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16/6/2022

TWELFTH PARLIAMENT | SIXTH SESSION

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

ON

PETITION REGARDING THE ALLEGED GAZETEMENT OF CHETAMBE (WEBUYE) HILL FOREST, VIDE LEGAL NOTICE NO. 106: PROPOSED DECLARATION OF PUBLIC FOREST CHETAMBE (WEBUYE) HILL FOREST DATED 25<sup>TH</sup> JUNE 2021

PAPERS LAID	
DATE	
FILED BY	
COMMITTEE	

Clerk's Chambers,  
First Floor,  
Parliament Buildings,  
NAIROBI.

DC-EG  
Recommended & Forwarded for Approval  
14/06/22 JUNE, 2022

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**LIST OF ABBREVIATIONS/ ACRONYMS**

- CS - Cabinet Secretary
- DCC - Deputy County Commissioner
- NLC - National Land Commission

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## PREFACE

**Mr. Speaker sir,**

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

### Committee Membership

The Committee comprises of the following Members.

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

**Chairperson**

**Vice-Chairperson**

At the sitting of the Senate held on 4<sup>th</sup> August, 2021, Sen. Moses Wetang'ula, EGH, MP, reported to the Senate that a Petition has been submitted through the Clerk, concerning the alleged gazette of Chetambe (Webuye) Hill Forest, vide legal Notice No. 106: Proposed Declaration of Public Forest Chetambe (Webuye) Hill Forest Dated 25<sup>th</sup> June 2021.

The Petitioners prayed that the Senate intervenes to have this gazette notice withdrawn and the status quo maintained to alleviate growing anxiety, forestall potential violent conflicts and avert any tragic risks such as loss of lives and property and related consequences.

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

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

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

The Committee proceeded to invite the Cabinet Secretary, Ministry of Lands and Physical Planning, the Cabinet Secretary, Ministry of Environment and Forestry, and the Chairperson, National Land Commission (NLC) to address respective issues raised on the Petition.

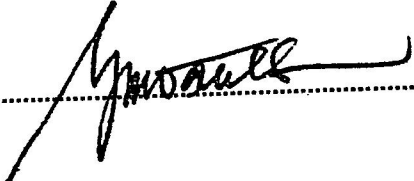
The Committee also undertook a site visit of the Chetambe forest area in Webuye, Bungoma County and met with the petitioners accompanied by the area Senator, Sen. Moses Wetang'ula, EGH, MP, Senator Bungoma County. The Committee thereafter made various observations and recommendations based on the stakeholder consultations carried out.

## ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioners, Ms. Farida Karoney, EGH, Cabinet Secretary, Ministry of Lands and Physical Planning, Mr. Keriako Tobiko, CBS, SC, Cabinet Secretary, Ministry of Environment and Forestry, Mr. Gershom Otachi, Chairperson, National Land Commission, and the other stakeholders for their submissions and contribution to the resolution of this matter.

**Mr. Speaker Sir,**

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Land, Environment and Natural Resources on the Petition concerning the alleged gazettement of Chetambe (Webuye) hill forest, vide legal notice no. 106: Proposed Declaration of Public Forest Chetambe (Webuye) Hill Forest dated 25<sup>th</sup> June 2021.

Signed:  Date: 9/6/2022

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

## CHAPTER I

### INTRODUCTION

1. At the sitting of the Senate held on 4<sup>th</sup> August, 2021, Sen. Moses Wetang'ula, EGH, MP, reported to the Senate that a Petition had been submitted through the Clerk, concerning the alleged gazettelement of Chetambe (Webuye) hill forest, vide legal notice no. 106: Proposed Declaration of Public Forest Chetambe (Webuye) Hill Forest dated 25<sup>th</sup> June 2021.

#### Underlying Constitutional and Statutory Provisions

2. Article 1(1) and (2) of the Constitution of Kenya, reposes all sovereign Power in the People of Kenya, exercised solely in accordance with the Constitution
3. Article 1(3) (a) and 1(4) of the Constitution delegates sovereign power of the constitution to inter alia Parliament<sup>t</sup> and the legislative assemblies of the county governments and that the sovereign power of the people is exercised at the national and county level.
4. Article 37 of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while Article 119(1) of the Constitution provides that *“every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”*
5. Article 40 (3)(b)(i) of the Constitution provides that the state shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation- is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that requires prompt payment in full, of just compensation to the person.

6. Article 60(1)(b) of the provides that land in Kenya shall be held, used and managed in a manner that is unequitable, efficient, productive and sustainable and according to the principle of security of land rights.
7. Under Article 62(2) of the Constitution, public land shall vest and be held by the county government in trust for the people resident in the county and shall be administered by the National Land Commission.
8. Under Article 67(2) of the Constitution, the National Land Commission is mandated to manage public land on behalf of the national and county governments.
9. Article 119 of the constitution provided that any person has a right to petition parliament to consider any matter within its authority.
10. Section 12 of the Land Act, 2012 provides for the procedure for allocation of Public Land.

### **The Petition**

11. This Petition before the Senate concerns the alleged gazettement of Chetambe (Webuye) Hill Forest vide Legal Notice No. 106: Proposed Declaration of Public Forest Chetambe (Webuye) Hill Forest dated 25<sup>th</sup> June 2021, where the residents feel that the disputed area is their ancestral land which they have lived on and used for various socio-economic activities including grazing their livestock.

### **Background of the Petition**

12. The Legal Notice No. 106 under which Chetambe (Webuye) Hill Forest was a gazetted forest covering a land mass of 406.22 hectares or 1003.36634 acres.
13. The residents of the area earmarked for gazettement were and are still gravely concerned and shocked at the notice, for the gazetted area is their ancestral land which they have lived on and used for various socio-economic activities including grazing ground for their livestock since time immemorial (close to a century).



14. At the advent of colonialism in Kenya, the heroic people of Bungoma put up a gallant resistance fight against the advancing colonialists on their land and their land remained sacred to them with immense historical significance.
15. Within the area earmarked, the *Tachoni Community* and the Kalenjin neighbors entered a covenant dubbed (*Okhulia Yimba*) to end inherent acrimony and animosity to achieve peaceful co-existence between the two communities. In 1925 the local inhabitants were forcefully evicted by the colonial government to pave way for white settlers in Chepsaita area currently Uasin Gishu County, Ndal, Naitiri, Lugari, and Kiminini among others and consequently they settled in the area then referred to as *East Kitosi*, the present Webuye East Sub County, gazetted area included.
16. Several forts namely; *Olukova lwa Sitati*, *Olukova lwa Chetambe*, *Olukpva lwa Kakai* and *Olukova lwa Wangusi* were constructed by the locals and they remain critical and revered shrines to the people of Webuye East Sub County.
17. The affected residents of Webuye East Sub County<sup>4</sup> were never consulted by way of public participation (a fundamental pillar and requirement under the Constitution of Kenya, 2010) in arriving at the decision to issue the Gazette Notice. Administrative processes and decisions that affect citizens welfare and wellbeing must strictly adhere to set constitutional and statutory provisions including the right to be heard by citizens who would be affected adversely or otherwise by such a decision.
18. The gazetted area is home to thousands of people (at an average of 2 to 3 families per acre) with historical attachment including their ancestral final resting places. The gazettelement of the forest has raised enormous anxiety and restlessness among the residents of the affected area leading to uncalled demonstrations and other resistance mechanisms and activities which are likely to escalate due to simmering tensions, delicate circumstances that as leaders in the County we wish not to embrace or encourage.

19. The effect of the gazette notice contravenes the people's rights as enshrined in Article (31)(b), on the privacy of property as well as the right not to have their possession seized. In addition, Article (1)(b) & (c) on basic education, nutrition, shelter and health of children. Article 61 on the security of land rights and Article 64 on registered ownership of private land will be grossly violated if the intended directive is implemented.

20. The petitioners have had this matter addressed by relevant authorities and used all available avenues to have the matter considered, all of which have resulted into unsatisfactory responses. None of the issues raised in this Petition were pending before any court of law, constitutional or any other legal body.

**The Petitioners prayed that:**

21. The Senate intervenes to have this gazette notice withdrawn and the status quo maintained to alleviate growing anxiety, forestall potential violent conflicts and avert any tragic risks such as loss of lives and property and related consequences.

## LEGAL BASIS FOR PETITIONS

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

## CHAPTER 2

### CONSIDERATION OF THE PETITION

#### Approach taken by the Committee

26. In considering the Petition, the Committee observed that it would be important to verify the allegations raised in the Petition and resolved to conduct an inquiry on the issues raised.
27. In this regard, the Committee met with the Petitioners and stakeholders on several occasions.
28. Thereafter, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning, the Cabinet Secretary, Ministry of Environment and Forestry, and the Chairperson of the National Land Commission who virtually appeared before the Committee.
29. The Committee then conducted a site visit to Chetambe Hill in Bungoma County on 16<sup>th</sup> March 2021.

#### Petitioners Submissions

26. Vide a letter, REF: SEN/DCS/LENR/2/2021/(57), dated 17<sup>th</sup> September, 2021, the Committee invited the Petitioners to virtually appear before the Committee on Wednesday, 29<sup>th</sup> September, 2021 who appeared and defended their Petition.

#### Responses by the Cabinet Secretary, Ministry of Lands and Physical Planning

27. Vide a letter, REF: SEN/DCS/LENR/2/2021/(64), dated 21<sup>st</sup> October, 2022, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning to virtually appear before the Committee on Thursday, 28<sup>th</sup> October, 2021 who thereafter appeared and responded as follows -
28. The Chetambe Hill Forest was gazetted vide Legal Notice No.106 dated June 25, 2021. The forest was gazetted in order to conserve the fragile ecosystem, which was prone to mudslides and other natural disasters. The delineated area covered part of

Ndivisi Mihuu registration section. The forest is delineated in Boundary Plan No.175/512 covering an area of approximately 406.22 hectares.

29. The process of delineating the forest for conservation started in 1973 long after the residents had acquired their title deeds.

30. The dispute regarding the gazettement of the forest is centered on the alleged lack of public participation, non-compensation and taking over the area by Forest Department. The locals did not vacate the land and instead continued transacting mostly subdividing the land and putting up residential homes on the relatively gentle slopes. Ndivisi Mihuu registration section covers the bulk of the gazette area as per the boundary plan No. 175/512.

31. Based on the boundary plan No. 175/512 as overlaid against the RIMs for Muchi and Mihuu registration sections, the number of parcels of land within the forest are as follows:

- |      |                                    |                                 |
|------|------------------------------------|---------------------------------|
| i.   | Ndivisi Mihuu registration section | - 182 with several subdivisions |
| ii.  | Ndivisi Muchi registration section | - 107                           |
| iii. | Webuye Municipality block 1        | - 24                            |
| iv.  | Webuye Municipality block 4        | - 29                            |

26. The Cabinet Secretary for Environment and Forestry has since directed that a taskforce be established under the Chairmanship of the County Commissioner, Bungoma to look into the matter and report the findings.

27. The taskforce has been constituted and comprises representatives of the Ministry of Environment and Forestry, Ministry of Lands and Physical Planning, National Land Commission, National Environment Management Authority and local leaders among others. We shall update the Committee on the findings of the taskforce once the report is finalized.

### Responses by the National Land Commission

28. Vide a letter, REF: SEN/DCS/LENR/2/2021/(64), dated 21<sup>st</sup> October, 202, the Committee invited the Chairperson, National Land Commission to appear virtually before the Committee on Thursday, 28<sup>th</sup> October, 2021 who thereafter appeared and responded as follows;
29. The Chetambe Hills Forest was formally gazetted vide Legal Notice No.106 dated 25th June, 2021 issued by the Cabinet Secretary, Ministry of Environment and Forestry. The notice targeted an area approximately 406ha covered by Boundary Plan No. 175/512.
30. The area residents, constituting of approximately 6000 families who occupy the said land objected to the gazettelement claiming that no acquisition was done and they were not compensated for their land.
31. Following complaints, a consultative meeting was held on Thursday 21st October, 2021 chaired by the County Commissioner, Bungoma, with the mandate of verifying the documents involved in the acquisition process and undertaking actual ground verification. Thereafter, a public barasa was held in Chetambe and it was agreed that the local community should appoint members who would join the other stakeholders in the verification exercise.
32. The information availed by NLC's County office indicates that the representatives from the community declined to proceed with the exercise demanding that a task force be formed and gazetted before the commencement of the exercise. They demanded the following to be addressed:
- i. Gazettelement of the verification process;
  - ii. Gazettelement of members of the task force;
  - iii. Complete list of beneficiaries who were compensated either fully or partially;
- and

- iv. Original maps i.e. old Preliminary Index Diagrams/Registry Index Maps and the current boundary plan.
33. Demands by the community for the formation and gazettelement of the task force brought about stalemate which led to a premature adjournment of the exercise.
34. The National Land Commission remains in consultation with the Ministry of Environment & Forestry and Kenya Forest Service with a view to resolving the matter.

**Responses by the Cabinet Secretary, Ministry of Environment and Forestry**

35. The Cabinet Secretary who appeared before the Committee on 1<sup>st</sup> December, 2021 informed the meeting that following a consultative meeting involving the Tachoni Community representatives, Cabinet Secretary Eugene Wamalwa, Kenya Forest Services and himself, he issued the following directives vide a letter Ref: ME&F/CS/336/2021 dated 30<sup>th</sup> September 2021 upon consideration of the issues raised by the community;
- i. That a joint ground and documents verification exercise be conducted to verify the validity of the allegations raised by the petitioners over the disputed gazettelement of Chetambe Hill Forest,
  - ii. That a report be submitted within thirty (30) days upon conclusion of the verification exercise, and
  - iii. That the implementation and enforcement of the gazettelement and any other precipitate action based on the disputed gazettelement be suspended pending the outcome of the verification exercise.
36. Following the directives, the Cabinet Secretary informed the meeting that an inter-ministerial team that included representatives from the Tachoni Community had been formed to undertake the verification. They visited the disputed area and conducted a series of meetings with the communities.

37. In reference to a letter, Ref: No. CONF/EX-S&B/1/KFS/VOL.VI/50, dated 15<sup>th</sup> November, 2021 from Kenya Forest Services to the Ministry of Environment and Forestry, the Cabinet Secretary informed the meeting that the verification process had stalled at the onset following the withdrawal of the Community as they needed him to constitute and gazette a taskforce for the same.
38. The Committee notes that following several engagements with the Ministry of Environment and Forestry on the matter that the Cabinet Secretary revoked the earlier Gazette Notice.

**Site Visit to Chetambe Hill Forest in Bungoma County**

35. The Committee undertook a Site Visit to Chetambe (Webuye) Hill Forest in Bungoma County on 16<sup>th</sup> March, 2022.
36. The Committee began the visit by paying a courtesy call to the office of the Deputy County Commissioner (DCC) where a short briefing session was held. During the session, the DCC informed the meeting that the matter had lasted for a long duration, causing suffering to the community as they had lived in fear of a possible eviction.
37. The Committee, accompanied by other stakeholders, proceeded to Chetambe Webuye Hill to meet with the petitioners to verify the matters contained in the petition and those expressed in submissions during the numerous virtual meetings held. Some of the key issues raised during the meeting included partial payments where the petitioners informed the Committee that some members of the community whose land was taken away were yet to be fully compensated. They also informed the Committee that issuance of title deeds had remained a challenge in the area and sought the Committee's intervention in expediting the process.
38. The Ministry of Environment and Forestry informed the meeting that the issues raised in the Petition had been resolved following its move to degazette the Legal Notice No 106 that had gazetted Chetambe Hill as forest land.



39. Noting the degazettement of the Legal Notice by the Ministry of Environment and Forestry, the Committee resolved that the land be resurveyed by the Ministry of Lands and Physical Planning, be subdivided accordingly and title deeds issued to the respective owners. The Committee also urged the Ministry of Lands and Physical Planning in conjunction with the National Land Commission to expedite the titling and the compensation processes.

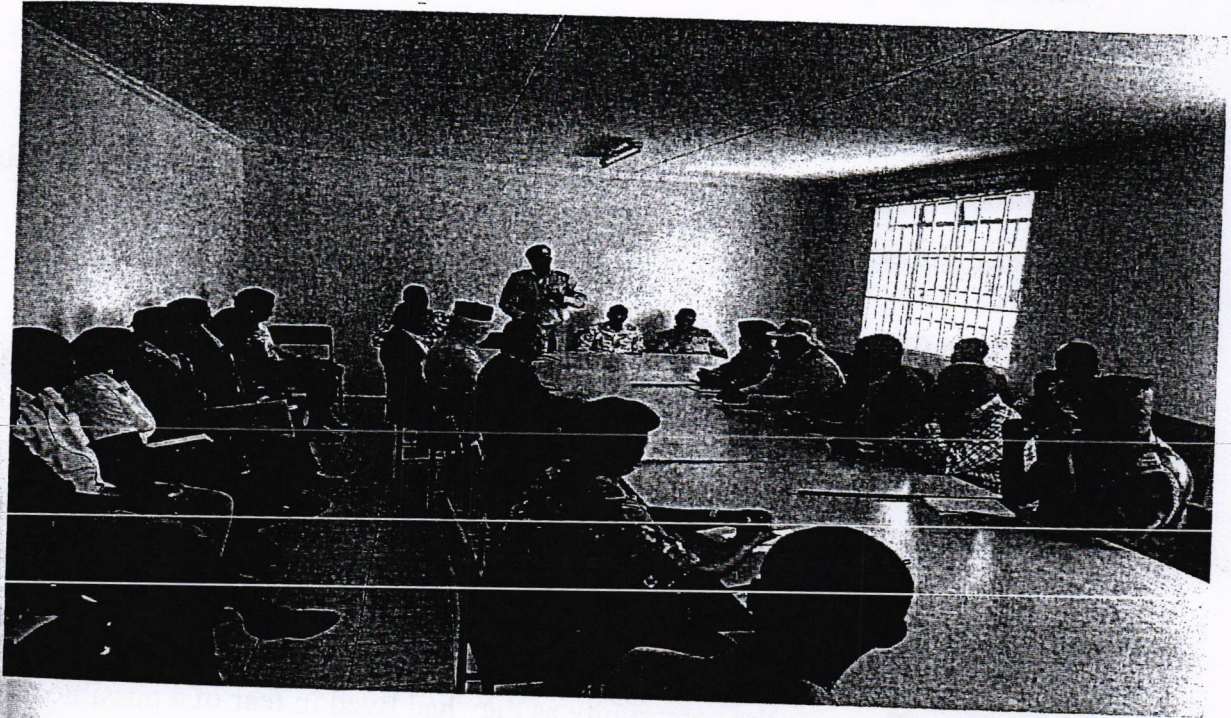
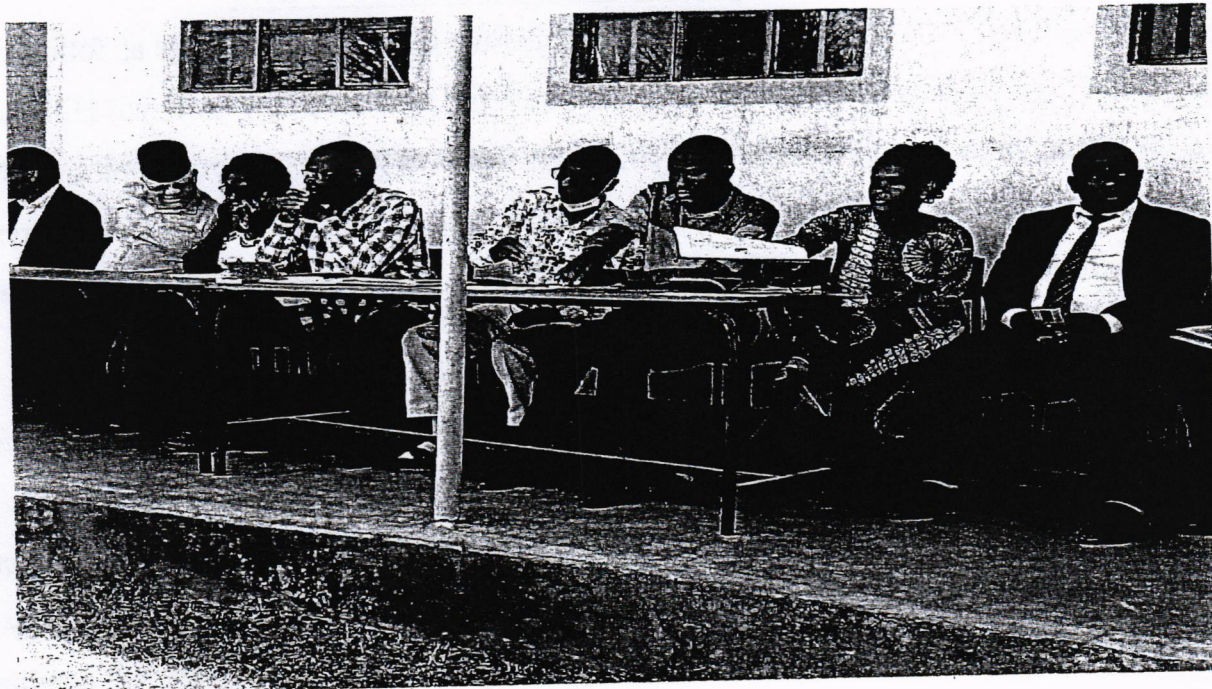
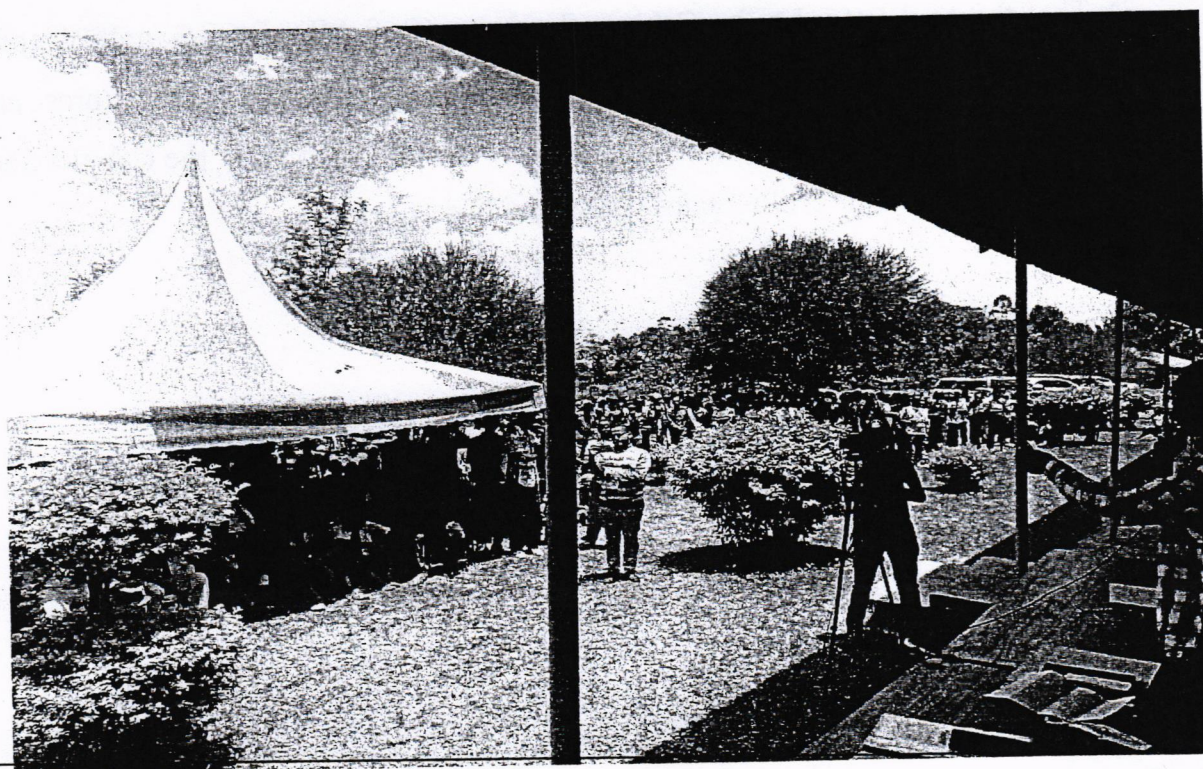


Figure 1: A Briefing Session at the Deputy County Commissioner's Office in Webuye



**Figure 2: Committee Members and Stakeholders during the Site Visit at Chetambe**



**Figure 3: Members of the Community during the Site Visit Meeting by the Committee**

## CHAPTER 5

### COMMITTEE OBSERVATIONS

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

- 1) The Committee notes that during its Site Visit to Chetambe (Webuye) Hill Forest in Bungoma County on 16<sup>th</sup> March, 2022, the Ministry of Environment and Forestry advised the Committee that the issues raised in the Petition had been resolved following its move to degazette Legal Notice No. 106 that had *gazetted* Chetambe Hill as a Forest.
- 2) That in their response to the Petition, the Cabinet Secretary, Ministry of Environment and Forestry furnished the Committee with a letter (Ref: ME&F/CS/336/2021 and dated 30<sup>th</sup> September 2021) by the Cabinet Secretary directing that the implementation and enforcement of the gazettelement and any other precipitate action based on the disputed gazettelement be suspended pending the outcome of a verification exercise. The Ministry did not furnish the Committee with evidence of the degazettelement of the Forest.
- 3) That the said letter by the Cabinet Secretary (Ref: ME&F/CS/336/2021 and dated 30<sup>th</sup> September, 2021) does not amount to a degazettelement of the Forest and that without the appropriate revocation of Legal Notice No. 106 by the Cabinet Secretary then the Chetambe Hill remains a gazetted Forest.

## CHAPTER 6

### COMMITTEE RECOMMENDATIONS

The Committee recommends that, the Cabinet Secretary, Ministry of Environment and Forestry, publishes a *Gazette* Notice revoking Legal Notice No. 106 that *gazetted* Chetambe Hill as a Forest within 21 days of the tabling of this report in the Senate.