing population.
- Global warming and climate change- erratic weather conditions and climate change threaten water bodies leading to reduced flow/drying of rivers/wetlands.
- Loss of soil through soil erosion on agricultural farms, degraded areas, hilltops/slopes.

- Siltation and sedimentation of water bodies, rivers, dams, wetlands compromising water quality and quantity.
- Deforestation e,g Chepalungu forest though now rehabilitated and overgrazing of pasture lands.
- Land degradation-The major degraded areas include: Hill tops and hill slopes; quarrying and sand harvesting e.g. Kipsegon quarry; Sand and stone mining areas e.g. Sachora near Kyogong.
- Wetlands and river banks /riparian encroachment (planting of eucalyptus trees) leading to loss of wetlands and drying of riverbeds.
- Landslides in some parts of Konoin sub-county due to land use changes.
- Invasive noxious aquatic species such as e.g. *salvinia molesta*.
- In-door air pollution- poor ventilation of indoor kitchen.

PROTECTION OF WATER CATCHMENT AREAS - POLICY AND LEGAL PROVISIONS ON THE ENTITLEMENT TO CLEAN AND HEALTHY ENVIRONMENT –

THAT, Article 42 of the Constitution of Kenya provides that every person has the right to a clean and healthy environment- which includes the right to have the environment protected for the benefit of present and future generations.

THAT, section 3(1) of the Environmental Management and Co-ordination Act (EMCA) provides that every person in Kenya is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment.

THAT, Article 69(1) of the Constitution provides that the State shall ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits; (b) Work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya; (d) Encourage public participation in the management, protection and conservation of the environment; (g) Eliminate processes and activities that are likely to endanger the environment.

THAT, Article 69(2) of the Constitution further provides that every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

THAT, Article 70(1) of the Constitution and Section 3(3) of the EMCA provides that if a person alleges that a right to a clean and healthy environment recognized and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in

addition to any other legal remedies that are available in respect to the same matter.

PROTECTION OF WETLANDS, RIVERS AND LAKES FROM POLLUTION AND DEGRADATION

THAT, for the protection of wetlands, rivers and lakes from pollution and degradation, section 42 (1) of the EMCA prohibits the following activities in a river, wetland or lake in Kenya unless Environmental Impact Assessment is done and Approved by Director General NEMA):

Erecting , reconstructing , placing, altering, extending, removing or demolishing any structure or part of any structure excavating, drilling, tunneling, introducing any animal, whether alien or indigenous, dead or alive, in any river, lake or wetland; introducing or planting any part of a plant specimen, whether alien or indigenous, dead or alive , depositing any substance in a lake, river or wetland or in, on or under its bed, if that substance would or is likely to have adverse environmental effects , directing or blocking any river, lake or wetland from its natural and normal course; draining any lake, river or wetland.

PROTECTION OF WETLANDS, RIVERBANKS, LAKESHORES AND COASTAL ZONE FROM FURTHER DEGRADATION

THAT, section 42(2) of the EMCA provides that the Cabinet Secretary by Gazette notice can declare any wetland, riverbank lakeshore or coastal zone as protected area and impose such orders or restriction deemed necessary.

He gave the legal definition of **riparian** as relating to or living or located on the bank of a watercourse (as a river or stream) or sometimes a lake; broadly: of or relating to or living or located on the bank of a body of water.

He also defined **“wetlands”** to mean areas permanently or seasonally flooded by water where plants and animals have become adapted; and include swamps, areas of marsh, peat land, mountain bogs, bank of rivers, vegetation, areas of impeded drainage or brackish, salt or alkaline; including areas of marine water the depth of which at low tide does not exceed 6 meters. It also incorporates riparian and coastal zones adjacent to the wetlands.

He submitted that, the County Assembly of Bomet can legislate on the wetlands, riverbanks and lakeshores or other water catchment habitats that can be gazetted as protected areas.

PROTECTION OF RIVERS AND LAKES.

THAT, section 42(4) of the EMCA provides for the issuance of guidelines on protection of rivers and lakes by NEMA in consultation with the lead agencies. He further stated that NEMA has developed sand harvesting guidelines and is developing sand harvesting regulations in consultation with the

lead agencies to provide specific guidelines for specific rivers and lakes protection. He stated that the County Assembly of Bomet can legislate on development of appropriate guidelines for the protection of wetlands, riverbanks, forests and other catchment areas or mechanisms of implementing some of the NEMA guidelines provided. He reiterated that the County Environment Committee is to implement the prescribed guidelines.

THAT section 42(5) of the EMCA provides that it constitutes an offence to contravene or not to comply with issued orders, standards, guidelines and regulations made for the protection of rivers, wetlands, lakes and coastal zone.

THAT there is need to develop necessary plans, standards and guidelines and to enforce the specific orders issued and that the County Assembly of Bomet can legislate on some of the specific measures to protect water catchment areas.

B. SUBMISSIONS FROM THE PETITIONERS

The Petitioners appeared before the Committee on Tuesday 20th March, 2023 and stated under oath as follows;

- i. **THAT**, they are URAIA Trust civic educators and are in collaboration with the Catholic Justice and Peace of Kericho Dioceses.
- ii. **THAT**, their role is to offer civic education on environmental awareness.

- iii. **THAT**, they petitioned the County Assembly of Bomet owing to the failure by the County Government of Bomet to stop the encroachment of wetlands and continued encouragement of eucalyptus trees along the streams and other water bodies.
- iv. **THAT**, wetlands in Ndaraweta and Daraja Sita within Ndaraweta and Kapletundo Wards respectively are in the verge of getting extinct due to the said human activities.
- v. **THAT**, despite this practice, the county government has not put up any legislative framework nor enforce the available national legislations to curb the practice.
- vi. **THAT** by tolerating this environmental risk, Bomet County is in danger of being arid in the next five years.
- vii. **THAT** their efforts to have the matter addressed by the relevant authorities have been in vain hence petitioned the legislative body of the county government.

The petitioners further submitted copies of pictures demonstrating how the wetlands have been encroached and exotic trees planted along the streams.

C. SUBMISSIONS/RESPONSE FROM THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR WATER, SANITATION, ENVIRONMENT, NATURAL RESOURCES AND CLIMATE CHANGE

The CEC Member appeared before the Committee on 9th May, 2023. He submitted under oath as follows;

Water Sources and Resources

THAT, the Department has put more effort in water management strategies to govern the control and movement of water resources to minimize damage to life and property while increasing its beneficial use.

THAT in their annual work plans, the department has considered protection of springs and wetlands and in partnership with the Dig Deep Africa, they are currently protecting 78 springs across the county.

FURTHER, that the extension of piped water to households is part of the scheme to protect the wetlands.

Riparian Zones

THAT, the riparian areas have remained relatively unprotected from poor agricultural practices, residential and commercial constructions, landscaping and logging.

THAT, in keeping with the desire to grant them adequate protection, the department acting on the recommendation of the NEMA, plans to accord the river banks and riparian zones the protection envisaged in the Environmental Management and Coordination Act.

THAT, the law governing the protection of the riparian zones is not on a single legislation and this has posed a challenge to the department.

THAT, the department's management strategies include;

- a. Developing long term measures on riparian restoration and banning of eucalyptus growing along the zones.
- b. Countywide delineation of riparian zones.
- c. Creation of countywide awareness to the communities who have grown eucalyptus trees along the riparian zones.

Legislative Framework

THAT, the department is currently considering a draft legislative framework governing the protection of water resources, water sources and riparian zones.

THAT, the documents in draft form and currently under consideration are:

- (1) The Draft County Policy on Riparian and Littoral Zone Protection.
- (2) The Draft Bomet County Sustainable Forest Management and Tree Growing Bill, 2023 which is at the County Executive Committee level.

Status of the establishment of County Environment Committee

THAT, the Governor guided by section 18 (3) of EMCA has appointed County Environment Committee and currently awaiting the Gazettement.

Chapter 3

Committee Observations

Based on the submissions from the petitioners, the Director NEMA and the County Executive Committee Member for Water, Sanitation, Environment, Natural Resources and Climate Change, the committee made the following observations:

- (1) **THAT**, the Implementation of specific national government policies on natural resources and environmental conservation, including soil and water conservation and forestry is a devolved function under Part 2 of the Fourth Schedule to the Constitution.
- (2) **THAT**, the laws governing protection of natural resources and environmental conservation is domiciled in a number of legislations, orders, standards, guidelines and regulations.
- (3) **THAT**, the county government has a Bomet County Policy on Riparian Zone and Wetland Protection, Sessional Paper NO.4 of 2015.
- (4) **THAT**, the County government has no legislative framework governing the protection of water resources, water sources and riparian zones.
- (5) **THAT**, there are sufficient laws, directives, regulations, guidelines, orders and other statutory instruments on the environmental conservation and protection of natural resources and that what is lacking is the implementation and enforcement of the said legal instruments.
- (6) **THAT**, NEMA has a Restoration Order banning the planting of Eucalyptus trees along the riparian areas or shorelines to a distance of at least thirty meters from the highest ever recorded

flood level. The said directive has been implemented in some parts of Bomet County including Embomos and Ndaraweta wards.

- (7) **THAT**, the Governor guided by section 18 (3) of EMCA vide a gazette notice, has gazetted the County Environment Committee.

Chapter 4

Committee Recommendations

The committee having investigated the matter in accordance with its mandate under Standing order 200(3) of the County Assembly Standing orders recommend as follows: -

- (1) **THAT**, in response to the Petitioners' prayer, the committee recommends that the County Executive Committee do develop a bill consolidating all the laws on the protection and sustainable management of water resources, water sources and riparian zones in the County of Bomet including the establishment of a centralized body with statutory powers to enforce compliance with the said law and forward the same to the County assembly for consideration.

- (2) **THAT**, the county executive committee through the County Environment Committee in liaison with the National Environment Management Authority and other national government agencies should implement the specific national government policies on natural resources and environmental conservation, including soil and water conservation and

forestry as envisaged under Part 2 of the Fourth Schedule to the Constitution.

- (3) **THAT**, the County Executive Committee should undertake a county-wide awareness campaign on the environmental protection, management and conservation.