

PARLIAMENT OF KENYA LIBRARY

REPUBLIC OF KENYA



cos
recommended for approval for tabling.

El
26/07/18

PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

SECOND SESSION, 2018

Rt. Hon Speaker
You may approve for tabling.
26/07/18

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

REPORT OF THE PETITION FOR SENATE TO VARY THE BOUNDARIES OF NYANGWETA FOREST TO AVAIL LAND FOR THE ESTABLISHMENT OF A SUGAR COMPLEX IN SOUTH MUGIRANGO SUB COUNTY, KISII COUNTY

PAPERS LAID	
DATE	31/07/2018
TABLED BY	Chairperson
COMMITTEE	Land & Environment
CLERK AT THE TABLE	Gertrude

Approved
26/7

Clerk's Chambers,
Parliament Buildings,
P. O. Box 41842-00100,
NAIROBI.

JULY, 2018

THE SENATE RECEIVED
26 JUL 2018
DEPUTY SPEAKER'S OFFICE

TABLE OF CONTENTS

Contents

TABLE OF CONTENTS.....	1
List of Abbreviations/ Synonyms	2
PREFACE	3
Committee Membership	3
The Petition.....	4
ACKNOWLEDGEMENT	5
CHAPTER I	7
INTRODUCTION	7
1.0 The right to petition	7
1.1 Background to the Petition.....	7
The petitioner raised the following issues in his petition.....	7
CHAPTER 2.....	10
APPROACH OF THE COMMITTEE	10
2.1 Committee Proceedings	10
CHAPTER 3.....	16
SUBMISSIONS TO THE COMMITTEE	16
3.1 Submissions by the Petitioner- Governor James O. Ongwae.....	16
3.2 Submissions by the Cabinet Secretary Ministry of Environment and Forestry	27
3.3 Submissions by National Land Commission.....	32
3.4 Submissions by Kanoria Group	32
3.5 Submissions by the Kenya Sugar Directorate	33
CHAPTER 4.....	35
COMMITTEE OBSERVATIONS	35
CHAPTER 5.....	39
COMMITTEE DETERMINATION	39
Committee determination:	39
CHAPTER 6.....	40
COMMITTEE RECOMMENDATIONS	40
APPENDICES.....	41

List of Abbreviations/ Synonyms

1. AFA – Agricultural and Food Authority
2. CEC – County Executive Committee
3. CS - Cabinet Secretary
4. EIA – Environmental Impact Assessment
5. ESIA - Environmental and Social Impact Assessment
6. FCC – Forest Conservation Committee
7. Ha - Hectares
8. KRESP – Kisii Renewable Energy and Sugar Company Limited
9. LH – Lower Highland
10. LM – Lower Midland
11. MOU – Memorandum of Understanding
12. NEMA - National Environmental Management Authority
13. UM – Upper Midland

PREFACE

Mr. Speaker sir,

The Standing Committee on Lands, Environment and Natural Resources is established pursuant to Standing Order No. 212(3). As set out in the Second Schedule, the Committee's assigned subject matter is to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

Committee Membership

- | | |
|------------------------------------|--------------------|
| 1. Sen. Mwangi Paul Githiomi, M.P. | - Chairperson |
| 2. Sen. Prengei Victor, M.P. | - Vice Chairperson |
| 3. Sen. George Khaniri, MGH, M.P. | - Member |
| 4. Sen. Godana Hargura, M.P. | - Member |
| 5. Sen. Mwaruma Johnes, M.P. | - Member |
| 6. Sen. Sylvia Kasanga, M.P. | - Member |
| 7. Sen. Ndwiga Peter Njeru, M.P. | - Member |
| 8. Sen. Halake Abshiro, M.P. | - Member |
| 9. Sen. Boy Issa Juma, M.P. | - Member |

I am pleased to present and table the Committee's report on the petition by Hon. James E.O Ongwae EBS, CBS, OGW (Governor, Kisii County) which was tabled on behalf of the people of Kisii County to the Senate. This report contains the determined prayer of the petitioner and the recommendations.

The petitioner submitted the prayer in line with Articles 37 and 119 of the Constitution and guided by the provisions of the *Petition to Parliament (Procedure) Act* and the *Senate Standing Orders*.

The prayer was based on the need for variation of the boundaries of Nyangweta Forest to avail land for the construction of a sugar factory, ethanol production plant and an electricity power generation plant.

The Petition

Pursuant to the Senate Standing Orders No. 220 (1) and 224(b) the Speaker of the Senate reported to the House a petition presented through the Clerk of Senate by the Governor of Kisii County, Hon. James O. Ongwae, for the variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii pursuant to the section 34 of the Forest Conservation and Management Act 2016. Pursuant to standing order 226(1), the petition stood committed to the Land, Environment and Natural Resources Committee.

The Committee undertook to investigate and determine the prayer of the petitioner pursuant to Senate Standing Order No. 226. It also received submissions from various key stakeholders.

ACKNOWLEDGEMENT

The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues for their thoughtful and considerate contributions to the matter. Further the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating this activity. We also wish to recognize the commitment and dedication of the Committee Secretariat that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

It is now my pleasant duty to table the report of the Senate Standing Committee on Land, Environment and Natural resources in relation to the petition regarding the variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii.

Signed: _____

SEN. MWANGI PAUL GITHIOMI, M.P. - CHAIRPERSON

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

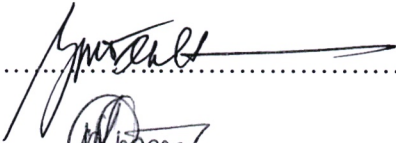
Date: _____

5-07-2018

**ADOPTION OF THE REPORT OF THE SENATE COMMITTEE ON
LAND, ENVIRONMENT AND NATURAL RESOURCES
PETITION REPORT FOR SENATE TO VARY THE BOUNDARIES OF
NYANGWETA FOREST TO AVAIL LAND FOR THE ESTABLISHMENT OF A
SUGAR COMPLEX IN SOUTH MUGIRANGO SUB COUNTY, KISII COUNTY**

We, the undersigned Members of the Land Environment and Natural Resources Committee of the Senate, do hereby append our signatures to adopt the Report-

1. Sen. Mwangi Paul Githiomi, M.P.


.....

2. Sen. Prengei Victor, M.P


.....

3. Sen. Godana Hargura, M.P.

.....

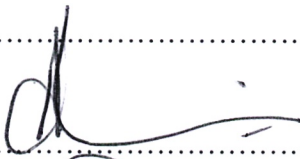
4. Sen. George Khaniri, MGH, M.P.

.....


5. Sen. Ndwiga Peter Njeru, EGH, MP.

.....

6. Sen. Halake Abshiro, M.P.


.....

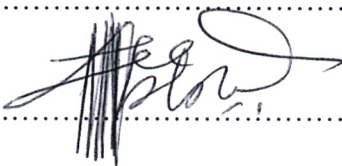
7. Sen. Boy Issa Juma, M.P.


.....

8. Sen. (Arch.) Sylvia Kasanga, M.P.

.....

9. Sen. Mwaruma Johnes, M.P.


.....

CHAPTER I

INTRODUCTION

1.0 The right to petition

The right of Kenyan citizens to petition public authorities and Parliament is a right conferred by the Constitution under Articles 37 and Article 119 of the Constitution and by the *petition to Parliament (Procedure) Act* as well as the *Standing Orders* of Senate. The right to petition is an essential citizen participatory tool, as it provides an avenue for the Members of Parliament and citizens to interact with the issues that concern citizens, and also demonstrates that Parliament is prepared to directly intervene on the issues of concern in order to promote and protect the rights of the citizens.

1.1 Background to the Petition

Pursuant to Senate standing Order 226 (1), the petition presented by Governor James E.O Ongwae on behalf of the people of Kisii County, was committed to the Standing Committee on Land, Environment and Natural resources for consideration and determination.

The petitioner raised the following issues in his petition:

1. In 2013, when the Kisii county government was conducting public participation forums across the county to identify priority projects, the residents indicated their priority 1-3 projects was the establishment of a sugar factory. This prioritization is the underlying drive of the petition before the Senate;
2. The county government identified the need to establish sugar factory as the priority project at Nyangweta Forest. The forest is registered as title no. South Mugirango/Nyataaro/2358, an absolute hold measuring approximately 63.2 Ha under the proprietorship of Gusii County Council which was confirmed by an official search at the lands registry. The records available in Kisii County registry showed that the initial size of the forest was 218 acres. The now defunct Gucha County Council allocated 60 acres of the forest land to Kisii University leaving a balance of 158 acres;
3. The Kisii County Government is petitioning the Senate to vary the boundaries of the remaining 158 acres to allow the excision of 120 acres for the establishment of the sugar factory complex;
4. The Kisii county government has held wide and inclusive public participation and started the process with the Kenya Forest Service through the Forest Conservation Committee (FCC) Nyanza Conservancy.

5. An environmental impact assessment was commissioned and National Environmental Management Authority (NEMA) subsequently issued a licence for the project;
6. The County Government through the County Assembly approved the gazettelement of 13 forest areas to replace and compensate the planned variation of the boundaries of Nyangweta forest. That the County Government had agreed with the Kenya Forest Service to compensate the land proposed to be excised from the public forest by designating more parcels of land in the County as forests under the management of the Kenya Forest Service. These 13 forest areas were placed under the custody of the Kenya Forest Service in fulfilment of the terms of this agreement;
7. In line with the procedure for variation of the boundaries of a public forest as provided under section 34 of the Forest Conservation and Management Act, the Governor of Kisii County, on behalf of the County residents, petitioned the Senate to approve the variation of the boundary of Nyangweta forest;
8. The alienated portion of Nyangweta Forest would be utilized for the construction of a sugar production plant, an ethanol production plant and an electricity power generation plant. The petitioner added that the resolution had been adopted by the Kisii County Assembly and approved by the National Environmental Management Authority and the Kenya Forest Service;
9. That the County Government had identified an investor to implement the intended project and entered a memorandum of understanding with Kanoria group from India which will set up a sugar complex with capacity of crushing 2,500 tonnes of cane per day with potential to expand to 5,000 tonnes of cane per day. The sugar complex will have a sugar production plant, an ethanol production plant and an electric power production plant;
10. The Kanoria group of companies will operate under a company registered in Kenya, the Kisii Renewable Energy and Sugar Company Limited (KRESP). The shareholding for KRESP is Kanoria at 99.9% and Joseph Gichuki at 0.1%;
11. The expected benefits of the project include-
 - i). Sugarcane is a major cash crop grown by the farmers in South Mugirango. The planned sugar factory will increase growing of the crop due to the expected ready market for the produce and increased net earnings due to reduced transport costs;
 - ii). It is expected that the complex will create about 3,000 direct employment opportunities which could benefit the locals in addition to about 600-700 skilled employment opportunities;

- iii). The investor's committed to support corporate social responsibility (CSR) projects such as agricultural extension services, support to schools, sports grounds development, sponsorship to sports activities, health centres and opening up of roads;
 - iv). Kisii County Government will benefit directly from the resulting CESS which will be used to improve access roads; and
 - v). The investment is expected to significantly transform the economy of the county and greatly change the livelihoods of not only the sugarcane farmers but also those of the residents of the county and the country at large. Expected livelihood changes include: better prices for cane delivered, creation of employment opportunities, market for farm produce and other products, improvement of infrastructure and revenue for the County Government in terms of rent and licence fees.
12. That the petitioner prayed to the Senate to approve the variation of the boundaries of the Forest and alienation of land for the construction of sugar production, ethanol production and an electricity power generation plant in light of the numerous benefits of the project.

CHAPTER 2

APPROACH OF THE COMMITTEE

The Members of the Committee sifted through the issues raised by the petitioner and analyzed the issues to be determined from the prayer of the petitioner and embarked on a process to identify the necessary action to take on the prayer submitted by the petitioner. The Committee invited the Cabinet Secretary, Ministry of Environment and Forestry to appear before the Committee and give his recommendation in accordance with Section 34(4) of the Forest Conservation and Management Act.

The Committee also invited the petitioner, Governor James Ongwae, to provide further information to help determine the prayer in the petition.

In addition the Committee had meetings with the Kenya Sugar Directorate, the National Land Commission, the Forest Conservancy Committee and the Kanoria investment Group. The Committee further conducted a site visit to Nyangweta Forest in Kisii County.

The sole objective of the Committee was to obtain as much information and facts on the subject matter so as to reply to the prayer of the petitioner conclusively and make recommendations on all issues pertaining to the petition.

2.1 Committee Proceedings

i. Deliberative sessions

In the exercise of its mandate the Committee held deliberative sessions with the following:

- a) The petitioner (H.E Governor James E.O Ongwae) Kisii County.
- b) The C.S Environment and Forestry.
- c) The National Environmental Management Authority.
- d) The Kenya Sugar Directorate.
- e) The Kanoria group (Investor).
- f) The National Land Commission.
- g) The Kenya Forest Service.
- h) The Forest Conservancy Committee.

ii. Documents review

The Committee reviewed documents presented to it by the petitioner and they are annexed in this report (Annex II). Among the annexes presented were;

- a) Petitioner's presentation,
- b) Environmental Impact Assessment reports,
- c) NEMA license and
- d) Project proposal and feasibility study report by the Kenya Sugar Directorate.

iii. Site Visit to Kisii County, Nyangweta Forest

The Committee began its visit by paying a courtesy call to the Office of the Governor, Kisii County where the Committee was able to interact with the entire team of County Executive Committee Members. The Committee Chairperson informed the meeting with the CEC's that the Committee was persecuting the matter and had met all the relevant persons.



Figure 1: The Committee was able to go meet with the County Assembly at the County Assembly Hall on 6.4.2018.

The Committee then proceeded to the County Assembly where a meeting was held in the presence of the Speaker of the County Assembly and all stakeholders were invited as well as members of the general public where the Committee was able to collect views of both the Members of the County Assembly and the Public who were present.



Figure 3: The Committee was able to go round the forest and ascertain the status of deforestation, the type trees planted and its boundaries with respect to bordering Nyangweta River and Nyansembe stream on 6.4.2018.

Thereafter, the Committee went to the site in Nyangweta Forest and was able to see after going round the entire forest land that indeed the Nyangweta forest is predominantly a plantation forest comprising of eucalyptus species, cypress, Grevillea, pine and shrubs. The unplanted area was approximately 50 acres of the 120 acres that is proposed for the sugar complex. The forest did not have any indigenous trees nor did it have any known endangered species. The Committee also noted that the Forest is not a catchment area and further that it is not a source of any river. However the Committee was able to establish that river Nyangweta which originated from some distance away forms the boundaries to one side of the forest while Nyansembe stream originates some other distance away to the southern side and passes through one side beyond the forest.



Figure 4: The Committee was able to conduct public Hearings and stakeholder involvement at Nyangweta Forest, Kisii County on 6.4.2018.

The Committee after going round the forest was able to conduct Public hearings next to the Forest and adjacent to Nyangweta River and collect views from the residents on the proposed alienation of a portion of Nyangweta Forest to utilize it for the construction of a sugar production plant, an ethanol production plant and an electricity power generation plant. The Committee noted the high levels of enthusiasm the locals had in the project and all gave very positive views. The Committee observed that the residents were in dire need of employment and industrialization in the area. It was also evident that they lacked a place to take their sugar cane due to distance factors. Residents and local leaders alike decried the societal damage arising due to the lack of a sugar factory, stating that local sugarcane did not have a market and was therefore being used to produce jaggery which in turn contributes to the prevalent production and consumption of illicit liquor.

The Committee further noted that Kisii County has a high tree cover with most homesteads containing a higher tree density than that found in Nyangweta forest. The Committee lauded the Kisii community for taking the initiative to plant trees within their own properties.

CHAPTER 3

SUBMISSIONS TO THE COMMITTEE

This section contains the summaries of the submissions made to the Committee during the sessions and other documents submitted.

3.1 Submissions by the Petitioner- Governor James O. Ongwae

The petitioner submitted as follows-

1. Nyangweta Forest was registered on 17th January 1970 as title No. South Mugirango/Nyataaro/1209. The name of the registered owner was Gusii County Council;
2. The Cabinet Secretary, Ministry of Environment and Natural Resources gazetted 18.53 hectares of Nyangweta forest on 27th July 2017 under legal notice no 119 as a result of engagement between the Ministry and the County Government. In addition other 13 forest areas were gazetted to compensate for the proposed excise of part of the Nyangweta Forest and further add to the 10% tree cover target;
3. The part of Nyangweta forest that Kisii County government is petitioning the Senate measures about 120 acres (48 hectares). This area is not gazetted and is under the custody of the Kisii County Government;
4. Nyangweta forest is predominantly a plantation forest comprising of eucalyptus species covering approximately 50%, cypress 30%, Grevillea and pine 15%, shrubs 5% of the forested area. The unplanted area is approximately 50 acres of the 120 acres that is proposed for the sugar complex. Given the nature of Nyangweta forest (plantation) it is not rich in biodiversity. The forest has no indigenous trees. This forest does not contain any known endangered species;
5. No river originates from Nyangweta forest. However, river Nyangweta which originates 30 kilometers away to the Eastern side (upstream) passes through the forest thus forming the boundaries to one side of the forest while Nyansembe stream originates 5 Kilometers away to the southern side and passes through one side, beyond the forest;

6. The Kisii County Government had engaged various stakeholders and members of the public and had resolved to alienate a portion of Nyangweta Forest to utilize it for the construction of a sugar production plant, an ethanol production plant and an electricity power generation plant. The resolution had been adopted by the Kisii County Assembly and approved by the National Environmental Management Authority and the Kenya Forest Service;
7. That the County Government had obtained all relevant approvals from the various government agencies and that they were given a clean bill of health to proceed with the project due to benefits that will accrue from it;
8. That the population in Kisii was increasing rapidly and land was very scarce in the area the project is to be undertaken forcing it resort to the request to petition Senate to approve the variation of the boundaries of Nyangweta forest to establish the sugar complex;
9. The Kisii county government had put in place an elaborate plan to increase the forest cover in the county through partnerships with local people and increased budgetary allocations;
10. That due diligence will be done in the execution of the memorandum of understanding with the investor such that subsequent contracts will be done when the necessary Government approvals have been obtained. In addition, the petitioner assured the Committee that the contract the County Government will execute with the investor will have very clear and stringent measures to ensure that the people of Kisii County will not be robbed off their valuable land;
11. The Kisii County Government informed the Committee they had consulted the National Land Commission at the County Level;
12. That the County Government had identified an investor for the project and executed a memorandum of understanding for the intended project implementation;
13. There will be an elaborate effluent treatment plant whose design will be an integral part of the whole complex consisting of sugar, renewable power generation and ethanol. Effort will be made to reduce effluent quantities, maximum recycling possible and treat the rest to bring it within the norms set by NEMA;

14. Sewage from the various residential buildings will be channeled to a properly designed and constructed septic whose contents will later be exhausted and transported to designated disposal sites;
15. There will be regular monitoring of the effluent every three months to ensure critical parameters such as biological, oxygen demand and others are kept within the acceptable levels. In addition, monitoring of effluent disposal sites will be carried and reports forwarded to relevant agencies in accordance to the guidelines;
16. The Committee was also informed that the County allocated monies for tree planting 2 million trees for FY 2014/15, 5 million trees for FY 2015/16 and a further 5 million trees for FY 2017/18 and has promised to continue allocating funds and promoting tree planting to replace the potential tree loss from the variation.
17. The Committee was also informed that the County had hired two guards to patrol Nyangweta Forest and that they have agreed to collaborate with KFS to protect the remaining forests from encroachment;
18. The Committee following its clarifications from the County Government was informed that the county plans to lease the land for 99 years once excised, to the investor through their local subsidiary (KRESP); and
19. The final prayer was that the Senate approves the variation of the boundaries of the Forest and alienation of land for the construction of sugar production, ethanol production and an electricity power generation plants to give Kisii County the opportunity to have the first major factory developed to respond to local socio-economic needs.

Following the request by the Committee that the CS Environment and Forestry does consultations on the issues that the CS Environment and Forestry had raised concerning the variation of the Forest, the following is the response of the County Government of Kisii, addressed to the Chairperson and copied to the Ministry of Environment and Forestry. *(Copy annexed)*

The County Government stated as follows;

That, in 2013, when the Kisii County Government was conducting public participation forums across the County to identify priority projects, the residents of South Mugarango Sub County indicated their priority 1-3 Projects was establishment of a Sugar Factory. This prioritization by the residents is the

underlying drive of the petition which the County Government submitted to the Senate to vary the boundaries of Nyangweta Forest to avail land for the establishment of the Sugar Complex.

The County Government, at that time commenced engagements with the Kenya Forest Service through the Forest Conservation Committee (FCC), Nyanza Conservancy. The engagement ended with recommendation that:

- a) The County Government commissions an Environmental Impact Assessment Study and follows the procedures of National Environmental Management Authority (NEMA) to obtain Environmental Impact Assessment License for the Project. The recommendation was implemented and subsequently NEMA issued a license for the Sugar Project to the County Government.
- b) Considering that there were no gazetted forests which were under the Kenya Forest Service in Kisii County, the County Government identified areas that would be gazetted in lieu of the planned variation of boundaries of Nyangweta Forest. The Kisii County Assembly approved an Advisory to gazette 13 forest areas and place them under the management of the Kenya Forest Service; a copy of the approval is attached as appendix XA.

The approvals obtained from the public/stakeholder forums, County Executive Committee and County Assembly, provided the basis for formal communication to the Kenya Forest Service and the Ministry of Environment and Natural Resources as follows:

- i). Through the letter Ref NO KSI/C/6/2/(525) of 10 November, 2016 to the FCC, Nyanza Conservancy, copy attached as appendix I.
- ii). Through the letter Ref NO KSI/C/6/2/(576) of 19 April 2017 to the Cabinet Secretary , Ministry of Environment and Natural Resources, copy attached as appendix II.
- iii). Through the letter Ref NO KSI/C/6/2/(576) of 8 May 2017 to the Principal Secretary, Natural Resources, copy attached as appendix III.

The letters are an indicator of the County Government's commitment to engage the relevant offices, follow procedures and law to pursue the critical path for realization of the priorities of the people of Kisii County.

The Chief Conservator of Forests, while acknowledging receipt of letter Ref NO KSI/C/LPP&UD/748 of 15 March 2017, which forwarded the Environmental Impact Assessment (EIA) license, advised that the Forest Conservation and Management Act 2016 which commenced on 31st March 2017 had changed the procedures of getting part of the forest to use for development. He made reference to section 34(i) of the Act, copy of Conservator's letter is attached as appendix IV.

In view of the Chief Conservator's advice, the County Government petitioned the Senate to vary the boundaries of Nyangweta Forest to avail land for the Sugar Complex through my letter Ref NO KSI/C/6/2(569) of 24 April 2017. However, the petition was not concluded during the 11th parliament and it lapsed.

The Senate Clerk, through his letter Ref SEN./PETITIONS/12/CORR./2017 (3) of 27 September 2017, advised the County Government to submit the petition afresh to the 12th Parliament. Thus, this is the petition that is before the Committee.

The background puts in perspective the process that has been followed and engagements that have taken place between the Kisii County Government and the Kenya Forest Service and other offices.

With this background, the County Government then proceeded to address the concerns which were raised by the Cabinet Secretary.

1. The Cabinet Secretary raised a concern on Jurisdiction matters in terms of section 34 of the Forest Conservation and Management Act 2016 regarding the part of Nyangweta Forest (120 acres) that the County Government petitioned the Senate.

County Governments Response

- a) Nyangweta Forest was registered on 17th January 1970 as title No. South Mugirango/Nyataaro/1209. The name of the registered owner is Gusii County Council of P. O Box 90 Kisii, a certified copy of the green card from the Kisii County Land Registry is attached as appendix V.
- b) The Kenya Forest Service through the Cabinet Secretary for Ministry of Environment and Natural resources gazetted 18.53 hectares of Nyangweta Forest on 27 July 2017, Legal Notice NO 119. This was as a result of the engagements between the Kisii County Government and Kenya Forest Service through the Forest Conservation Committee, Nyanza Conservancy. The legal notice is attached as appendix VI.

- c) The part of Nyangweta Forest that Kisii County Government petitioned the Senate measures 120 acres (48 hectares). This area is not gazetted and it is under the custody of the Kisii County Government.
2. The Cabinet Secretary also raised a concern about the size of land quoted in the Environmental Impact Assessment Study report, that is, 400 hectares against the request of the Kisii County Government of 120 acres required for the Sugar Complex at Nyangweta.

County Governments Response

It is clarified that the 400 hectares was erroneously quoted in the EIA Study Report. The correct size of the land required is 120 acres (48 hectares). To this end, the Kisii County Government has formally written to the National Environmental Management Authority informing them that the earlier figure was erroneously quoted in the EIA Study report, and that it should be corrected to ready 48 hectares, copy of the said letter to NEMA is attached as appendix VII.

3. The Cabinet Secretary in his letter stated that Kisii County is in the category of lowest cover counties with 2.6 % of forest cover against the constitutional requirement of 10%. He therefore sought to be provided with evidence on a budgeted action plan with timeline to indicate how the forest Cover will be increased to 10% by 2022.

County Governments Response

In order to raise the Forest Cover, the Kisii County Government is using multiple approaches and working with several partners including Kenya Forest Service, Civil Society Organizations, schools, farmers and International Organizations.

- a) The key tool of the County Government towards realization of the goal is the Strategic Action plan developed for the period 2017 to 2022. The strategic action Plan is attached as appendix XIII. Through the Action plan, the County Government will plant an additional
 - i. 333,250 seedlings in institutions,
 - ii. 96,000 seedlings on hilltop areas,
 - iii. 50,000 seedlings within urban centers and road sides

- iv. These actions will give a total of 479,250 trees planted for the period of five years.
- v. Considering that in forestry, 1 hectare holds 1,600 seedlings, the tree cover will increase by 299.53 hectares, of these, 14 hectares Ha have already been planted during the current rains; see report attached as appendix VIII.
- b) In the Financial year 2014/2015 total of 74,316 seedlings were distributed to different institutions and planted. See detailed report attached as appendix X.
- c) During the financial years 2015/2016, the County Government distributed seedlings and led their planting in several institutions across the County. Total of 55,434 seedlings were planted across the County. See detailed report attached as appendix IX.
- d) The County Government has increased allocation of funding for tree planting progressively from Ksh. 2million in 2014/2015 to KSh.10 million in 2017/2018 which will be maintained to ensure sustained and continued tree planting activities in the County.
- e) In addition, there are ongoing engagements with strong indication of a possible funding with the **African Development Bank** to support forestry development under the **Green Zone Development Support Project Phase 2(GZDSP ii)** within the next 6 years, 2018-2023. The project will contribute;
 - i. 700 hectares to agroforestry,
 - ii. 200 hectares under Bamboo planting,
 - iii. 50 hectares under fruit Orchard and
 - iv. 92.4 hectares under hill top afforestation.

The Project is expected to contribute significantly to increased forest cover, see proposal attached as appendix XI.

- f) In Kisii County, every household has planted a minimum of 30 trees as home shades, for commercial, home use and fruits. Based on the 2009 population census, there were at that time 245,028 households. When calculated, there was a minimum of 7,350,840 trees at the households level in 2009. At a projected growth rate of 2%, by 2018, there will be 293,353 households and thus the minimum numbers of trees at the household level will be 8,800,590.

- g) Other stakeholders that include private organizations, individual farmers, and institutions are projected to contribute 2% of the proposed tree planting.
 - h) In addition, seedling production in Kisii County stands at an average of 10 million per annum.
 - i) Of the 120 acres the Kisii County Government petitioned the Senate, 10% will be developed as green belt, thus observing international standards.
 - j) The construction work of the proposed sugar factory will only affect trees standing directly in the line of construction (infrastructural development). Trees in other areas will be left intact and indeed the investor indicated so to the Senate Committee on Land, Environment and Natural Resources when they appeared before it during the public hearing of the petition.
4. The Cabinet Secretary raised another issue regarding the proposed mitigation and compensatory measure of the 13 forest areas which aggregate to 400 hectares. He adds that only five areas have been gazetted and adds that the rest of the areas have not been gazetted because they are settled on. He further points out that the Governor was not able to provide the actual areas not settled.

County Governments Response

- a) The Petitioner stated that the 13 forest areas were offered to the Kenya Forest Service to gazette and manage them as a mitigation and compensatory measure in lieu of the planned variation of the boundaries of Nyangweta Forest. This offer was based on the engagements the Kisii County Government held with the KFS through FCC, Nyanza conservancy.
 - b) The Ministry of Environment and Natural Resources has since gazetted 6 (six) forests, gazette notices are attached as appendix VI.
 - c) Regarding the areas of each forest not settled, a recent assessment of the 13 forests showed approximately 40 hectares are encroached by development of educational institutions, churches, offices and individuals. The Kisii County Government and the KFS will work together to resurvey the areas and beacon them to prevent any further encroachments, the forest assessment report is attached as appendix XII.
5. The Cabinet Secretary pointed out that the gazettelement of the 13 forest areas does not result into net increase in forest cover since they are factored in the 2.6% of the forest cover of the

County. He added that furthermore, the ecosystems services value of the area need to be determined in comparison to the value of the scattered forests identified to be gazetted.

County Governments Response

In responding to this concern, the Petitioner pointed out that some measures addressing it are similar to those in response to concern Number 3 above. He however stated as follows:

- a) Nyangweta forest is predominantly a plantation forest comprising Eucalyptus species covering approximately 50%, Cypress 30%, Grevillea and pine 15%, Shrubs 5% of the forested area. The unplanted area is approximately 50 acres of the 120 Acres that is proposed for the sugar complex. Given the nature of Nyangweta forest (plantation forest), it's not rich in Bio-diversity and therefore can easily be replicated elsewhere. Indeed, it has no indigenous trees. The Kisii County Government has also been progressively increasing the forest cover as shown in this letter and attached annexure.
- b) The Kisii County Government identified 13 forest areas with low stock density of trees and earmarked them for planting/reforestation. The 13 areas are: - Ndonyo, Emborogo, Insaria, Keboye, Ritumbe, Sombogo, Taracha, Nyanturago, Kionganyo, Nyakeiri, Ngeri, part of Nyangweta forest and Mogonga. The total area encroached on these 13 sites is approximately 40 hectares. The encroached areas are currently not under tree cover and therefore do not constitute to the 2.6% forest cover in Kisii County. This gives us an opportunity to increase tree cover.
- c) Further to the above, Kisii County Government developed a strategic action plan to plant an additional 333,250 seedlings in institutions, 96,000 seedlings on hilltop areas, 50,000 seedlings within urban centers and road sides to increase tree cover for a period of five years which totals to 479,250 seedlings. Considering that in forestry, 1 hectare holds 1,600 seedlings, the tree cover will increase by 299.53 Ha. Of these, 14 hectares have already been planted during the current rains; see report attached as appendix XIII.
- d) The County Government has increased allocation of funding for tree planting progressively from Kshs. 2 million to KShs.10 million annually which will contribute to increased tree cover. In addition, there are ongoing engagements with the African Development Bank which will support forestry development under the **Green Zone Development Support Project Phase 2(GZDSP ii)** within the next 6 years. The project will contribute 700 Ha to

agroforestry, 200 Ha under Bamboo planting, 50 Ha under fruit Orchard and 92.4 Ha under hill top afforestation. This is going to contribute significantly to increased forest cover.

- e) Other stakeholders that include private organizations, individual farmers, groups and institutions are projected to contribute 2% of the proposed tree planting. In addition, Seedling production in Kisii County stands at an average of 10million seedlings per annum.
- f) The proposed area for sugar factory doesn't contain any known endangered, rare or threatened species at all.
- g) The construction work of the proposed sugar factory will only affect trees standing directly in the line of construction (infrastructural development). Trees in other areas, will be left intact and indeed the investor indicated so to the Senate Committee on Land, Environment and Natural resources when they appeared before it during the public hearings of the petition.
- h) The anticipated loss of Ecosystem goods and services in terms of regulatory, habitat, production and information functions associated with the conversion of the 120 Acres for Nyangweta forest to sugar factory is therefore insignificant.
- i) It is important to note that there is no river emanating from Nyangweta Forest. River Nyangweta which originates 30 kilometres away to the Eastern side (upstream) passes through the forest thus forming the boundaries to one side of the forest between free hold land and the Forest areas while Nyansembe Stream originates 5 kilometres away to the Southern side and passes through one side of the forest thus joining river Nyangweta to the western side, beyond the forest. See the Topo sheet attached as appendix XIIA.
- j) The forested part of Nyangweta Forest that falls within the 120 acres that the County Government proposes to develop a sugar complex is minuscule as compared to the areas the County Government offered to Kenya Forest Services to gazette and manage. It should be noted that six of the forest areas offered to KFS were gazetted by the Ministry of Environment and Natural Resources on July 27, 2017. The legal notices are attached as appendix VI. In addition, the County Government works with the Kenya Forest Service and other organizations as partners in planting tree across the account to increase the tree cover

- k) On 6 April 2018, the Senate Committee on Land, Environment and Natural resources hearing the petition to vary the boundaries of Nyangweta Forest to avail land for development of a sugar complex, walked around the forest and held a public participation meeting. While visiting the area, they witnessed an area measuring approximately 50 acres that remains unplanted and currently under use by local farmers who have planted maize, beans etc. The photographs taken on that day are attached as appendix XIIB.

6. Effluent Treatment Plant (ETP) for the Sugar Project at Nyangweta

The Cabinet Secretary further raised a concern on the location of the proposed factory sandwiched between Nyangweta river and Nyansembe stream, considering that the river and stream are perennial and contain high volume of water flows throughout the year, and that river Nyangweta would be the main source of water supply to the proposed Sugar Factory. It is anticipated that the factory effluent will be discharged to the said river after treatment. However, there is no study presented to ensure the treatment of the waste.

County Governments Response

- a) There will be an elaborate Effluent Treatment Plant (ETP) whose design will be integral part of the whole complex consisting of sugar, renewable power generation and ethanol. Efforts will be made to reduce effluent quantity, recycle maximum possible and treat the rest to bring it within the norms set by authorities.
- b) In the manufacturing of sugar, water is evaporated from the juice and vapor condensed. The condensate will be utilized for molasses conditioning, lime preparation, centrifugal washing, rotary vacuum filter, spray pond make up, equipment cleaning etc. Any condensate remaining will be termed as excess and treated as effluent before discharge.
- c) The ETP will consist of equalization, extended Aeration, primary/secondary clarification, sand filter, and treated water tank from where it will be recycled or sent for irrigation.
- d) Sewage from various residential buildings will be channeled to a properly designed and constructed septic, whose contents will later be exhausted and transported to designated disposal site (ETP).

- e) It is envisaged that detailed designs for full treatment of effluent will be made available together with other engineering building plans for the entire complex and it will be ensured that discharges conform to NEMA's waste management regulation standards.
- f) There will be regular monitoring of the effluent every three months to ensure critical parameters such as biological, oxygen demand and others are kept within acceptable levels. In addition, monitoring of ETP will be carried out and reports forwarded to relevant agencies in accordance to the guidelines.

3.2 Submissions by the Cabinet Secretary Ministry of Environment and Forestry

The Cabinet Secretary Ministry of Environment and Forestry Mr. Keriako Tobiko, CBS, Sc submitted as follows-

1. That, the forest is a public forest. In this respect, the Cabinet Secretary informed the Committee that it is important that the concern be resolved as a jurisdiction matter in terms of Section 34 of the Forests Act, 2016;
2. The Environmental Impact Assessment (EIA) Report and Licence for the proposed sugar factory was based on 400 (four hundred) hectares against the request by the County Government of 120 (one hundred and twenty) acres of Nyangweta Forest land for establishment of the Factory. The significant discrepancy raised serious concerns on accuracy and the validity of the EIA Report and the issued licence. It further raised doubts on the accuracy of the presentation of information and data on the same;
3. Kisii County is in the category of the lowest forest cover counties at a low of 2.6% against the requirement of 10%. There was no evidence provided to the Ministry on a concrete budgeted action plan with clear time lines to indicate how the county would increase forest cover to 10% by 2022. The Cabinet Secretary stated that the petition must provide information on how the county intends to increase forest cover;
4. That, the Kisii County Governor proposed mitigation and a compensatory measure to have 13 forest areas gazetted which aggregate to 400 hectares. It should be noted that, out of the 13 forests proposed for gazettelement only 5 forest areas had been gazetted as forest reserves. Kenya Forest Service surveyors confirmed that the rest of the forests had not been gazetted because they have been settled on;

5. The gazettement of these areas would not result into a net increase in forest cover since the 13 areas proposed to be gazetted were already factored in the 2.6% of forest cover of the County. Furthermore, the ecosystems services value of the 103 hectares of the whole of Nyangweta forest needs to be determined in comparison to the value of the scattered forests identified to be gazetted;
6. The Environmental Impact Assessment Report raised serious concerns about the location of the proposed factory sandwiched between Nyangweta River and Nyansembe stream which drain into Gucha River and eventually into Lake Victoria. It is also noted that the said rivers are perennial and contain high volume of water flows throughout the year. Furthermore, river Nyangweta would be the main source of water supply to the proposed sugar factory. It is also anticipated that the factory effluent will also be discharged into the said rivers after treatment. However, there is no comprehensive study presented to ensure the treatment of the waste. These rivers also serve the communities in Kisii and other communities as far as the Lake Victoria;
7. In light of the issues raised, the Cabinet Secretary informed the Committee that he was not in a position to recommend the approval of the petition in terms of Section 34(4) of the Forest Conservation and Management Act, 2016 unless the concerns were fully addressed.

The Committee then allowed for more consultations to be done between the Ministry of Environment and Forestry with the County Government of Kisii in view of resolving the aforementioned concerns by the Ministry of Environment and Forestry.

The Committee then met the Ministry of Environment and Forestry once again with a view to receive views after consultations were made with the County Government of Kisii.

The following were the deliberations;

In view of the response from the County Government of Kisii, the CS informed the Committee that;

1. Nyangweta Forest is a Public Forest and not a Community Forest. As per the Constitution Article 62 (2) (3) vests and details administration and use of such lands to the Governments while conserving and managing forests. The Forest Conservation and Management Act (FCM Act) No. 34 of 2016 also highlights on the various classifications of Forests.

On the Gazettement of Nyangweta forest, the Committee was informed that this was based on public consultation as required by law attested to by a letter from the county government referenced KSG /MWEENR/CEC/FS/VOL 11/03 (511) dated 19th September 2016 and subsequently an internal memo dated 31st January 2017 informing on recommendations of applications by FCC. *(Annexed to this report)*

Following recommendation for gazettelement of various forest blocks in Kisii, there was need to carry out preliminary surveys in collaboration with the County Government to enable gazettelement of the identified community/county Government Forest blocks to public/government Forests. While recommending the forest blocks for gazettelement, the County Government had identified part of Nyangweta block for development of a University and Sugar factory. Therefore during the forest preliminary survey, the KFS survey team was shown the area to be gazetted as Nyangweta forest leaving out the area earmarked for the university and sugar factory. The preliminary survey therefore resulted into an approved boundary plan No 175/438 resulting into the gazettelement of Nyangweta forest vide Legal Notice No. 119 of 20th July 2017.

Based on the above details, KFS has jurisdiction on Nyangweta Hill forest measuring 18.53 Ha which is adjacent to the area earmarked for development of the university and sugar factory measuring 74.07 Ha approximately as shown on Nyangweta Hill Forest and Environs Map.

As shown on the Nyangweta Hill forest and environs map, the area earmarked for development is public land under the custodianship of the County Government of Kisii and is not covered by the section 34(1) of the Forest Conservation and Management (FCM) Act No.34 of 2016, and therefore not under the jurisdiction of the Kenya Forest Service.

2. More Forest Cover is needed to attain the minimum accepted international standard of 10% and by the Kenyan Constitution given that in Kisii County the Forest cover is at 2.6%.

According to the CS, the action being taken is still not clear since they just obtained generalities. Among the documentation presented, they find no seriousness on the Part of the County Government regarding attainment of the 10% forest cover.

3. Under section 37 of the FCM Act 2016 is a provision for the exchange of Private Land with Forest Land. While gazetting Community Land into a Public Forest, it is a requirement that prior public consultation is carried out in accordance with the second schedule.

Therefore as per the letter Ref. KCG/MWEENR/CEC/FS/VOL.II/03 (511) dated 19th September, 2016, the following forests were to be gazetted as forest areas.

No.	Name	Registration Section	Area (Ha)
1.	Nyangweta	South Mugirango/Nyataro/1209	16
2.	Ndonyo	South Mugirango/Nyataro/120 2	15.4
3.	Insaria	South Kisii/Bomaranda/490	2.4
4.	Keboye Hills	South Kisii/Bomarenda	25
5.	Ritumbe	South Mugirango/Chache/107	10.4
6.	Sombogo	Kitutu Chache North	5
7.	Taracha Hill Kambu	Nyaribari Chache/Birongo/589	3.84
8.	Nyaturago Swampo	Nyaribari Chache & Bobasi,Nyaturago Scheme 711	360
9.	Emborogo Hill	Nyaribari Masaba/Bonyakani/1055	8.2
10.	Kionganyo	Nyaribari Chache South	4
11.	Nyakeiri	Kitutu Chache North	2.5
12.	Ngeri	Bonchari	3.0
13.	Mogonga Swamp	Basi/Masige/Bobasi 2094	6.0

A Survey team from Kenya Forest Service went to the field to do ground verification on the status of the above stated areas and do a ground Survey for the purposes of gazetteement.

After thorough verification, ground truthing and Surveying, the forests tabulated below were gazetted.

FOREST	LOCATION	AREA	LEGAL NOTICE NO.	BP/NO.175/437
INSARIA	KISII	4.570	118 of 27 th July 2017	175/437
NYANGWETA	KISII	18.530	119 of 27 th July 2017	175/438
NDONYO	KISII	12.590	120 of 27 th July 2017	175/439
NGERI HILL	KISII	16.210	121 of 27 th July 2017	175/440
RITUMBE	KISII	9.570	122 of 27 th July 2017	175/441
BASI/MASIGE	KISII	4.650	123 of 27 th July 2017	175/442
FOREST				
	TOTAL	66.120		

However, the following forests were not gazetted because of the reasons stated:

- i). **Keboye Hills:**
Before visiting the area, a proper search of data was done in the Kisii Survey office registry. The data was obtained and survey carried out after a thorough reconnaissance where it was discovered that the said hill was subdivided and fully settled as per the subdivisions.
- ii). **Sombogo**
A visit and Survey of the area showed that such a forest does not exist. The registry index Map of the area shows that the area belongs to individuals with parcel numbers and is fully settled.
- iii). **Taracha Hill**
This hill could not be gazetted because it is developed with a health centre, two churches and ward administration offices which have been occupied almost the whole area intended for gazettelements.
- iv). **Nyanturago Swamp**
There are several public utilities occupying the swamp such as Primary Schools and Churches
- v). **Emborogo Hill**
There exist the following utilities;
 - SDA church
 - Orphanage.
 - SDA primary school
- vi). **Nyakieri**
The whole area is developed and covered by a primary and secondary schools.
Therefore out of a total of 13 parcels of Land, only 6 have since been gazetted including 18.5Ha being Nyangweta Forest. Appendix 12 of the County Government's response to their report is irreconcilable. The Ministry of Environment and Forest therefore holds that there isn't enough compensation to warrant granting of the Petition.

4. **On Clarity of size of land area subject to EIA.**

The Committee heard from the Governor Kisii, who explained to the Senate that the area of interest for development of a sugar factory is 120 acres approximately and not 400 hectares as interpreted from the EIA because the EIA covered an area beyond Nyangweta forest. They further informed the Committee that they had communicated the information to NEMA via letter

dated 9th April, 2018 (*annexed to the report*) and were requesting for variation of the area earmarked for establishment of the Sugar Factory, associated facilities and amenities from 400Ha erroneously quoted in the EIA study to 48Ha.

The CS informed the Committee that NEMA in return responded to the County Government via a letter dated 16th April, 2018 (*annexed to the report*) advising them to apply for the variation through the NEMA website licensing portal for them to facilitate the process of application of which they hadn't responded back to NEMA.

Following the above mentioned reasons, the Cabinet Secretary, Environment and Forest informed the Committee that he is not convinced and therefore recommends against issuance of the County Government's request.

The Committee made some interventions and requested that the CS arranges a visit to the area and was yet to view for himself, given the fact that it is important for the Ministry to also have a feel of the Communities interest before making recommendations that affect the same Community.

3.3 Submissions by National Land Commission

The National Land Commission Chairperson Prof. Muhammad Swazuri informed the Committee that it was not aware of the proposed variation of the boundaries of Nyangweta Forest, but they would embark on the same and give their submissions to the Committee as well as to the County Government.

3.4 Submissions by Kanoria Group

The Kanoria group represented by Mr. Joseph Gichuki, Kanoria Group Liaison in Kenya and the General Manager projects, Kanoria Group, Mr. H. R. Joshi submitted as follows-

1. They gave a brief background and profiling of their investment group;
2. Explained their business plans and the expected Cooperate Social Responsibility activities to done within Kisii County;
3. The Committee was informed that the outputs were all re-useable and that there would be an effluent treatment plant at the facility;

4. The manufacturing was going to be within international standards and norms and they were confident that they would maintain sugar prices at competitive levels; and
5. They informed the Committee that 30% Equity would come from Kanoria group themselves then the remaining 70% will be funding from development partners and banks.

3.5 Submissions by the Kenya Sugar Directorate

The Kenya Sugar Directorate represented by the Director, Mr. Solomon Odera, submitted as follows-

1. The Kanoria group met and fulfilled the requirements of registration as a miller;
2. The Sugar Directorate also informed the Committee that Stakeholder engagement was also done as evidenced in the documents submitted to the Committee;
3. The current area under mill cane in Kisii County was 1,490 ha contracted to Sukari Industries, Transmara and Sony sugar companies;
4. The Kisii County is broadly divided into three agro ecological zones, comprising the upper midland (UM) 75%, Lower Highland (LH) 20%, and Lower Midland (LM) 5%. Sugarcane thrives well in the LM agro ecological zone;
5. Kisii County has a total area of 1,317.5 KM² of which about 78% is arable (104,928.7 Ha);
6. The Kisii County Government signed a memorandum of understanding on 2nd March, 2017 with Kanoria group of India to establish a sugar complex at Nyangweta. The shareholding for KRESP is Kanoria at 99.9% and Joseph Gichuki at 0.1%;
7. The Committee was informed that the Sugar Directorate was now under the Agriculture and Food Authority in the Ministry of Agriculture;
8. The Kisii County Government submitted the project profile, project proposal and feasibility study for the Kisii sugar project to AFA Sugar Directorate. This was in addition to the following documents submitted earlier-
 - Duly filled application form for registration of a miller;
 - Memorandum and articles of Association of the Kisii Renewable Energy & Sugar Company Ltd;
 - Profile of the Investor(s); and

- Letter from the County Government confirming availability of land.
9. To confirm the status on site, the Directorate constituted a team for the purpose. The team comprised of the Interim Manager - Technical and Advisory Services, Interim Agricultural Mechanization Officer and Interim Senior Agronomist. A visit was made to the proposed factory site on 16th December, 2016. The team's Terms of Reference were to:
 - i) Assess the suitability of the proposed site;
 - ii) Confirm the availability of land for cane production,
 - iii) Confirm compliance with other regulatory requirements; and
 - iv) Make recommendations on the application for issuance of letter of comfort.
 10. The team made an extensive tour of the proposed factory site and held a meeting with representatives of Kisii County Government, led by the CEC, Department of Lands, Physical planning, Housing and Urban development, Mr. Moses Onderi;
 11. The Sugar Directorate informed the Committee that indeed the project is viable and has met the requirements of a Sugar Factory and that the relevant land acquisition processes by the County Government is what was pending and incomplete.

CHAPTER 4

COMMITTEE OBSERVATIONS

The committee made the following observations-

1. Nyangweta Forest is a Public Forest and as such variation to its boundaries can be varied through a petition to Parliament in accordance with section 34 of the Forest Conservation and Management Act. The provision clearly stipulates the steps to be taken and considerations to be made when determining whether or not to approve the variation of the boundaries of a public forest;
2. Section 34(2) of the Act provides that a petition to Parliament under Section 34 shall demonstrate that the variation does not endanger any rare, threatened or endangered species or adversely affect the value of the forest as a water catchment area, prejudice biodiversity conservation, cultural site protection of the forest or its use for educational, recreational, health or research purposes;
3. Section 34(4) of the Act provides that the Cabinet Secretary responsible for forests shall make a recommendation to the Committee subject to conditions the Cabinet Secretary considers necessary. The Cabinet Secretary did not recommend that the forest be varied in accordance with the prayer of the petitioner;
4. National Statistics indicate that Kisii County has a forest cover of about 2.6% against the recommended requirement of 10%. Tree cover in the County is however higher with households planting plenty of trees within their homesteads as was observed during the Committee's visit;
5. Nyangweta forest has no indigenous trees and does not contain any known endangered species. On the 120 acres intended for the proposed factory, approximately 50 acres has been cleared and is being farmed while the rest is predominantly a plantation forest comprising eucalyptus species covering approximately 50%, cypress 30%, Grevillea and pine 15% and shrubs 5%;
6. No river originates from Nyangweta forest. Nyangweta River originates 30 kilometers away to the Eastern side (upstream) and passes through the forest thus forming the boundaries to one side of the forest while Nyansembe stream originates 5 Kilometers away to the southern side and passes through one side beyond the forest;

7. The project under consideration was conceived pursuant to a public participation exercise held across the county to identify priority projects where the residents indicated that their priority 1-3 projects was the establishment of a sugar factory;
8. The Cabinet Secretary for Environment and Forestry alluded to the fact that the Environmental Impact Assessment Report raised serious concerns about the location of the proposed factory which will be sandwiched between Nyangweta River and Nyansembe stream which drain into Gucha River and eventually into Lake Victoria. It was also noted that the said rivers are perennial and contain high volume of water flows throughout the year. Furthermore, river Nyangweta would be the main source of water supply to the proposed sugar factory. It is also anticipated that the factory effluent will also be discharged into the said rivers after treatment. These rivers also serve the communities in Kisii and other communities as far as the Lake Victoria.
9. The County Government and the Investor committed to the Committee that-
 - a. there will be an elaborate effluent treatment plant whose design will be an integral part of the whole complex consisting of sugar, renewable power generation and ethanol with efforts made to reduce effluent quantity, recycle maximum possible and treat the rest to bring it within the norms set by the relevant authorities;
 - b. sewage from the various residential buildings will be channeled to a properly designed and constructed septic whose contents will later be exhausted and transported to a designated disposal site; and
 - c. there will be regular monitoring of the effluent every three months to ensure critical parameters such as biological, oxygen demand and others are kept within the acceptable levels. In addition monitoring of effluent disposal sites will be carried and reports forwarded to relevant agencies in accordance to the laid out guidelines.
10. There is a high population in Kisii County which has contributed to the scarcity of available land to establish a project of this size and complexity;
11. The expected benefits of the project include-
 - a. Sugar cane is a major cash crop grown by the farmers in Kisii County. The planned sugar factory will increase growing of the crop due to the expected ready market for the produce and increased net earnings due to reduced transport costs;

- b. It is expected that the complex will create about 3000 direct employment opportunities which could benefit the locals in addition to about 600-700 skilled employment opportunities;
 - c. The proprietor's committed corporate social responsibility projects such as agricultural extension services, support to schools, sports grounds development, sponsorship to sports activities, health centres and opening up of roads;
 - d. Kisii County Government will benefit directly from the resulting CESS which will be used to improve county roads; and
 - e. The investment is expected to significantly transform the economy of the county and greatly change the livelihoods of not only the sugarcane farmers but also those of the residents of the county and the country at large. Expected livelihood changes include: better prices for cane delivered, creation of employment opportunities, market for farm produce and other products, improvement of infrastructure and revenue for the County Government.
12. An Environmental Impact Assessment was commissioned and National Environmental Management Authority (NEMA) approved the EIA report and subsequently issued a license for the project;
13. The County Government has identified an investor to implement the intended project and entered a memorandum of understanding with Kanoria group from India which will set up a sugar complex with capacity to crush 2,500 tons of cane per day and the potential to expand to 5,000 tons of cane per day. The sugar complex will have a sugar production plant, an ethanol production plant and an electric power production plant;
14. According to the Sugar Directorate the Kanoria group met and fulfilled the requirements of registration as a miller and that the project is viable;
15. The financing of the project will be raised with 30% Equity from Kanoria group and 70% from development partners and financing from commercial banks;
16. The Kanoria group of companies will operate under Kisii Renewable Energy and Sugar Company Limited (KRESP), a company registered at the companies' registry in Nairobi, Kenya. The shareholding for KRESP is Kanoria at 99.9% and Joseph Gichuki at 0.1%;
17. The National Land Commission are the custodians of all public land as provided under Article 67(2)(a) of the Constitution. While the County Government intimated that the

Commission was always consulted at the county level, the Commission denied knowledge of the proposed project but assured the Committee that they are embarking on ensuring that relevant approvals will be sorted before any clearances are made;

18. The numbers of the gazetted forest provided by the County Government and those of the Cabinet Secretary were at variance. Kenya Forest Service surveyors confirmed that out of the 13 forests proposed for gazettelement five (5) had been gazetted as forest reserves. The rest of the forests had not been gazetted because they have been encroached upon. On the other hand the county government insisted that it was only 40% settled and the number of forests gazetted were six (6). The Committee however observed that this difference in terms of compensation by the County Government is far much more. The County Government provided 66.120 hectares which is not settled while they are taking up 48 hectares of Nyangweta Forest. The Committee further observes that the residents who encroach on forest land be evicted;
19. A taskforce appointed by the Cabinet Secretary for Environment and Forestry on 26th February, 2018 (vide Gazette Notice No. 1938) established that the main driver of deforestation in the country is the rampant and illegal logging and not industrialization;
20. There is need to maintain a balance between industrialization and forest conservation to ensure that local communities benefit from their natural resources;
21. Residents of Kisii County advised the Committee that with the value they will acquire from the proposed project, they will be incentivized and they promised to plant trees and support the National and County Governments in protecting the remaining forests from encroachment and other types of deforestation; and
22. The proposed project is in tandem and would support the President's big four agenda with respect to manufacturing and industrialization. This would also boost the economy of the County.

CHAPTER 5

COMMITTEE DETERMINATION

From the Evidence adduced and the observations made the Committee makes the following determination on the prayer of the petitioner that the Senate approves the variation of the boundaries of Nyangweta Forest in South Mugirango Sub-county, Kisii County.

Committee determination:

Pursuant to section 34(5) of the Forest Conservation and Management Act 2016, the Committee determines that the petition discloses a reasonable ground for the variation of the boundaries of Nyangweta Forest and recommends that the Senate grants the petition and varies the boundaries of Nyangweta Forest in accordance with the prayers of the petitioner but with the following conditions-

- (1) That the Kisii County Government ensures that the excised land is only utilised for the project as stipulated in the petition and as approved by the National Environmental Management Authority in its licence;
- (2) That the excised land shall never be transferred to a private individual or entity;
- (3) That the Kisii County Government shall, in collaboration with the National Government, rehabilitate the forests within the county, reclamation from encroachers and replanting of trees;
- (4) That the Kisii County Government and the Investor shall subject the implementation of the proposed project to all relevant regulatory authorities; and
- (5) The implementation of the proposed project shall comply with the relevant statutory and regulatory requirements.

CHAPTER 6

COMMITTEE RECOMMENDATIONS

From the foregoing, the Committee now makes the following recommendations-

1. That the Senate grants the petition and varies the boundaries of Nyangweta Forest in accordance with the prayers of petitioner with the conditions set out under Chapter 5 of this report;
2. That the Kenya Forest Service takes possession and exercise proper control over all public forests and ensure that those who have encroached on public forests are evicted forthwith;
3. That the Kenya Forest Service protects all public forests in accordance with the Forest Management and Conservation Act and arrests and ensures the prosecution of trespassers;
4. That the Kenya Forest Service ensures the rehabilitation of cleared and deforested forests and
5. That the Kenya Forest Service conducts an extensive mapping of forest cover and tree cover within nine (9) months to facilitate a better understanding of tree cover deficiencies and requirements. This will enable the government to determine whether there is a variance between forest cover and tree cover as determined by the Committee and therefore facilitate the achievement of ten percent (10%) tree cover as stipulated under Article 69(1)(b) of the Constitution.

APPENDICES

- Annex I: Minutes of the meetings
- Annex II: Submissions of Key Stakeholders
- Annex III: Submissions of the Petitioner A
- Annex IV Submissions of the Petitioner B

MINUTES OF THE 3RD MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 27TH FEBRUARY, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 11.00 A.M.

MEMBERS

PRESENT

- | | |
|------------------------------------|--------------------|
| 1. Sen. Mwangi Paul Githiomi, M.P. | - Chairperson |
| 2. Sen. Prengei Victor, M.P. | - Vice Chairperson |
| 3. Sen. George Khaniri, MGH, M.P. | - Member |
| 4. Sen. Godana Hargura, M.P. | - Member |
| 5. Sen. Mwaruma Johnes, M.P. | - Member |

ABSENT WITH APOLOGY

- | | |
|----------------------------------|----------|
| 1. Sen. Sylvia Kasanga, M.P. | - Member |
| 2. Sen. Ndwiga Peter Njeru, M.P. | - Member |
| 3. Sen. Halake Abshiro, M.P. | - Member |
| 4. Sen. Boy Issa Juma, M.P. | - Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|-----------------------|------------------------------|
| 1. Mr. Victor Bett | - Committee Clerk |
| 2. Mr. Hassan Odhwa | - Principal Research Officer |
| 3. Mr. Wilson Bosmet | - Principal Serjeant at Arms |
| 4. Mr. Mitchell Otoro | - Legal Counsel |
| 5. Mr. Alex Rithi | - Media Relations |
| 6. Ms. Hawa Abdi | - Serjeant at Arms |

MINUTE SEN/SCLNLR/14/2018: PRELIMINARIES

- a.) The meeting was called to order at 11.30 am by the Chairperson followed by a word of prayer.
- b.) The Chair welcomed the members to the second meeting of the Standing Committee on Land, Environment & Natural Resources.

MINUTE SEN/SCLNLR/15/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Godana Hargura, M.P. and seconded by Sen. Prengei Victor, M.P. with amendments as follows;

1. Preliminaries;
 - a. *Prayer*
 - b. *Remarks by the Chairperson*
2. Adoption of the agenda;
3. Confirmation of minutes of the 2nd Sitting;

4. Matters arising from the minutes of the previous meeting;
5. **Petitions;**
 - a. **Alleged non-operationalization of certain provisions of the Wildlife Conservation and Management Act (No. 47 OF 2013)** Petitioner: Ali S.Bwana
 - b. **Variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County** Petitioner: Governor James E. O. Ongwae
6. House Keeping
7. Any other Business;
8. Date of the next meeting.

MINUTE SEN/SCLNDR/16/2018: CONFIRMATION OF MINUTES OF THE 2ND SITTING;

The Minutes of the 2nd sitting held on 20th February, 2018 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Prengei Victor, M.P. and seconded by Sen. Mwaruma Johnes, M.P. respectively.

MINUTE SEN/SCLNDR/17/2018: MATTERS ARISING;

Under Min SEN/SCLNDR/11/2018: HOUSE KEEPING;

Statements referred to the Committee include:

- a. Sen. Mutula Kilonzo Junior - **Delayed compensation to persons displaced during the construction of Mulima Dam in Mbooni Constituency, Makueni County:** Asked on 14.02.2018 Response due: **01.03.2018**

-Letter has been sent to the Ministry and the Committee is still waiting for a response.

- b. Sen. Mutula Kilonzo Junior - **Dumping of Asbestos in Kikumbulyu Ward, Kibwezi West in Makueni County,:** Asked on 14.02.2018 Response due: **08.03.2018**

-Letter has been sent to the Ministry and the Committee is still awaiting for a response.

MINUTE SEN/SCLNDR/18/2018: PETITIONS;

- a. **Alleged non-operationalization of certain provisions of the Wildlife Conservation and Management Act (No. 47 OF 2013)** Petitioner: Ali S.Bwana

Some of the questions the Committee found that could be directed to the petitioners to make clarifications on the petition include:

1. whether any of the County Wildlife Conservation and Compensation Committee has ever been provided with any resources to facilitate their functions under the Act, and if so by which entity; and
2. explain how and with what resources the County Wildlife Conservation and Compensation Committees have been operating on.

The Committee invites the **Petitioners**, the **Cabinet Secretary, Tourism and Wildlife** and the **Kenya Wildlife Service management**.

b. **Variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County** Petitioner: Governor James E. O. Ongwae

Some of the questions the Committee found that can be posed to the petitioner to make clarifications on the petition include—

1. whether the petitioner can demonstrate that the variation of the forest does not endanger any rare, threatened or endangered species, adversely affect its value as a water catchment area, prejudice biodiversity conservation, cultural site protection of the forest or its use for educational, recreational, health or research purposes as required by Section 34(2) of the Forest Conservation and Management Act, 2016;
2. whether the Kisii County Government exhausted all other avenues before resorting to the variation of the forest to provide land for the project;
3. how the variation of the forest will affect the 10 percent tree cover target Article 69(1)(b) of the Constitution mandates the state to achieve;
4. whether the memorandum of understanding signed between the County Government and the investor is legally binding on the investor and guarantees the completion of the project;
5. whether the memorandum of understanding signed between the County Government and the investor can be availed to the Committee for its perusal;
6. whether the land excised from the forest will at any time be transferred to private entities; and
7. whether the County Government consulted the National Land Commission who are the custodians of all public land as provided under the Article 67(2)(a) of the Constitution.

The Committee resolved to invites the **Petitioners, the Cabinet Secretary, Environment and Forestry** and the **Kenya Forest Service management**.

MINUTE SEN/SCLNR/19/2018: HOUSE KEEPING;

A.)The Committee deliberated on an invitation from the President of the National Congress of the Federative Republic of Brazil to attend the 8th World Water Conference.

The Committee nominated the following members to form part of the delegation:

1. Sen. Mwangi Paul Githiomi, M.P. - Chairperson/Leader of Delegation
2. Sen. George Khaniri, MGH. M.P. - Member/Commissioner PSC

The Forum is scheduled to take place as from 18th March, 2018 to 23rd March, 2018

B.)The Committee deliberated on the Inaugural Induction Programme scheduled for **Sunday, 5th March, 2018** and **Monday, 6th March, 2018** as it is too short to enhance productivity of the retreat considering the Committee's mandate is wide and mobilization of both the members of the Committee and the Stakeholders proved difficult for attendance on Sunday.

The members in a meeting held on 27th February, 2017 resolved as stated above that a convenient date agreeable to both parties.

MINUTE SEN/SCLNR/20/2018: ANY OTHER BUSINESS;

There were no matters raised.

MINUTE SEN/SCLNR/21/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 12.25pm and the date of the next meeting was scheduled for **Thursday, 1st March, 2018**.

SIGNATURE.......... DATE 27-02-2018

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, M.P.)

MINUTES OF THE 4TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 1ST MARCH, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 A.M.

MEMBERS

PRESENT

- | | |
|------------------------------------|--------------------|
| 1. Sen. Mwangi Paul Githiomi, M.P. | - Chairperson |
| 2. Sen. Prengei Victor, M.P. | - Vice Chairperson |
| 3. Sen. George Khaniri, MGH, M.P. | - Member |
| 4. Sen. Mwaruma Johnes, M.P. | - Member |
| 5. Sen. Slyvia Kasanga, M.P. | - Member |
| 6. Sen. Ndwiga Peter Njeru, M.P. | - Member |
| 7. Sen. Boy Issa Juma, M.P. | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------|----------|
| 1. Sen. Godana Hargura, M.P. | - Member |
| 2. Sen. Halake Abshiro, M.P. | - Member |

IN ATTENDANCE

SENATORS (FRIEND TO THE COMMITTEE)

- | | |
|---------------------|------------------------|
| 1. Sen. Sam. Ongeru | -Senator, Kisii County |
|---------------------|------------------------|

KISII COUNTY GOVERNMENT

- | | |
|---------------------------------|---------------------------------|
| 1. Gov. James E. O. Ongwae, CBS | - Governor, Kisii County |
| 2. Mr. Moses Onderi | - CEC Lands, Kisii County |
| 3. Mr. Kennedy Onsembe | - County Attorney, Kisii County |
| 4. Mr. Esman Onsarigo | - CEC Agriculture |
| 5. Mr. Miruka Kenan | - D/Director |
| 6. Ms. Periz Mokua | - Information Officer |

SENATE SECRETARIAT

- | | |
|-----------------------|------------------------------|
| 1. Mr. Victor Bett | - Committee Clerk |
| 2. Mr. Wilson Bosmet | - Principal Serjeant at Arms |
| 3. Mr. Mitchell Otoro | - Legal Counsel |
| 4. Mr. Alex Rithi | - Media Relations |
| 5. Ms. Hawa Abdi | - Serjeant at Arms |

MINUTE SEN/SCLN/22/2018: PRELIMINARIES

- a.) The meeting was called to order at 9.30 am by the Chairperson followed by a word of prayer.
- b.) The Chair welcomed the members and the visiting delegation from Kisii County Government to the meeting of the Standing Committee on Land, Environment & Natural Resources and lead the meeting through a round of Introductions.

MINUTE SEN/SCLNDR/23/2018: ADOPTION OF AGENDA

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

1. Preliminaries;
 - a. *Prayer*
 - b. *Remarks by the Chairperson*
2. Adoption of the agenda;
3. Confirmation of minutes of the 3rd Sitting;
4. Matters arising from the minutes of the previous meeting;
5. **Meeting with the Petitioner, Governor Kisii County Government on the Petition on Variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County** Petitioner: Governor James E. O. Ongwae
6. Any other Business;
7. Date of the next meeting.

MINUTE SEN/SCLNDR/24/2018: CONFIRMATION OF MINUTES OF THE 3RD SITTING;

The confirmation of Minutes of the 3rd sitting held on 27th February, 2018 were deferred to such a time that the Committee will be able to deal with housekeeping.

MINUTE SEN/SCLNDR/25/2018: MATTERS ARISING;

There were no matters arising since minutes of the previous sitting were not confirmed.

MINUTE SEN/SCLNDR/26/2018: Petition on the variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County

Meeting with the Petitioner: Governor James E. O. Ongwae

The Committee heard from the Governor as follows:

1 MARCH, 2018

1.0 Introduction

Kisii County covers a total area of 1,317.5 km² and is divided into nine constituencies namely: Kitutu Chache North, Kitutu Chache South, Nyaribari Masaba, Nyaribari Chache, Bomachoge Borabu, Bomachoge Chache, Bobasi, South Mogirango and Bonchari. It has 9 Sub-Counties, 24 divisions, 75 Locations and 190 sub-locations respectively.

1.1 Population of Kisii County

The County has an estimated population of 1,236,966 (2012). This represents 597,934 and 639,032 males and females respectively. Based on its total area said above, this population represents an average population of 939 people per square kilometre. By 2022 this population is expected to rise to 1,367,049 persons (660,810 males and

706,239 females). Population densities are high in areas with large proportions of arable land such as Kitutu Chache South (1,344), Nyaribari Chache (1,124), Bomachoge Borabu (989), and Bomachoge Chache (934). Soils in the County are generally good and fertile allowing for agricultural activities.

1.2 Climatic Conditions

Kisii County exhibits a highland equatorial climate resulting into a bimodal rainfall pattern with average annual rainfall of 1,500mm. The long rains are between March and June while the short rains are received from September to November; with the months of January and July being relatively dry. The maximum temperatures in the County range between 21°C – 30°C, while the minimum temperatures range between 15°C and 20°C. The high and reliable rainfall coupled with moderate temperatures are suitable for growing crops like sugarcane, tea, coffee, pyrethrum, maize, beans and bananas as well dairy farming.

The County is traversed by permanent rivers which flow westwards into Lake Victoria and among the notable ones are Gucha, Mogusii, Riana, Mogonga and Iyabe Rivers.

1.3 Scarcity of land due to population pressure

It is evident from the above facts that the population of Kisii County, that is, an average of 939 persons per square kilometre, has exerted pressure on the available land. This has led to serious scarcity/shortage of land in the area. One of the challenges that have emerged over the last 5 years of the Kisii County Government relating to land is where prospective investors cannot find suitable land for investing in the County.

Scarcity/shortage of land, is the underlying cause why after over 55 years of Kenya's Independence, Kisii County does not have a single industry. It is against this background that the County Government is seeking the indulgence of the Senate to vary the boundaries of Nyangweta Forest to avail land for one of the Investors that have shown interest in the Sugar Industry.

2.0 Potential Industrial Sugarcane Growing in Kisii County

Sugarcane growing is one of the cash crops widely grown across Kisii County. This is due to the generally fertile soils and favourable climatic conditions. It is grown both for chewing and industrial purposes. A recent review carried out by the County Department of Agriculture showed that a large number of farmers growing sugarcane, do sell it to factories located in the neighbouring Counties of Narok, Migori and Homabay. The review showed that in 2016, the farmers delivered cane to the factories as follows:

S/NO	Name of Factory	COUNTY	Deliveries in town
1	Sony	Migori	7,013.48
2	Transmara	Narok	50,652.24
3	Sukari Industries	Homabay	8,934.92

Whilst these factories have served farmers in Kisii County for several years, a further review has shown that they have expanded their base area under sugarcane growing in their home counties. This is in their efforts to realize self sufficiency of the raw materials within their localities. The net effect has been that the farmers in Kisii County experience delays in the cutting and collection of their canes.

The Department of Agriculture further carried a quick survey which revealed that currently in Kisii County there are 4,155 hectares under sugarcane growing, and that the current production of sugarcanes in tons is 266,341 tons annually. The potential area for sugarcane growing was found to be 5,500 hectares.

The plans to establish a sugar complex in Kisii County have a base which in due course is to be consolidated and refocused with objective of serving the local sugar factory.

3.0 Prioritization of the Sugar Factory Project

The residents of Kisii County in the public participation/stakeholder forums that were held to draw their views about the projects the County Government should implement, they severally listed priorities of the project as **Priority 1-Sugar Factory, Priority 2-Sugar Factory, Priority 3 Sugar Factory.**

This is the drive behind the petition which the Kisii County Government submitted to the Senate for consideration to vary the boundaries of Nyangweta Forest in South Mugirango Sub County to avail land for the establishment of the sugar complex.

On behalf of the residents of Kisii County, I urge the Senate to give the petition a favourable consideration in order to make the residents of Kisii County realize their aspirations.

4.0 Legal Framework for the Petition

This petition to the senate is made under the provisions of The Forest Conservation and Management Act, 2016 part IV section 34. The section provides that any person may petition the Senate, for the variation of boundaries of a public forest or revocation of the registration of a public forest or a portion of a public forest.

4.1 The Kisii County Government Petition to the Senate

Kisii County Government humbly petitions the Senate to vary the boundaries of Nyangweta Forest in Kisii County, South Mugirango Sub County to avail land for **establishment of a Sugar Complex which will have three production plants including Sugar Production plant, Ethanol production Plant and Electric Power CO-Generation Plant.**

4.2 Location and Size of Nyangweta Forest

Nyangweta Forest (entire) is located in Moticho Ward, South Mugirango Sub County, in Kisii County. It is registered as title NO South Mugirango/Nyataaro/2358, an absolute holding measuring approximately 158 acres under the proprietorship of Gusii County Council.

5.0 Elaborate Public/Stakeholder Engagements

The Public participation/stakeholder engagements regarding the sugar complex at Nyangweta were held with the publics from Kisii County, various Government Departments, Kisii County Assembly and wider public notices in the daily newspapers, radio and Kenya Gazette. These engagements aimed at giving all interested parties and wider audience in Kisii County and the Country at large opportunity to make comments about the project.

The engagements also aimed at meeting the constitutional requirements on public participation and specific provisions of the law relating to variation of boundaries of forests and environment management.

Below is an outline of the public participation engagements that were undertaken:

5.1 The first public/stakeholder participation meeting was on 15 April 2014, at Nduru Boys Secondary School hall in South Mugirango Sub County. The Stakeholders meeting was convened with objective of consulting the Sugarcane farmers, Members of County Assembly, Chiefs, members of the public, religious leaders, Youth groups, women groups and other Community leaders to reaffirm their earlier proposal of establishing a sugar factory in South Mugirango and identify a suitable land for the proposed Sugar factory project.

The meeting unanimously reaffirmed the proposal to establish the sugar factory and identified the suitable land to be at Nyangweta Forest. They urged the County Government to work with the Kenya Forest service to avail the land.

5.2 The Follow up Stakeholders/Public Participation meeting on 4 September 2016 on the proposed Sugar Complex at Nyangweta Forest was necessitated due to the changes that had taken place in the plans to establish a Sugar factory. The changes which had taken place were;

- a) **Change of Investor.** The early investor that was identified in 2014 had intended to establish a sugar factory but changed his interests. Consequently, the County Government continued to search for prospective investors in the Sugar Industry. It was until February 2016 that another investor, the Kanoria Group from India was identified.
- b) **Memorandum of Understanding.** The County Government signed a memorandum of understanding in February 2016 with the Kanoria Group from India to establish a Sugar Complex at Nyangweta .
- c) **Production Plants.** The first investor was to establish a sugar production plant only, but the Kanoria Group intends to establish a Sugar Complex with three plants , namely,
 - (i) Sugar Production plant
 - (ii) Ethanol Production Plant and
 - (iii) Electric Power Plant
- d) **Land requirement.** The land requirement for the three plants was 120 acres.

The Stakeholders meeting approved the changes and urged the County Government to take urgent measures to implement the proposals.

5.3 The third public participation/Stakeholder meeting was 29 March 2016. This was a workshop which drew participants from the six wards of South Mugirango. The workshop was attended by the six Members of the County Assembly from South Mugirango, farmers, Religious leaders, County Executive committee members, Teachers and members of the general public.

The objective of the workshop was to discuss the Environmental Impact Assessment Study Report on the proposed Sugar Complex at Nyangweta Forest. The scope of the study included the entire area under forest cover at Nyangweta.

The consultant who carried out the EIA Study conducted the workshop using three languages, that is, English, Kiswahili and Ekegusii to ensure that all those participating followed the proceedings.

Participants of the workshop approved the study report and urged the County Government to submit it to the National Environmental Management Authority (NEMA) on priority for processing and issuance of a license for the Project.

5.4 The 4th stakeholders/public participation meeting at Nyakeyo Secondary School with the Forest Conservancy committee on the proposed sugar complex at Nyangweta Forest in South Mugirango Sub County on 6 September 2016.

The stakeholders /public participation meeting was organized to provide a forum for the stakeholders to interact with the members of the Forest Conservancy Committee (FCC), Nyanza Conservancy, who were visiting to monitor on compliance issues relating to the planned variation of boundaries, familiarize themselves with Nyangweta forest and the issues at the ground.

The National Government was represented by the Kisii County Commissioner and Deputy Commissioner in charge of South Mugirango Sub County.

Participants of the stakeholder/Public participation meeting were drawn from the areas surrounding the forest. They included farmers, teachers, religious leaders, heads of departments of Forestry and environment, civil servants, chiefs and general public.

The FCC had an open interactive session with stakeholders in which the general disposition of the residents of South Mugirango about the project became evidently clear.

The stakeholder meeting urged the FCC to assist the Kisii County Government to get 120 acres of land from Nyangweta forest to establish the Sugar Complex.

6.0 Consultative Workshop between the Kisii County Government and Forest Conservancy Committee on 6-7 September 2016 at Kisumu

This workshop was preceded by a stakeholders /public participation meeting that was at Nyangweta Forest which provided the FCC a forum to interact with the residents of Kisii County.

The workshop brought together representatives of the National Government, County Government and members of the Forest Conservancy Committee, Nyanza Conservancy.

The Forest Conservancy Committee led by the Chairman took the County Government team through the detailed laws and procedures that must be followed in seeking variation of boundaries of forests. The County Government build a strong case for the 120 acres required for the sugar complex.

The workshop resolved that the County Government make an application to the Kenya Forest Service through the Forest Conservancy Committee, Nyanza Conservancy for the 120 acres required at Nyangweta, submit a map of the area, a certificate of official search and indicate clear measures of compensations to the Kenya Forest Service. The County Government implemented these resolutions.

7.0 Environmental Impact Assessment Study Report

The Kisii County Government commissioned an Environmental Impact Assessment Study based on the recommendation of the Kenya Forest Service. The Study covered

the entire area under forest cover at Nyangweta and beyond. It was submitted to the National Environmental Management Authority (NEMA), which after review, gave it a preliminary approval and prepared public notices which were widely circulated by placing the notices in two daily newspapers, on radio and the Kenya Gazette to meet the legal requirements related to EIA study reports. Copies of the notices are attached to the petition as appendices as follows;

- a) A copy of the Kenya Gazette Notice No 4278 is attached as appendix XI
- b) A copy of the of documents of the radio notices is attached as appendix XII
- c) A copy of the notice placed in the Standard Newspaper of June 6, 2016 is attached as appendix XIII
- d) A copy of the notice placed in the Star Newspaper of June 6, 2016 is attached as appendix XIV

The issues that were raised by the Sugar Directorate and the Forest Conservancy Committee, Nyanza Conservancy following the wider Public Participation were subsequently addressed and the EIA study cleared.

NEMA has since issued EIA License NO NEMA/EIA/PSL/4393 for the Nyangweta Sugar Project, a copy of the said License is attached to the petition as appendix 1B.

8.0 Engagements with the Kenya Forest Service

The Kisii County Government engaged with the Kenya Forest service through the Forest Conservancy Committee, Nyanza Conservancy. The engagement resulted to the Kisii County Government offering the Kenya Forest Service compensation of an area measuring 461, 74 hectares across the County to gazette and manage them as forests areas in lieu of the planned variation of boundaries of Nyangweta Forest. Besides, the County Government has committed through budgetary provision to increase the forest Cover by planting a minimum of 10,000 trees yearly.

8.1 Size of Land Kisii County is Petitioning the Senate

The Kisii County Government is petitioning Senate to vary the boundaries of the forest and avail 120 acres for the establishment of the Sugar Complex. This leaves a balance of 38 acres which will remain under the management of the Kenya Forest Service. The County Government will work with the Kenya Forest to re-afforest the remaining part of the forest and facilitate its gazette, in addition to other compensation proposals.

8.2 Compensation to & Collaboration with the Kenya Forest Service

The County Government identified 13 forests located in different parts of the County with total area of 461.74 hectares and offered these forest/areas to the Kenya Forest Service to gazette and manage the. To this end, an advisory was prepared and forwarded to the Kisii County Assembly for approval.

The approval of the County Assembly was granted and communicated through the Honourable Speaker's letter dated 13 April 2017. The areas offered as compensation to the Kenya Forest service include

S/N	NAME OF FOREST/AREA	SUB COUNTY	SIZE
1	Nyangweta Forest	South Mugirango	18.53 Hactares

2	Ndonyo Hill Forest	South Mugirango	12.59 hectares
3	Ritumbe Forest	South Mugirango	10.4 hectares
4	Insaria	South Kisii, Bomorenda	2.4 hectare
5	Keboye Hills	South Kisii, Bomorenda	25 hectares
6	Sombogo	Kitutu Chache North	5 hectare
7	Taracha Hill Keumbu	Nyaribari Chache	3.84 hectare
8	Nyanturago Swamp	Nyaribari Chache	360 hectares
9	Emborogo	Nyaribari Masaba	8.2 hectares
10	Kionganyo	Nyaribari Chache	4 hectare
11	Nyakeiri	Kitutu Chache North	2.5 hectares
12	Ngeri Hill Forests	Bonchari	3.0 hectares
13	Mogonga Swamp	Bobasi	6 hectares

8.3 Gazettement of the Forests Offered for compensation

The Cabinet Secretary for Environment, in the Special Issue of Kenya Gazette Supplement NO 113, gazetted the following forests which are part of those the Kisii County Government is compensating the Kenya Forest Services in lieu of the planned variation of Boundaries of Nyangweta Forest:

S/NO	NAME OF FOREST/AREA	SIZE	LEGAL NOTICE NO & DATE
1	Insaria Hill Forest	4.57 hectares	118 of 27 July 2017
2	Nyangweta Forest	18.53 hectares	119 of 27 July 2017
3	Ndonyo Hill Forest	12.59 hectares	120 of 27 July 2017
4	Ngeri Hill Forest	16.21 hectares	121 of 27 July 2017
5	Ritumbe Forest	9.57 hectares	122 of 27 July 2017
6	Mogonga Swamp BASSI/MASIGE (Mispelt and mixed up in the Gazette Notice)	4.64 hectares	123 of 27 July 2017

8.4 Budgetary provisions for Planting of Trees in Kisii County:

The Department of Environment and Natural Resources at the County has a budget for carrying out tree planting every year. In 2014/2015 there was a budget of Kshs 2 million, 2015/2016 there was 5 million while in 2017/2018 there is 5 million. The budget will be retained to ensure that there are continuous deliberate plans to plant trees in the Kisii County with objective of increasing the forestry cover.

8.5 The Kisii County Government collaborates with Kenya Forest Service to enhance forest cover and protect existing and future planted forest in the County. To this end, the County Government has hired and deployed guards to protect some forests.

8.6 Management of the trees at the Nyangweta Forest

The Nyangweta Forest is under management of the Kenya Forest Service. The trees which are currently there will be evaluated and disposed in accordance with the Kenya Forest service procedures if the Senate granting the variation of boundaries petitioned for.

9.0 Identification of Investor and Signing of MOU

In February 2016, the Kisii County Government organized an Investment Summit which attracted local and global investors. The proprietors and Directors of the Kanoria Group of Companies from India attended as participants and developed interest in the Sugar and related products industry. This culminated in the signing of the Memorandum of Understanding (MOU) between the Kisii County Government and the Kanoria Group of companies to establish the Sugar complex in Kisii County.

9.1 Who are the Kanoria Group of Companies?

The Kanoria Group of Companies ventured into manufacturing in the 1950s . They have wide experience of owning and managing large scale integrated sugar enterprises in India. Other plants they own and operate in India include Cement making, pharmaceuticals, Jute products, textiles, chemicals, packaging, pipes, roofing and auto components plants. The Group has the capacity to establish a Sugar complex that will have three plants, namely; Sugar production, Ethanol production and Electric Power CO Generation.

10 The Sugar Factory (Sugar Complex)

In order to realize the intentions of establishing a Sugar Factory at Nyangweta, Kisii County Government (KCG) entered a Memorandum of Understanding (MOU) dated 2nd March 2016 with investors, the **Kanoria Group** from India who will set up a Sugar Complex with a capacity of crushing 2500 tons of cane per day (TCD) with potential to expand to 5000 TCD, Distillery production capacity of 45KL per day and Power CO-generation Capacity of 10MW.

The sugar complex will consist of three production plants, namely;

1. Sugar Production Plant
2. Ethanol Production plant
3. Electric Power Production Plant

11. Kisii Renewable Energy & Sugar Factory Ltd

The Kanoria Group of Companies will operate in Kisii under a newly registered company, Kisii Renewable Energy & Sugar Company Limited (KRESP1), a copy of the certificate of incorporation of the said company is attached to the main petition as appendix IV.

The company is registered with NSSF as Employer NO 20568266 and KRA PIN NO P051599751Z. Other registrations are on-going.

12 Feasibility Study and Company File

Feasibility Study for the Sugar Complex Project was carried out and completed in 2016. A copy of the Study was thereafter submitted to the Sugar Directorate to meet part of the requirements for processing the application for Sugar Cane Millers. In addition, the Company/project profile of Kisii Renewable Energy and Sugar Factory Company Ltd was prepared and submitted to the Sugar Directorate. Further the Sugar Directorate cleared the Environmental Impact Assessment Study report thus giving a clear indication that requirements had been complied with.

The Sugar Complex project is in a state of preparedness waiting the decision of the Senate to move to the site.

13. Lease of Land to Kisii Renewable Energy and Sugar Factory CO Limited

The Kisii County Government rationalized land as an incentive to the investor in the County. This will be the first industry in Kisii County. The County Government will not sell the land to the investor but plans to lease it to the Kisii Renewable Energy and Sugar Factory Company Ltd for period of 99 years with an annual lease rate of Kshs 4000/ (revisable) per acres payable at the beginning of the year. The rate was determined by the Government valuation Officer who visited the site and prepared a Valuation Report.

14. Projected Land Use of the 120 acres required to establish the Sugar Complex

The projected land use of the 120 acres was approved at the various levels including public/stakeholders participation engagements, County Executive Committee, Kisii County Assembly and the Forest Conservancy Committee-Nyanza Conservancy. The projected land use of the 120 acres will be as follows:

LAND USE	APPROXIMATE SIZE OF LAND (total acreage is 120 acres)	PERCENTAGE (%)
a) Cane tractor/vehicle movement,	3.6	3
b) Weigh-bridge services	3.6	3
c) Parking	8.4	7
d) cane handling/storage	6	5
e) Human movement	3.6	3
f) Movement for sugar trucks	3.6	3
g) Movement for Ethanol tankers	3.6	3
h) Process plants for Sugar and ethanol	10.8	9
i) Power Plant housing boiler and turbine	9.6	8
j) Electrical switch yard	8.4	7
k) Residential colony for employees	12	10
l) Greenbelt	8.4	7
m) Administration block and canteen	3	2.5
n) Large storage areas for ethanol and molasses	7.2	6
o) Sugar godowns	6	5
p) Bagasse yard.	6	5
q) Access Road	3	2.5
r) Pre School Unit/Amenities like fire station, health centre, petrol pump etc.	6	5
s) Social centre/shopping	7.2	6

15. The Sugar Complex Capacities

The Sugar Complex will have the capacities outlined below and will be implemented in two phases as shown in the table below:

COMPONENT	PHASE I 2016-2019	PHASE II-2020-2022
Sugarcane Crushing Capacity/day	2,500MTs	5,000 MTs
Sugar Production Capacity	105,000MTs	210,000MTs
Cultivated Plantation Size	10,000 ha	10,000 ha
Distillery Capacity	45KLpd	45KLpd
Power Co-generation capacity	10MW	20MW
Estimated Investment	50Mn USD	
Sugar Production	86,250MTs	172,500 MTs
Ethanol Production	7.5 mnlitres	15mn litres
Power Production	80,000 MWh	160,000MWh

16. Summary of reasons for the Sugar Complex

During the various public participation/stakeholder meetings participants that included the residents of Kisii County, Members of the County Assembly, County Executive, heads of the relevant departments, participants gave various reasons why they wanted a Sugar Complex established at Nyangweta Forest. Below is a summary of the reasons:

- a) South Mugirango and the surrounding Sub Counties of Banchari, Bogetutu , Bomachoge, Nyaribari and Bobasi have red soils which are fertile and suitable for growing sugarcane and other agricultural crops.
- b) Sugarcane is already a major cash crop grown by the farmers of South Mugirango, Bonchari and Bomachoge. With the planned setting up of the sugar complex, more farmers will embrace sugarcane farming due to the ready market and increased net earnings due to reduced transport costs.
- c) The illegal cutting of trees at Nyangweta forest and other areas within the catchment zone at night by Jaggery producers will come to an end. This will ensure that the remaining part of Nyangweta forest and other forests in the County are conserved with participation of the community.
- d) The transport costs to the sugar factories in the neighbouring counties are high thus leading to recovery of considerable earnings to pay for the transport expenses. The proposed sugar complex is therefore expected to reduce the transport expenses and increase the net earnings for the farmers from their deliveries to the factory since the distance will reduce by an average of about 50%.

- e) The proposed sugar complex is expected to create about 3000 indirect employment opportunities which will benefit the local people in addition to 1500 skilled employment opportunities.
- f) The proposed sugar complex will have direct interactions with the residents of Kisii County in terms of the benefits resulting from social corporate responsibility of the sugar complex including agriculture extension services, support to schools, sports grounds development, sponsorship to sports activities, support to health centres and infrastructure development including roads, schools and their and maintenance just to mention a few.
- g) The communities staying in the environs of the sugar complex will be supplied with treated water as part of the corporate social responsibilities at a minimal fee.
- h) The Sugar Complex will provide free extension services to all farmers thus improving farming methods and ensuring food security in the area.
- i) CESS is one of the benefits expected from the deliveries of sugarcane to the factories. It is expected that Kisii County will directly benefit from the resulting CESS from the Sugar complex, which revenue will be used to developing infrastructure and other facilities beneficial to the residents.
- j) Nyangweta Forest is accessible, with a tarmac and murrum roads passing through it. Etago Health centre, Nduru Hospital and Etago police station are located within a distance of about 3 kilometres.
- k) River Nyangweta passes to the Northern part of the forest and a small stream to the Southern part marks the boundary between the forest and free holding land. The complex, will therefore extract water from nearby river Nyangweta.
- l) The forest is served with electricity from the national grid and surrounded with rich agricultural land which extends to Bomachoge, Bonchari, Bogetutu, Nyaribari and Bobasi sub counties.
- m) The community further committed that if granted the 120 acres from the Nyangweta forest, they will form themselves into associations that will work with the Kenya Forestry to protect the remaining part of the forests and other forest areas in the County.
- n) Participants also recognized that the establishment of Sugar Factory in Kisii County will create a first major Factory that will address the needs of the sugarcane farmers in the County.

17. Approval from the Kisii County Assembly

The County Executive submitted the resolutions to the Kisii County Assembly which had been passed by the County executive Committee seeking approval to vary the

boundaries of Nynagweta Forest and avail 120 acres to establish a sugar complex. The Kisii County Assembly approved the resolutions of the County Executive Committee.

18. Proposed Sugar Factory to Transform the Economy and Change livelihoods

The establishment of the sugar complex at Nyangweta is an investment that is expected to significantly transform the economy of the County, and would greatly change the livelihoods of not only the sugarcane farmers but also those of the residents of the County and the Country at large. Examples of the likely changes in livelihood include, better prices for cane delivered, creation of employment opportunities for the residents, ready market for farm produce and other products, improvement of infrastructure and social services among others. The county Government will also earn revenue in terms of rent and license fees.

19. Conclusion

The engagement with lead agencies including National Environmental Management Authority, the Kenya Forest Service, the public notices placed in the newspapers, radio and Kenya Gazette, the public participation/stakeholders meetings, the debate in the County Assembly and discussions at the County Executive Committee have taken measures which ensures that:

- a) The variation of boundaries of Nyangweta Forest will not endanger any rare, threatened or endangered species and will not adversely affect its value as a water coachmen area. It will not prejudice biodiversity conservation, cultural site protection of the forest or its use for educational, recreational, health or research.

It is therefore the Governor's Petition to the Senate on behalf of the residents of Kisii County and the Kisii County Government to vary the boundaries of Nyangweta Forest to avail land for the development of the Sugar Complex project which will have three plants including Sugar Production Plant, Ethanol production plant and CO –Generation plant.

MINUTE SEN/SCLNR/27/2018: ANY OTHER BUSINESS;

There were no matters raised.

MINUTE SEN/SCLNR/28/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 11.12am and the next meeting was scheduled to follow immediately at 11.30am.

SIGNATURE.....



DATE.....

1-3-2018

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, M.P.)

MINUTES OF THE 6TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 13TH MARCH, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 A.M.

MEMBERS

PRESENT

- | | |
|---------------------------------------|--------------------|
| 1. Sen. Mwangi Paul Githiomi, M.P. | - Chairperson |
| 2. Sen. Prengei Victor, M.P. | - Vice Chairperson |
| 3. Sen. George Khaniri, MGH, M.P. | - Member |
| 4. Sen. Godana Hargura, M.P. | - Member |
| 5. Sen. Ndwiga Peter Njeru, EGH. M.P. | - Member |
| 6. Sen. Mwaruma Johnes, M.P. | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------|----------|
| 1. Sen. Sylvia Kasanga, M.P. | - Member |
| 2. Sen. Boy Issa Juma, M.P. | - Member |
| 3. Sen. Halake Abshiro, M.P. | - Member |

IN ATTENDANCE

SENATE SECRETARIAT

- | | |
|-----------------------|------------------------------|
| 1. Mr. Victor Bett | - Committee Clerk |
| 2. Mr. Wilson Bosmet | - Principal Serjeant at Arms |
| 3. Mr. Mitchell Otoro | - Legal Counsel |
| 4. Mr. Alex Rithi | - Media Relations |
| 5. Ms. Hawa Abdi | - Serjeant at Arms |

MINUTE SEN/SCLNDR/36/2018: PRELIMINARIES

The meeting was called to order at 9.30 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNDR/37/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Ndwiga Peter Njeru, EGH. M.P and seconded by Sen. Mwaruma Johnes, M.P.

1. Preliminaries;
 - a. *Prayer,*
 - b. *Remarks by the Chairperson*
 - c. *Introductions*
2. Adoption of the agenda;
3. Confirmation of minutes of the previous sitting;
4. Matters arising from the minutes of the previous meeting;
5. **Deliberations on the Petition by the Governor Kisii County Government on the Variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County;**
 - a. **Meeting with the CS Environment and Forestry(9.00am); and**

- b. Meeting with the Kenya forest Service(10.30am)
6. Any other Business;
 7. Date of the next meeting.

MINUTE SEN/SCLNR/38/2018: CONFIRMATION OF MINUTES OF THE 4TH SITTING;

The confirmations of Minutes of the 4th sitting held on 1st March, 2018 were confirmed with amendments and proposed by Sen. Mwaruma Johnes, M.P and seconded by Sen. Ndwiga Peter Njeru, EGH. M.P.

MINUTE SEN/SCLNR/39/2018: MATTERS ARISING;

Matters arising from minutes of the previous meeting were that inclusion of the concerns raised by members to the Kisii County Government were not captured and need to be included in the minutes of the 4th Siting held on 1st March, 2018.

a.) Under MINUTE SEN/SCLNR/26/2018:

PETITION ON THE VARIATION OF THE BOUNDARIES OF NYANGWETA FOREST IN SOUTH MUGIRANGO SUB-COUNTY, KISII COUNTY

The Committee was meeting with the Petitioner: Governor James E. O. Ongwae, Governor Kisii County on the aforementioned Petition.

The Committee heard the following concerns which the County Government was able to address:

1. whether the petitioner can demonstrate that the variation of the forest does not endanger any rare, threatened or endangered species, adversely affect its value as a water catchment area, prejudice biodiversity conservation, cultural site protection of the forest or its use for educational, recreational, health or research purposes as required by Section 34(2) of the Forest Conservation and Management Act, 2016;

The County Government assured the Committee that the obtained all relevant approvals and that they were given a clean bill of health to proceed. Among the approvals cited were from NEMA.

2. whether the Kisii County Government had exhausted all other avenues before resorting to the variation of the forest to provide land for the project;

The County Government informed the Committee that the Population in Kisii was increasing rapidly and land is very scarce in the area the project is scheduled to be undertaken.

3. how the variation of the forest will affect the 10 percent tree cover target Article 69(1)(b) of the Constitution mandates the state to achieve;

The County Government informed the Committee that the already gazetted forest land they had set aside for the replacement of Nyangweta Forest will compensate and further adds to the 10% tree cover target.

4. whether the memorandum of understanding signed between the County Government and the investor is legally binding on the investor and guarantees the completion of the project;

The County Government informed the Committee that indeed the MOU is legally binding and that subsequent contracts will be done when the necessary Government approvals have been obtained.

The Committee then resolved to have the investor invited to the Committee.

5. whether the memorandum of understanding signed between the County Government and the investor can be availed to the Committee for its perusal;

The County Government committed themselves to availing the MOU to the Committee.

6. whether the land excised from the forest will at any time be transferred to private entities;

The Committee was informed by the County Government that the Contracts they will sign will have very clear and stringent measures to ensure that the people of Kisii County will not be robbed off their valuable land.

7. whether the County Government consulted the National Land Commission who are the custodians of all public land as provided under the Article 67(2)(a) of the Constitution.

The Kisii County Government informed the Committee that, indeed the Commission has always been consulted at the County Level. The Committee resolved to have a sitting with the National Land Commission on the matter.

MINUTE SEN/SCLNR/40/2018:

**DELIBERATIONS ON THE PETITION
BY THE GOVERNOR KISII COUNTY
GOVERNMENT ON THE VARIATION
OF THE BOUNDARIES OF
NYANGWETA FOREST IN SOUTH**

MUGIRANGO SUB-COUNTY, KISII COUNTY;

a. Meeting with the CS Environment and Forestry(9.00am);

The Committee received apologies through the Chairperson that particular morning through a phone call made to the Chairperson informing him that the CS wouldn't be able to appear before the Committee due to unavoidable circumstances and he was request for rescheduling of the meeting with the Committee.

Following extensive deliberations between committee members, the Committee was able to settle on **Wednesday, 4th April, 2018** to be the most suitable day for the Committee to meet with the CS on the matter.

b. Meeting with the Kenya forest Service(10.30am)

The Committee was also aware of information that there was restructuring of the management of that had affected operations at the Kenya Forest Service and that they should accompany the CS when the CS will be meeting the Committee on **Wednesday, 4th April, 2018**.

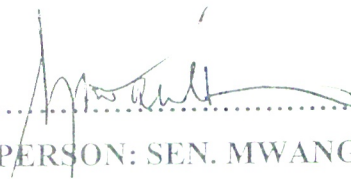
MINUTE SEN/SCLNR/41/2018: ANY OTHER BUSINESS;

- The Committee was informed of the Petition by twenty (20) Petitioners and sponsored by the Senator of Muranga, County Sen. Irungu Kangata MP, on the proposed Mitubiri Sanitary Landfill Project that was assigned to the Committee and the Committee resolved to meet with the Sponsor of the Petition on **Thursday, 15th March, 2018**.
- The Committee was concerned with the numerous statements that the Committee has had to deal with and that relevant Ministries are not responding top them in good time. The Committee in the same light was able to receive a response to two statements, on the provision of water to the residents of Kitengela Township which the Committee found to be satisfactorily answered and another on Human Wildlife Conflict and Livestock predation in Wajir County which was wasn't clear enough and a possible contradiction in reference to the relevant Act.
- The Committee also resolved to have the following dates marked.
 - 4th – 7th April, 2018 – Kisii County Visit on the Kisii County Petition
 - 9th – 13th April, 2018 - Induction Retreat & Report Writing on Petitions

MINUTE SEN/SCLNR/42/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 12.00Noon and the next meeting was to follow thereafter.

SIGNATURE.....



DATE.....

13-03-2018

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, M.P.)

MINUTES OF THE 7TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY, 13TH MARCH, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 12.00 NOON.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Godana Hargura, M.P.

PRESENT

- Chairperson
- Vice Chairperson
- Member

ABSENT WITH APOLOGY

1. Sen. Mwaruma Johnes, M.P. - Member
2. Sen. Slyvia Kasanga, M.P. - Member
3. Sen. Ndwiga Peter Njeru, M.P. - Member
4. Sen. Boy Issa Juma, M.P. - Member
5. Sen. George Khaniri, MGH, M.P. - Member
6. Sen. Halake Abshiro, M.P. - Member

IN ATTENDANCE

SENATORS:

1. Sen. (Prof.) Sam Ongeru, EGH, MP. – Senator Kisii, County

NATIONAL LAND COMMISSION

1. Prof. Muhammad Swazuri - Chairperson, NLC
2. Mr. Tom Chavansi - CEO, NLC
3. Mr. F. K. Mugo - Director Finance and Accounting
4. Dr. Salome Muambi - Director, Valuation
5. Mr. Benard Cherutich - D/D Finance and Accounting
6. Mr. Daniel Mwakio - PFO

NEMA

1. Dr. Geoffrey Wahungu - Director General NEMA

SENATE SECRETARIAT

1. Mr. Victor Bett - Committee Clerk
2. Mr. Mitchell Otoro - Legal Counsel
3. Ms. Hawa Abdi - Serjeant at Arms
4. Ms. Joyce Chelang'at - Audio Officer

MINUTE SEN/SCLNR/43/2018: PRELIMINARIES

- a.) The meeting was called to order at 12.15pm by the Chairperson followed by a word of prayer.
- b.) The Chair welcomed the National Land Commission (NLC) to the meeting of the Standing Committee on Land, Environment & Natural Resources and lead the meeting through a round of Introductions.

MINUTE SEN/SCLNDR/44/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Godana Hargura, M.P and seconded by the Vice Chairperson Sen. Prengei Victor, M.P.

1. Preliminaries;
 - a. *Prayer,*
 - b. *Remarks by the Chairperson*
 - c. *Introductions*
2. Adoption of the agenda;
3. **Deliberations on the Petition by the Governor Kisii County Government on the Variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County**
 - a. **Meeting with the National Land Commission and**
 - b. **Meeting with NEMA**
4. Any other Business;
5. Date of the next meeting.

MINUTE SEN/SCLNDR/45/2018:

DELIBERATIONS ON THE PETITION BY THE GOVERNOR KISII COUNTY GOVERNMENT ON THE VARIATION OF THE BOUNDARIES OF NYANGWETA FOREST IN SOUTH MUGIRANGO SUB-COUNTY, KISII COUNTY

a.) Meeting with the National Land Commission (NLC)

The Committee sought to know the comments of the Commission in regards to the aforementioned petition and the Commission informed the Committee that they are in agreement that Land in Kisii is scarce, given that previously they had tried getting Land for Garbage and a Public Cemetery and it was difficult to obtain one.

NLC also informed the Committee that it is their considered opinion that the matter of Nucleus in terms off enough cane in the County to require an entire factory as a matter that needs to confirmed with the relevant authorities.

NLC also informed the Committee that they were not informed of the matter of proposed variation of the boundaries of Nyangweta Forest in Kisii County but will now embark on working on the matter and receiving all relevant documentation from the County Government and give a written response to the Committee.

b.) Meeting with NEMA

The Committee was informed that indeed NEMA has since issued an EIA License NO NEMA/EIA/PSL/4393 for the Nyangweta Sugar Project a copy was then provided to the Committee and was for 4000Hectares as the entire topographical Land as that was the consideration at that time.

MINUTE SEN/SCLNENR/46/2018: ANY OTHER BUSINESS;

There were no matters raised.

MINUTE SEN/SCLNENR/47/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 1.20pm and the date of the next meeting was scheduled for Wednesday, 14th March, 2018 as from 9.00am.

SIGNATURE..........DATE.....14-05-2018.....

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, M.P.)

MINUTES OF THE 10TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 4TH APRIL, 2018 IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Godana Hargura, M.P.
2. Sen. Ndwiga Peter Njeru, EGH. M.P.
3. Sen. Halake Abshiro, M.P.

PRESENT

- Member (A.g. Chairperson)
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. George Khaniri, MGH, M.P.
4. Sen. Boy Issa Juma, M.P.
5. Sen. Mwaruma Johnes, M.P.
6. Sen. Sylvia Kasanga, M.P.

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

IN ATTENDANCE

1. Sen. Samuel Ongeru, EGH, MP

SENATORS

- Senator Kisii County

MINISTRY OF ENVIRONMENT & FORESTRY

1. Mr. Keriako Tobiko, CBS, Sc - Cabinet Secretary
2. Mr. Wilson Tonkei - Personal Assistant
3. Dr. Geoffrey Wahungu - DG NEMA
4. Mr. Evans Kegode - Head Surveys & Mapping(KFS)
5. Ms. Monica Kalenda - Ag. CCF
6. Mr. Gideon Gathara - Forestry Conservation Secretary

SENATE SECRETARIAT

1. Mr. Victor Bett - Committee Clerk
2. Mr. Mitchell Otoro - Legal Counsel
3. Ms. Hawa Abdi - Serjeant at Arms
4. Ms. Christine Maeri - Audio Officer

MINUTE SEN/SCLNENR/53/2018: PRELIMINARIES

- a.) The meeting was called to order at 9.30 am by the Chairperson followed by a word of prayer by Sen. Halake Abshiro.
- b.) The Chair welcomed the CS Environment & Forestry to the meeting of the Standing Committee on Land, Environment & Natural Resources giving apologies for the slight delay in starting of the meeting and thereafter led the meeting through a round of Introductions.

MINUTE SEN/SCLNENR/54/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Ndwiga Peter Njeru, EGH, M.P and seconded by Sen. Halake Abshiro, M.P.

1. Preliminaries;
 - a. *Prayer,*
 - b. *Remarks by the Chairperson*
2. Adoption of the agenda;
3. **Deliberations on the Petition by the Governor Kisii County Government on the Variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County;**
 - a. **Meeting with the CS Environment and Forestry and**
 - b. **with the Kenya forest Service**
4. Any other Business;
5. Date of the next meeting.

MINUTE SEN/SCLNR/55/2018:

DELIBERATIONS ON THE PETITION BY THE GOVERNOR KISII COUNTY GOVERNMENT ON THE VARIATION OF THE BOUNDARIES OF NYANGWETA FOREST IN SOUTH MUGIRANGO SUB-COUNTY, KISII COUNTY

Meeting with the Cabinet Secretary (CS) Environment and Forestry and with the Kenya forest Service

The CS began by giving his apologies for not be able to appear before the Committee during the first invitation due other pressing concerns.

The CS then proceeded to the matter under consideration by introducing how the matter is relevant to his office by quoting Section 34(4) of the Constitution where he is required to submit a recommendation on whether the Petition should be approved or not.

The CS informed the meeting that he is not able to give final recommendations since he is waiting for sufficient evidence so as to enable his office to give either for or against recommendations on the Petition.

The CS then gave a list of issues of concern that needed to be addressed by the Kisii County Government.

The issues were premised on the background of the important role of sustainable forest sector development in respect to;

- i). The four priority pillars on food security, affordable health, manufacturing and access to affordable housing, and
- ii). The directive by H.E, the President on establishment of 10% forest cover in the country by 2022.

In view of this background, he raised the following concerns during the meeting.

1. The parties involved in the matter hold different views on the legal status of Nyangweta Forest. The Kisii County contends that Nyangweta Forest is a community forest. On Ministries part, they hold the view that the forest is a public forest. In this respect, he informed the meeting that it is important that the concern be resolved as a jurisdiction matter in terms of Section 34 of the Forests Act, 2016.
2. The Environmental Impact Assessment (EIA) Report and Licence for the proposed sugar factory is based on 400 (four hundred) hectares against the request by the County Government of 120 (one hundred and twenty) acres of Nyangweta Forest land for establishment of the Factory. The significant discrepancy raises serious concerns on accuracy and the validity of the EIA Report and the issued licence. It further raises doubts on the accuracy of the presentation of information and data on the same.
3. Kisii County is in the category of the lowest forest cover counties which is currently at a low 2.6% cover against the constitutional requirement of 10%. There is no evidence provided to the Ministry on a concrete budgeted action plan with clear time lines to indicate how the county will increase forest cover to 10% by 2022. This MUST be provided.
4. The Kisii County Governor proposes mitigation and a compensatory measure to have gazetted 13 forest areas which aggregate to 400 hectares. It should be noted that, out of the 13 forests proposed for gazettelement only 5 forest areas have been gazetted as forest reserves. Kenya Forest Service surveyors have confirmed that the rest of the forests have not been gazetted because they are settled on. The Governor admitted this fact but contends that not the entire portions are settled on. However, he was not able to provide the actual areas not settled on.
5. It should also be pointed out that the gazettelement of these areas does not result into a net increase in forest cover since the 13 areas proposed to be gazetted are already factored in the 2.6% of forest cover of the County. Furthermore, the ecosystems services value of the 103 hectares of the whole of Nyangweta forest needs to be determined in comparison to the value of the scattered forests identified to be gazetted.
6. The Environmental Impact Assessment Report raises serious concerns about the location of the proposed factory sandwiched between Nyangweta River and Nyansembe stream which drain into Gucha River and eventually into Lake Victoria. It is also noted that the said rivers are perennial and contain high volume of water flows throughout the year. Furthermore, river Nyangweta would be the main source of water supply to the proposed sugar factory. It is also anticipated that the factory effluent will also be discharged into the said rivers after treatment. However, there is no comprehensive study presented to ensure the treatment of the

waste. These rivers also serve the communities in Kisii and other communities as far as the Lake Victoria.

In view of the foregoing, he informed the Committee that he is not in a position to recommend the approval of the petition here in in terms of Section 34(4) of the Forest Conservation and Management Act, 2016 unless the concerns are fully addressed.

The Committee then remained with the task of finding out whether the land under question is a public forest or a community forest.

The Committee then asked the CS to write to the County Government asking them to shed more light on the issues he raised before the meeting so that the County Government can be given a fair chance to respond then the CS will then be able to give a solid recommendation to the Committee.

MINUTE SEN/SCLN/R/56/2018: ANY OTHER BUSINESS;

There were no matters raised.

MINUTE SEN/SCLN/R/57/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 10.55 am and the date of the next meeting was scheduled for Wednesday, 4th April, 2018 at 11.00 am.

SIGNATURE.......... DATE 4-05-2018.....

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, M.P.)

MINUTES OF THE 13TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 9TH MAY, 2018 IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDING AT 11.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Godana Hargura, M.P.
4. Sen. Halake Abshiro, M.P.
5. Sen. Mwaruma Johnes, M.P.

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Ndwiga Peter Njeru, EGH, M.P. - Member
2. Sen. George Khaniri, MGH, M.P. - Member
3. Sen. Boy Issa Juma, M.P. - Member
4. Sen. Sylvia Kasanga, M.P. - Member

IN ATTENDANCE

1. Sen. Samuel Ongeru, EGH, MP

SENATORS

- Senator, Kisii County

SUGAR DIRECTORATE

1. Mr. Solomon Odera - Director Sugar Directorate,
2. Mr. Samuel Kemboi - Surveillance Officer
3. Mr. Stanley Juma - Agronomist

SENATE SECRETARIAT

1. Mr. Victor Bett - Committee Clerk
2. Mr. Ahmed Odhowa - Principal Researcher
3. Ms. Hawa Abdi - Serjeant at Arms
4. Ms. Christine Maeri - Audio Officer

MINUTE SEN/SCLNDR/68/2018:

PRELIMINARIES

- a.) The meeting was called to order at 11.30 am by the Chairperson followed by a word of prayer.
- b.) The Chair welcomed the Sugar Directorate to the meeting of the Standing Committee on Land, Environment & Natural Resources and lead the meeting through a round of Introductions.

MINUTE SEN/SCLNDR/69/2018:

ADOPTION OF AGENDA

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

1. Preliminaries;
 - a. *Prayer,*
 - b. *Remarks by the Chairperson*

2. Adoption of the agenda;
3. **Deliberations on the Petition by the Governor Kisii County Government on the Variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County;**
 - **The Kenya Sugar Directorate**
4. Any other Business;
5. Date of the next meeting.

MINUTE SEN/SCLNR/70/2018:

DELIBERATIONS ON THE PETITION BY THE GOVERNOR KISII COUNTY GOVERNMENT ON THE VARIATION OF THE BOUNDARIES OF NYANGWETA FOREST IN SOUTH MUGIRANGO SUB-COUNTY, KISII COUNTY

The Kenya Sugar Directorate

The Committee was informed that the Committee the sugar directorate was now under the Agriculture and Food Authority in the Ministry of Agriculture.

They informed the Committee that through their letter Ref: NO. KSI/C/LPPHUD/733 dated 22nd November, 2016, the Kisii County Government submitted the project profile, project proposal and feasibility study for the Kisii sugar project to AFA Sugar Directorate. This was in addition to the following documents submitted earlier on 4th October, 2016.

- Duly filled application form for registration of miller
- Memorandum and articles of Association of the Kisii Renewable Energy & Sugar Company Ltd.
- Profile of the Investor(s)
- Letter from the County Government confirming availability of land

To confirm the status on site, the Directorate constituted a team for the purpose. The team comprised of the Interim Manager - Technical and Advisory Services, Interim Agricultural Mechanization Officer and Interim Senior Agronomist. A visit was made to the proposed factory site on 16th December, 2016. The team's Terms of Reference were to: -

- i) Assess the suitability of the proposed site;
- ii) Confirm the availability of land for cane production,
- iii) Confirm compliance with other regulatory requirements; and
- iv) Make recommendations on the application for issuance of letter of comfort.

The team made an extensive tour of the proposed factory site and held a meeting with representatives of Kisii County Government, led by the CEC, Department of Lands, Physical planning, Housing and Urban development, Mr. Moses Onderi.

The application by Kisii Renewable Energy & Sugar Co. Ltd is for the development of a Sugar Project that shall consist of a 2,500 TCD expandable to 5,000 TCD of mill white sugar using milling technology and vacuum pan system at Nyangweta, Kisii County. Upon implementation, at 2,500 TCD the project shall produce

- 86,250 Metric tonnes of sugar per year,
- 7.5 million litres of Ethanol
- 80,000 MWh Power Company Generation.

The Kisii County Government signed a memorandum of understanding on 2nd March, 2017 with Kanoria group of India to establish a sugar complex at Nyangweta.

The shareholding for KRESP is Kanoria at 99.9% and Joseph Gichuki at 0.1%.

The project area is:

- County – Kisii
- Sub County - South Mugirango
- Ward - Moticho
- Area - Nyangweta (Forest with a total area of 120 acres)

There shall be a 99 years lease agreement with the County Government of Kisii who are the current land holders. The site is accessible by a tarmac road through Kamagambo and is sandwiched between Nyangweta River and Nyansembe stream which drains to Gucha river and ultimately into Lake Victoria. River Nyangweta will be the main source of water supply to the proposed sugar factory.

CANE AVAILABILITY POTENTIAL Land Use Potential in Kisii County

Kisii County is characterized by a hilly topography with several ridges and valleys and is endowed with several permanent rivers which flow from East to West into Lake Victoria.

The County has a highland equatorial climate with a bimodal rainfall pattern. The long rains occur between February to June and the short rains are received from September to early December.

Soil types are varied ranging from volcanic (nitosols), clay, red loams and sandy loams.

The County is broadly divided into three agro ecological zones, comprising the upper midland (UM) 75%, Lower Highland (LH) 20%, and Lower Midland (LM) 5%. Sugarcane thrives well in the LM agro ecological zone.

Kisii County has a total area of 1,317.5 KM² of which about 78% is arable (104,928.7 Ha).

Name of sub county	Total arable land(Ha)	Area under crops(Ha)	Area under mill cane	Area under noble cane	Minimum area required under food crop (1/3 rule policy).

Bomachoge Chache	9,401	7,050	182	61	3,134
Bomachoge Borabu	9,438	6,607	336	10	3,146
South Mugirango	15,928	11,149	3,200	1	5,309
Kitutu Chache South	8,143	5,700	8	80	2,714
Bonchari	10,500	9,800	350	580	3,500
Bobasi	18,759	13,131	80	200	6,253
Nyaribari Masaba	12,528	8,840	0	4	4,209
Nyaribari Chache	10,476	7,333	0	33	3,492
Kitutu Chache North	9,656	6,760	0	30	3,219
Total	104,929	76,370	4,156	998	34,976

From the table, the available land for cane development = $104,929 - 34,976 = 69,953$ Hectares

MILL CANE REQUIREMENT

The factory's proposed capacity is 2,500 TCD. The annual mill cane requirement therefore is $280 \text{ days} \times 2,500 \text{ TCD} = 700,000 \text{ TC}$ (Tonnes Cane)

At an average productivity of 70 TCH, then the surface required to produce $700,000 \text{ TC} = 700,000 / 70 = 10,000 \text{ Ha}$ /year

N/B: A half of the surface under cane is harvestable while the other half should be under maintenance, therefore, the total surface required for a sustainable cane supply for 2,500 TCD factory is $10,000 \times 2 = 20,000 \text{ Ha}$

Therefore the available arable land for sugarcane cultivation apart from other crops is estimated at over 30,000 Ha in Kisii County is adequate and can sustain a 2,500 TCD Sugar mill.

They informed the Committee that the current area under mill cane in Kisii County is 1,490 Ha contracted to Sukari Industries, Transmara and Sony sugar companies.

The Sugar Directorate also informed the Committee that Stakeholder engagement was also done as evidenced in the annexed documents.

In terms of Compliance status, they informed the Committee that;

REQUIREMENTS FOR REGISTRATION AS A MILLER

REQUIREMENT		STATUS	REMARKS
1.	Completed official application form for registration	Availed on 4 th October, 2016	Complied
2.	Feasibility study	Availed on 22 nd November, 2016	Complied
3.	Copy of land registration document	Not availed	Proposed excision from Nyangweta forest be followed with lease agreement between County Government and Investor
4.	Certificate of incorporation	Availed. No PVT/2016/016645	Complied
5.	KRA PIN certificate	Availed, P051599751Z	Complied
6.	Memorandum and articles of Association	Availed	Complied
7.	Environmental impact assessment study report	Availed on 4 th January, 2017	Complied
8.	NEMA Certificate	NEMA/EIA/PSL/4393	Complied
9.	NSSF	Registered and availed, S/NO: E051479	Complied

They eventually recommended that the Kisii Renewable Energy and Sugar Company may be issued with a letter of comfort subject to them availing land title deed for the proposed factory site.

The Committee was concerned with the cost of sugar production in Kenya and the directorate informed the Committee that in other countries where the cost of production of sugar is low is because most of them use irrigation on their plantations, the issue of ecological zones and the fact that they grow cane in low lands with high humidity levels.

The directorate urged the Senate to help pass the regulations once it comes to the Senate. Following the doing away with the Sugar Development Fund during the last two years, it has really impacted the Sector and therefore where the Senate can intervene, they would appreciate.

MINUTE SEN/SCLNR/71/2018: ANY OTHER BUSINESS;

The Committee discussed about the recent developments on Ndakaini Dam in Murang'a County and resolved that;

- a.) Invitations be made to all relevant stakeholders to appear before the Committee;
- b.) Site visit be made to Ndakaini Dam, Murang'a County

The other matter was on the Mitubiri Landfill Petition whereby the Committee resolved to invite the local; leaders to its meeting and thereafter the Committee can visit the proposed site for the Landfill project.

MINUTE SEN/SCL/ENR/72/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 12.45 pm and the date of the next meeting was scheduled for Thursday, 10th May, 2018 at 11.00 am.

SIGNATURE.......... DATE.....th 10th June 2018.....
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, M.P.)

MINUTES OF THE 12TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 5TH APRIL, 2018 IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Godana Hargura, M.P.
2. Sen. Halake Abshiro, M.P.
3. Sen. Mwaruma Johnes, M.P.

PRESENT

- Member (A.g. Chairperson)
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Mwangi Paul Githiomi, M.P. - **Chairperson**
2. Sen. Prengei Victor, M.P. - **Vice Chairperson**
3. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member
4. Sen. George Khaniri, MGH, M.P. - Member
5. Sen. Boy Issa Juma, M.P. - Member
6. Sen. Slyvia Kasanga, M.P. - Member

IN ATTENDANCE

KANORIA GROUP OF COMPANIES

1. Mr. Joseph Gichuki - Kanoria Group Liaison in Kenya
2. H. R. Joshi - GM Projects, Kanoria Group

SENATE SECRETARIAT

- (a) Mr. Victor Bett - Committee Clerk
- (b) Mr. Mitchell Otoro - Legal Counsel
- (c) Ms. Hawa Abdi - Serjeant at Arms
- (d) Ms. Christine Maeri - Audio Officer

MINUTE SEN/SCLN/63/2018: PRELIMINARIES

- a.) The meeting was called to order at 9.30 am by the Chairperson followed by a word of prayer.
- b.) The Chair welcomed the Kanoria Group of Companies to the meeting of the Standing Committee on Land, Environment & Natural Resources and led the meeting through a round of Introductions.

MINUTE SEN/SCLN/64/2018: ADOPTION OF AGENDA

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

1. Preliminaries;
 - a. *Prayer,*
 - b. *Remarks by the Chairperson*
2. Adoption of the agenda;

3. Deliberations on the Petition by the Governor Kisii County Government on the Variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County;
 - a. Meeting with Kanoria Group of Companies and
 - b. The Kenya Sugar Directorate
4. Any other Business;
5. Date of the next meeting.

MINUTE SEN/SCLNR/65/2018:

DELIBERATIONS ON THE PETITION BY THE GOVERNOR KISHI COUNTY GOVERNMENT ON THE VARIATION OF THE BOUNDARIES OF NYANGWETA FOREST IN SOUTH MUGIRANGO SUB-COUNTY, KISHI COUNTY

A. Meeting with Kanoria Group of Companies

The Committee was taken through the Presentation by the Kanoria Group that outlined as follows:

- The Kanoria family having been in business for several generations, first commenced manufacturing business in the 1950s' and now owns and operates business interests in the manufacturing of make cement, sugar, pharmaceuticals, tea, jute products, textiles, chemicals, packaging, pipes, roofing materials and others.
- The members of the Kanoria family have separated from time to time and own and operate different business groups.
- Mr. Ajay Kanoria's group goes by the name, the Kanoria Group. The Kanoria Group owns and operates cement & industrial gases plants in India and is setting up integrated sugarcane, sugar, power and ethanol projects in Africa. Mr. Kanoria was responsible for the management of the Sugar, Cement, Pharmaceuticals, Industrial Gases, Pipes and telecommunication businesses of the family prior to separation.
- The Kanoria Group business interests have been in operations for more than 5 decades. After completing the required background work, the Kanoria Group has embarked on a green field project to farm sugarcane, manufacture sugar and produce power.
- The Kanoria Group's experience in the sugar industry is extensive and in-depth. The Kanoria family owned two sugar factories with a present capacity of 5,000 and 7,000 ted. The two sugar factories were managed by Mr. Kanoria prior to a separation in the family.

- Mr. Ajay Kanoria is the Chairman of the Kanoria Group
 - Mr. Kanoria graduated in Economics and Political Science from St. Xaviers, Calcutta in 1974 and took sole charge of the Kanoria Family's two sugar factories viz. Shankar Agro and Purtabpore Co. Ltd
 - He is a well-known and respected business leader.
 - Mr. Kanoria heads the Kanoria Group which has sizeable interest in manufacturing cement, industrial gases and also in Real Estate development.
 - Currently, he serves as the Chairman of Bagalkot Cement & Industries Ltd. and as a Director of Asiatic Oxygen Ltd.
 - Mr. Kanoria served as the Chairman of Kanoria Industries Ltd and Anglo French Drug Company (Eastern) Ltd., Vice Chairman of Rajasthan Communications Ltd and Bihar Air Products Ltd. He served as a Director Shri Pipes Ltd, Six Sigma Gases (India) Lt and Indessa Gases Ltd. He served as the Indian Sugar Mills Association. As Advisor to Government of India, in 1982, he participated in negotiations of the International Sugar Agreement in Geneva and London under the aegis of GATT.
 - He was a Member of World Economic Forum and served on the Governing Committees of the Federation of Indian Chambers of Commerce and Industry, the Indian Sugar Mills Association, the Cement Manufacturers Association, the All India Association OF Employers. In 1982, he participated in negotiations of GATT's International Sugar Agreement in Geneva and London.
 - He was the President of the Rotary Club of Bombay and served on its Board of Directors for two years

■ **KRESP1 Business Plan**

- 2,500 TCD capacity Sugar Plant expanded to 5000 TCD in phases
- 18 MW Cogeneration Power Plant, expanded to 30 MW in phases
- 45 KLPD Molasses based Ethanol/ENA Plant in 2nd phase
- Sugarcane requires 18,000 hectares under sugarcane with Out growers for a Sugarcane crushing capacity of 2,500 TCD. The Farmers will be supported to enable them to achieve this resulting in sustained profitable cultivation for them
- It will produce ~ 86,250 MT of sugar, and ~ 80 million KWH of surplus renewable power per annum
- The Sugar Factory will be powered by the Biomass Plant fueled with sugarcane fiber residues
- A capacity of 13 MW of Power will be supplied to the National Grid of Kenya, adding to the country's overall electrical power capacity
- Sugarcane requires 25,000 hectares under sugarcane with Out growers for a Sugarcane crushing capacity of 5000 TCD. The Farmers will be supported to enable them to achieve this resulting in sustained profitable cultivation for them

- It will produce ~ 172,500 MT of sugar, 15 million litres Ethanol and ~ 160 million KWH of surplus renewable power per annum
- The Sugar Factory and Distillery will be powered by the Biomass Plant fuelled with sugarcane fiber residues
- A capacity of 20 MW of Power will be supplied to the National Grid of Kenya, adding to the country's overall electrical power capacity
- Total investment -- USD 35 m
- Equity USD 10.5 m : Debt USD 24.5 m
- Projected Date of breaking ground -- Mid 2019
- Projected Date Of Commissioning factory -- Mid 2021
- Projected Date of completion of plantation -- Mid 2022
- Projected annual processing and production Sugarcane 750,000 tons, sugar 86,250 tons, power 80 million kwh

■ KRESPI CSR

They strongly believe in Corporate Social Responsibility and giving back to the community

Phase 1 – along with setting up the factory

- Sugarcane Applied Research and Development Institute;
This Institute will be responsible for evaluating of different varieties of sugarcane and techniques and practices to improve, yields, sucrose content & to reduce cost of cultivation.
It will work with out-growers to transfer knowledge and assist them in generating higher incomes on their farms
- Healthcare clinic
- Local crafts development centre

Phase 2 – post expansion to 5000 tcd

- Mini Township with Uninterrupted Electricity and Water supply, Good roads, Gardens, Water and Sewage Treatment Plants
- Primary and Secondary Schools
- Hospital
- Technical Training Institute
- Sports facilities

This will lead to all-round increase in development of individuals, employability, improved yield of crops and living conditions.

The Kanoria Group believes in looking after the surrounding community, aiming to improve the lives of area residents.

Through a policy of returning a portion of its earnings to society, in addition to ensuring that its employees adhere to its high standards of behavior, we will evoke trust among partners, stakeholders, employees, and the community

The Committee was able to seek the following clarifications:

- (a) Whether the quantities of Sugar in the area is enough to sustain the establishment of the Sugar factory;
They informed the Committee that in partnership with the County Government they will be able to do extensive awareness and provide extension services to farmers so as to enable them grow sugar cane and also stretch the same awareness to neighbouring constituencies.
- (b) What is the capability of the Company in terms of managing the by products and chemicals
They informed the Committee that the outputs are all re-useable and that there will be an effluent treatment plant at the facility.
- (c) What are their mitigation measures put to operate with the threat of availability of cheap imported sugar;
They informed the Committee that they manufacturing are within international standards and norms and they are confident that they can maintain sugar prices at that level.
Other factors like power generation and production of Ethanol among others work as supplements in the process to support the returns obtained from sugar.
- (d) How they plan to support locals from the County;
The informed the Committee that they will engage farmers by having experienced extension officers to guide farmers on modern farming methods for them to be able to increase their yields.
- (e) Their source of funding;
They informed the Committee that 30% Equity would come from Kanoria group themselves then the remaining 70% will be funding from development partners and banks.
They have met several financiers and approvals are pending since part of the approvals includes the land in question and other licenses that depend on the availability of this land.

B.) The Kenya Sugar Directorate

The Kenya Sugar Directorate did not appear before the Committee and the Committee resolved to re-invite them again for another meeting.

MINUTE SEN/SCLNR/66/2018: ANY OTHER BUSINESS;

There were no matters raised.

MINUTE SEN/SCL/ENR/67/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 11.45 am and the date of the next meeting was scheduled for Kisii County during the Committee's visit on Friday, 6th April, 2018 at 9.00 am.

SIGNATURE  DATE 9-05-2018

(CLERK/PERSON: SEN. MWANGI PAUL GITHIOMI, M.P.)

MINUTES OF THE 15TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 16TH MAY, 2018 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Ndwiga Peter Njeru, EGH. M.P.
4. Sen. George Khaniri, MGH, M.P.
5. Sen. Godana Hargura, M.P.
6. Sen. Halake Abshiro, M.P.
7. Sen. Mwaruma Johnes, M.P.

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Sylvia Kasanga, M.P. - Member
2. Sen. Boy Issa Juma, M.P. - Member

IN ATTENDANCE

SENATORS

1. Sen. (Prof.) Sam Ongeru, EGH, MP. - Senator, Kisii County

MINISTRY OF ENVIRONMENT & FORESTRY

1. Mr. Keriako Tobiko, CBS, Sc - Cabinet Secretary
2. Mr. Wilson Tonkei - Personal Assistant
3. Dr. Geoffrey Wahungu - DG NEMA
4. Mr. Evans Kegode - Head Surveys & Mapping (KFS)
5. Ms. Monica Kalenda - Ag. CCF
6. Mr. Boniface Mamboleo - Head of ELA Section - NEMA
7. Mr. Gideon Gathara - Forestry Conservation Secretary

SENATE SECRETARIAT

1. Mr. Victor Bett - Committee Clerk
2. Mr. Hasan Othowa - Principal Researcher
3. Mr. Mitchell Otoro - Legal Counsel
4. Mr. Wilson Bosumet - Serjeant at Arms
5. Ms. Hawa Abdi - Serjeant at Arms

MINUTE SEN/SCLNR/79/2018: PRELIMINARIES

The meeting was called to order at 9.30 am by the Ag. Chairperson followed by a word of prayer.

MINUTE SEN/SCLNR/80/2018: ADOPTION OF AGENDA

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

1. Preliminaries;
 - *Prayer,*
 - *Remarks by the Chairperson*
2. Adoption of the agenda;
3. **Deliberations on the Petition by the Governor Kisii County Government on the Variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County;**
 - Meeting with the CS Environment and Forestry;
4. **Deliberations on the woes affecting Ndakaini Dam given that the country is experiencing high quantities of rainfall and yet the dam is still experiencing difficulties in achieving optimal levels**
 - Meeting with the CEC Environment, Energy, Water and Natural resources, Nairobi City County Government,
5. Any other Business;
6. Date of the next meeting.

MINUTE SEN/SCLNR/81/2018:

MEETING WITH THE CS ENVIRONMENT AND FORESTRY ON THE DELIBERATIONS INTO THE PETITION BY THE GOVERNOR KISII COUNTY GOVERNMENT ON THE VARIATION OF THE BOUNDARIES OF NYANGWETA FOREST IN SOUTH MUGIRANGO SUB-COUNTY, KISII COUNTY

The CS began by informing the Committee that he wrote to the County Government via a letter dated 30th April, 2018 with highlights of what they needed to respond to so as to enable him make a judgement on whether to recommend for or against the variation of the boundary of Nyangweta Forest.

In view of their response, the CS informed the Committee that;

1. Nyangweta Forest is a Public Forest and not a Community Forest. As per the Constitution Article 62 (2) (3) vests and details administration and use of such lands while conserving and managing forests. The Forest Conservation and Management Act (FCM Act) No. 34 of 2016 also highlights on the various classifications of Forests.

On the Gazettement of Nyangweta forest, the Committee was informed that this was based on public consultation as required by law attested to by a letter from the county government referenced KSG /MWEENR/CEC/FS/VOL 11/03 (511) dated 19th September 2016 and subsequently an internal memo dated 31st January 2017 informing on recommendations of applications by FCC.

Following recommendation for gazettement of various forest blocks in Kisii, there was need to carry out preliminary surveys in collaboration with the County Government to enable gazettement of the identified community/county Government Forest blocks to public/government Forests. While recommending the

forest blocks for gazettelement, the County Government had identified part of Nyangweta block for development of a University and Sugar factory. Therefore during the forest preliminary survey, the KFS survey team was shown the area to be gazetted as Nyangweta forest leaving out the area earmarked for the university and sugar factory. The preliminary survey therefore resulted into an approved boundary plan No 175/438 resulting into the gazettelement of Nyangweta forest vide Legal Notice No. 119 of 20th July 2017.

Based on the above details, KFS has jurisdiction on Nyangweta Hill forest measuring 18.53 Ha which is adjacent to the area earmarked for development of the university and sugar factory measuring 74.07 Ha approximately as shown on Nyangweta Hill Forest and Environs Map.

As shown on the Nyangweta Hill forest and environs map, the area earmarked for development is public land under the custodianship of the County Government of Kisii and is not covered by the section 34(1) of the forest conservation and management Act No.34 of 2016, and therefore not under the jurisdiction of the Kenya forest Service.

2. The Forest Cover to attain the minimum accepted international standard of 10% and by the Kenyan Constitution given that in Kisii County the Forest cover is at 2.6%.

According to the CS the action being taken is still not clear since they just obtained generalities. Among the documentation presented they find no seriousness on the Part of the County Government regarding attainment of the 10% forest cover.

3. Under section 37 of the FCM Act 2016 is a provision for the exchange of Private Land with Forest Land. While gazetting Community Land into a Public Forest, it is a requirement that prior public consultation is carried out in accordance with the second schedule.

Therefore as per the letter Ref. KCG As per the letter Ref.KCG/MWEENR/CEC/FS/VOL.II/03 (511) date 19th September, 2016, the following forests were to be gazetted as forest areas.

No.	Name	Registration Section	Area (Ha)
1.	Nyangweta	South Mugirango/Nyataro/1209	16
2.	Ndonyo	South Mugirango/Nyataro/120 2	15.4
3.	Insaria	South Kisii/Bomaranda/490	2.4
4.	Keboye Hills	South Kisii/Bomarenda	25
5.	Ritumbe	South Mugirango/Chache/107	10.4
6.	Sombogo	Kitutu Chache North	5
7.	Taracha Hill Kembu	Nyaribari Chache/Birongo/589	3.84

8.	Nyaturago Swamp	Nyaribari Chache & Bobasi, Nyaturago Scheme 711	360
9.	Emborogo Hill	Nyaribari Masaba/Bonyakani/1055	8.2
10.	Kionganyo	Nyaribari Chache South	4
11.	Nyakeiri	Kitutu Chache North	2.5
12.	Ngeri	Bonchari	3.0
13.	Mogonga Swamp	Basi/Masige/Bobasi 2094	6.0

A Survey team from Kenya Forest Service went to the field to do ground verification on the status of the above stated areas and do a ground Survey for the purposes of gazettelement.

After thorough verification, ground truthing and Surveying, the forests tabulated below were gazetted.

FOREST	LOCATION	AREA	LEGAL NOTICE NO.	BP/NO.175/437
INSARIA	KISII	4.570	118 of 27 th July 2017	175/437
NYANGWET	KISII	18.530	119 of 27 th July 2017	175/438
NDONYO	KISII	12.590	120 of 27 th July 2017	175/439
NGERI HILL	KISII	16.210	121 of 27 th July 2017	175/440
RITUMBE	KISII	9.570	122 of 27 th July 2017	175/441
BASI/MASIGE FOREST	KISII	4.650	123 of 27 th July 2017	175/442
	TOTAL	66.120		

However, the following forests were not gazetted because of the stated reasons:

i). **Keboye Hills:**

Before visiting the area, a proper search of data was done in the Kisii Survey office registry. The data was obtained and survey carried out after a thorough reconnaissance. It was discovered that the said hill was subdivided and fully settled as per the subdivisions.

ii). **Sombogo**

A visit and Survey of the area showed that such a forest does not exist. The registry index Map of the area shows that the area belongs to individuals with parcel numbers and is fully settled.

iii). **Taracha Hill**

This hill could not be gazetted because it is developed with a health centre, two churches and ward administration offices which have been occupied almost the whole area intended for gazettelements.

iv). **Nyanturago Swamp**

There are several public utilities occupying the swamp such as Primary Schools and Churches

v). **Emborogo Hill**

There exist the following utilities;

- SDA church
- Orphanage.
- SDA primary school

vi). **Nyakieri**

The whole area is developed and covered by a primary and secondary schools.

Therefore out of a total of 13 parcels of Land only 6 have since been gazetted including 18.5Ha being Nyangweta Forest. Appendix 12 of the County Government's response their report is irreconcilable. The Ministry of Environment and Forest therefore holds that there isn't enough compensation.

4. **On Clarity of size of land area subject to EIA.**

The Committee had from the Governor Kisii, who explained to the senate that the area of interest for development of a sugar factory is 120 acres approximately and not 400 hectares as interpreted from the EIA because the EIA covered an area beyond Nyangweta forest. They further informed the Committee that they had communicated the information to NEMA via letter dated 9th April, 2018 and were requesting for variation of the area establishment of the Sugar Factory, associated facilities and amenities from 400Ha erroneously quoted in the EIA study to 48Ha.

The CS informed the Committee that NEMA in return responded to the County Government via a letter dated 16th April, 2018 advising them to apply for the variation through the NEMA website licensing portal for them to facilitate the process of application of which they hadn't responded back to NEMA.

Following the above mentioned reasons the Cabinet Secretary, Environment and Forest informed the Committee that he is not convinced and therefore recommends against issuance of the County Government's request.

The Committee made some interventions and requested that the CS arranges a visit to the area and view for himself and that it is important for the Ministry to also have a feel of the Communities interest before making recommendations that affect the same Community.

The Committee resolved that since the 60days given for consideration of the Petition had elapsed then the Committee can now proceed to report writing, thereafter the Committee will adopt its report and table it in the Senate.

MINUTE SEN/SCL/ENR/82/2018:

MEETING WITH THE CEC ENVIRONMENT, ENERGY, WATER AND NATURAL RESOURCES, NAIROBI CITY COUNTY GOVERNMENT ON DELIBERATIONS ON THE WOES AFFECTING NDAKAINI DAM GIVEN THAT THE COUNTRY IS EXPERIENCING HIGH QUANTITIES OF RAINFALL AND YET THE DAM IS STILL EXPERIENCING DIFFICULTIES IN ACHIEVING OPTIMAL LEVELS

The Committee had received apologies from the CEC Environment, Energy, Water and Natural resources, Nairobi City County Government via email informing the Committee that he was in Mombasa on official business with the County Assembly Committee and that he will join the Committee during the scheduled site visit to Ndakaini Dam, Murang'a County.

MINUTE SEN/SCL/ENR/83/2018: ANY OTHER BUSINESS;

The Committee was able to get confirmation from the CS that indeed he is working on ensuring a Parliamentary Liaison Officer is availed to enhance easier communication between the Committee and the Ministry.

MINUTE SEN/SCL/ENR/84/2018: DATE OF NEXT MEETING;

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

SIGNATURE..... DATE...16-05-2018
(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, M.P.)

MINUTES OF THE 26TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 5TH JULY, 2018 IN, COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 12.30 PM.

MEMBERS

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

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Ndwiga Peter Njeru, EGH. M.P. - Member
2. Sen. George Khaniri, MGH, M.P. - Member
3. Sen. Slyvia Kasanga, M.P. - Member
4. Sen. Boy Issa Juma, M.P. - Member
5. Sen. Godana Hargura, M.P. - Member

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Hassan Odhowa
3. Mr. Mitchell Otoro
4. Mr. Wilson Bosumet

SENATE SECRETARIAT

- Committee Clerk
- Principal Researcher
- Legal Counsel
- Sergeant at arms

MINUTE SEN/SCLNENR/141/2018: PRELIMINARIES

The meeting was called to order at 12.45pm by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNENR/142/2018: ADOPTION OF AGENDA

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

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
 - *Introductions*
2. Adoption of the agenda;
3. Housekeeping –
 - Speakers Letter on Pre-Publication Scrutiny of the Natural Resources(Benefit Sharing) Bill 2018
 - Adoption of the Committee's Petition Report on Nyangweta Forest by Kisii County Government
 - Correspondences
4. Any other Business;
5. Date of the next meeting.

MINUTE SEN/SCLNENR/143/2018:

HOUSEKEEPING

- **Speakers Letter on Pre-Publication Scrutiny of the Natural Resources(Benefit Sharing) Bill 2018**

The Committee is in agreement with the letter containing the following contents:

The Committee resolving to approve the proposed Natural Resources (Benefit Sharing) Bill, 2018 for publication subject to the following concerns being addressed by the sponsor-

- (a) That the proposed Bill be amended to remove petroleum, natural gas, minerals, geothermal energy and wind from the ambit of the proposed law. The sponsor may then consider amending the Mining Act, 2016, the Petroleum (Exploration, Development and Production) Bill, 2017 and the Energy Bill, 2017 to align them to the provisions under the proposed Bill.
- (b) That the proposed Bill be amended to include, among the functions of the Commission on Revenue Allocation, oversight over the formation of benefit sharing committees and forums and ensuring proper and timely payments to counties and local communities.

- **Adoption of the Committee's Petition Report on Nyangweta Forest by Kisii County Government**

The Committee adopted its report with amendments to have the following recommendations:

1. That the Senate grants the petition and varies the boundaries of Nyangweta Forest in accordance with the prayers of petitioner with the conditions set out under Chapter 5.
2. That the Kenya Forest Service takes possession and exercise proper control over all public forests and ensure that those who have encroached on public forests are evicted forthwith.
3. That the Kenya Forest Service protects all public forests in accordance with the Forest Management and Conservation Act and arrests and ensures the prosecution of trespassers.
4. That the Kenya Forest Service ensures the rehabilitation of cleared and deforested forests.
5. That the Kenya Forest Service conducts an extensive mapping of forest cover and tree cover within nine (9) months to facilitate a better understanding of tree cover deficiencies and requirements and enable the government to achieve ten percent (10%) tree cover as stipulated under Article 69(1)(b) of the Constitution.

The Committee then proceeded to adopt its report after having been proposed by Sen. Halake Abshiro, M.P. and seconded by Sen. Mwaruma Johnes, M.P.

- **Correspondences**

The Committee was able to review the following letters that were sent to the Committee;

- ✓ Official Study visit to Kenya by the National Council Standing Committee on Habitat from the Republic of Namibia
 - The Committee agreed to meet the Committee from Namibia during the time they will be in Kenya.
- ✓ IDP's Resettlement Issues

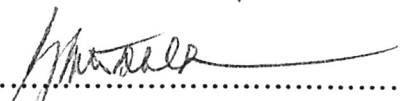
- The Committee resolved to look into all IDP matters once the Committee has winded up all investigations on Petitions.
- ✓ AHADI partnership with the Committee on Mining and Extractive matters.
 - The Committee agreed to have the retreat on a date that would be convenient to the Committee.

MINUTE SEN/SCLNDR/144/2018: ANY OTHER BUSINESS;

The Committee discusses correspondences that were sent to the Committee.

MINUTE SEN/SCLNDR/145/2018: DATE OF NEXT MEETING;

The meeting was adjourned at 1.55 pm and the date of the next meeting was to be called on notice.

SIGNATURE.......... DATE..... 11/7/2018

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)

INTERNAL MEMO



TO: Senior Deputy Clerk (MA)
THRO': Director, L & P Services
THRO': Principal Clerk Assistant, L & P Services
FROM: Second Clerk Assistant
DATE: 7th December, 2017

Handwritten: forwarded
LSD
7/12/2017
Signature: [Signature]
13/12/2017

SUBJECT: PETITION BY THE GOVERNOR OF KISII COUNTY, HON. JAMES ONGWAE, FOR VARIATION OF THE BOUNDARIES OF NYANGWETA FOREST IN SOUTH MUGIRANGO SUB-COUNTY, KISII COUNTY

The captioned Petition was partially considered by the previous Senate, before it adjourned *sine die*, without having concluded consideration of the Petition. A letter was subsequently sent to the Petitioner, on 27th September, 2017, informing him that the Petition may be re-submitted for consideration afresh by the current Senate.

I have reviewed the re-submitted Petition, together with the attached documents, and confirm that it complies with provisions of the Forest Conservation and Management Act (No. 34 of 2016), under which it is made, as well as the Petition to Parliament (Procedure) Act (No. 22 of 2012), and the Senate Standing Orders.

Consequently, it is proposed that the Petition be admitted for presentation before the Senate.

Enclosed in this regard are-

- a) draft acknowledgment letter addressed to the Petitioners; and
- b) draft presentation summary for the Speaker.

Signature: [Signature]
CHARLES MUNYUA

Handwritten: Hm. Speaker
The attached petition is submitted for approval.
Signature: [Signature]
8/12/17

PETITION BY THE GOVERNOR OF KISII COUNTY, HON. JAMES E. O. ONGWAE, FOR VARIATION OF THE BOUNDARIES OF NYANGWETA FOREST IN SOUTH MUGIRANGO SUB-COUNTY, KISII COUNTY

Honourable Senators,

1. I hereby report to the Senate that a petition has been submitted, through the Clerk, by the Governor of Kisii County, Hon. James E. O. Ongwae, for variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County.
2. The Petition is submitted pursuant to section 34 of the Forest Conservation and Management Act (No. 34 of 2016), which outlines the procedure to be followed in varying the boundaries of or revocation of a public forest, as well as the factors to be considered in arriving at such a determination.
3. In the present case, the Petitioner prays that the Senate approves the proposed variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County, by excision of 120 acres thereon, to avail land for establishment of a Complex comprising –
 - a) a sugar production plant;
 - b) an ethanol production plant; and,
 - c) an electric power generation plant.
4. The Petitioner indicates that the County Government of Kisii has entered into a Memorandum of Understanding with an investor for development of the said Complex, and has since obtained the following approvals and licences –
 - i) approval by the County Assembly of Kisii;
 - ii) Environmental Impact Assessment (EIA) Licence from the National Environment Management Authority (NEMA);
 - iii) approval by the Kenya Forest Service (KFS); and
 - iv) approval by members of the public through various stakeholder engagement forums.

The documents relating to the captioned approvals are annexed to the Petition.

5. Pursuant to Section 34 of the Forest Conservation and Management Act, as well as applicable provisions of the Petition to Parliament (Procedure) Act and Senate Standing Orders, the relevant Committee of the Senate is required to consider this matter, and carry out its own inquiry, before reporting to the Senate on whether the proposed variation of boundaries should be approved or rejected.
6. Consequently, the Senate will vote on whether to approve or reject the recommendation of the Committee.
7. **Honourable Senators**, pursuant to standing order 226, I shall now allow comments, observations or clarifications in relation to the petition for not more than **thirty** minutes.

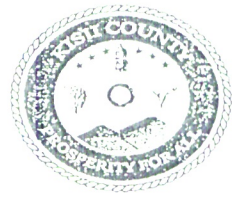
[after comments by Senators]

8. **Honourable Senators**, pursuant to standing order 226(1), the Petition should be committed to the relevant standing committee for its consideration. In this case, I direct that, once committees are constituted, the Petition be committed to the Standing Committee on Land, Environment and Natural Resources.
9. In terms of standing order 226(2), the Committee is required, in not more than sixty days from the time of reading the Prayer, to respond to the Petitioner by way of a Report addressed to the Petitioner, and laid on the Table of the Senate. The period of sixty days will start running from the date of constitution of the Committee.
10. I thank you.

No. 12

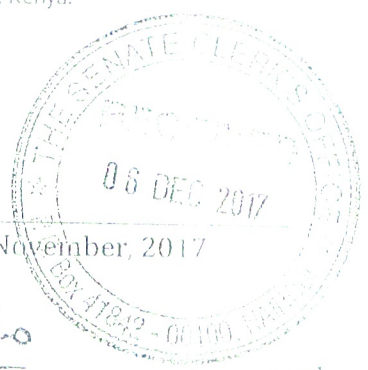
KISII COUNTY GOVERNMENT

Telephone: +254709773000/1/2/3
Email: info@kisii.go.ke
Email: governor@kisii.go.ke



Kisii Municipal Building,
P.O. Box 4550 – 40200
Kisii, Kenya.

OFFICE OF THE GOVERNOR



Ref: KSI/C/6/2/(615)

Date: 14th November, 2017

Mr Jeremiah Nyegenye,
The Senate Clerk,
Parliament Building,
P O Box 41842-00100,
NAIROBI
Tel 020 2221291/2848000
Email: csenate@parliament.go.ke

Mr. Amolo
You are dealing with this matter. Is finalized.
6/12/17

Dear *Jeremiah,*

REF: PETITION TO VARY THE BOUNDARIES OF NYANGWETA FOREST IN SOUTH MUGIRANGO SUB COUNTY, KISII COUNTY

Please refer to my letter Ref: KSI/C/6/2(569) of 24 April 2017 and your reply Ref: SFM/PETITIONS/12/CORR./2017 (3) of 27 September 2017 in which you are advising the County Government of Kisii to resubmit the above petition to the Senate afresh since the earlier one lapsed when the term of the 13th parliament ended. Below is the full petition on this subject to the Senate.

1.3 The Background

This petition is made under the provisions of The Forest Conservation and Management Act, 2016 part IV section 34.

Kisii County Government humbly petitions the Senate to vary the boundaries of Nyangweta Forest in Kisii County, South Mugirango Sub County to avail land for establishment of a Sugar Complex which will have three production plants including Sugar Production plant, Ethanol production Plant and Electric Power Generation Plant. The project was generated by the residents of the County during the public/stakeholders engagements and is consistent with the County Government's larger objective of Industrialization.


Mr. Charles Mwangi
... matter already well ... but was

This petition builds on the elaborate engagement that the Kisii County Government held with the Members of the Public during stakeholders/public participation meetings, the Forest Conservancy Committee, Nyanza Conservancy, approvals obtained from the Kisii County Assembly and Executive, Environmental Impact Assessment Study Report and Subsequent issuance of the Environment Impact Assessment License and the Memorandum of Understanding signed by the Kisii County Government with the investor.

Nyangweta Forest is registered as title No South Mugirango/Nyataaro/2358, an absolute holding measuring approximately 63.2 Ha under the proprietorship of Gusii County Council, copy of certificate of official search is attached as appendix I.

The forest is located in South Mugirango Sub County, Moticho Ward. The forest touches Chitago/Borabu, the neighbouring Ward. Records available in the Kisii County Land Registry show that the forest land was originally measuring approximately 218 acres. The Gucha County Council allocated 60 acres of the forest land to Kisii University to construct a campus leaving a balance of 158 acres.

Out of the remaining 158 acres of forest land, the Kisii County Government is petitioning Senate to vary the boundaries of the forest and avail 120 acres for the establishment of the Sugar Complex. This leaves a balance of 38 acres which will remain under the management of the Kenya Forest Service. The County Government will work with the Kenya Forest to re-forest the remaining part of the forest and facilitate its gazettelement, in addition to other compensation proposals outlined in paragraph 1.2 below.

Nyangweta Forest is accessible with tarmac and murram roads passing through it. River Nyangweta which passes to the Northern side of the forest and a small stream to the Southern part marks the boundaries between the forest and free hold land. The forest is surrounded with rich  agricultural land and served with electricity line from the national grid.

2. The Map

A map of Nyangweta Forest showing the part of it the County Government is petitioning Senate to vary the boundaries and avail land for establishment of the Sugar complex is attached as appendix II. The required area measures 120 acres. The Kisii County Government will compensate the Kenya Forest Service by identifying areas to be gazetted as forests and placed under their management. Paragraph 3 provides details regarding the planned compensation to and collaboration with the Kenya Forest Service.

3. Compensation to & Collaboration with the Kenya Forest Service

- a) The County Government identified 13 forests located in different parts of the County with total area of 461.74 hectares to be gazetted and placed under the management of the Kenya Forest Service. To this end, an advisory was prepared and forwarded to the Kisii County Assembly for approval and subsequent gazettelement. The approval of the County

Assembly was granted and communication thereof made through the Honourable Speaker's letter dated 13 April 2017.

A copy of the advisory is attached as appendix XB and Honourable Speaker's letter communicating approval of the advisory as appendix XA.

- b) The Department of Environment and Natural Resources at the County has a budget for carrying out tree planting every year. In 2014/2015 there was a budget of Kshs 2 million, 2015/2016 there was 5 million while in 2016/2017 there was 5 million. The budget will be retained to ensure that there are continuous deliberate plans to plant trees in the county with objective of increasing the forestry cover in Kisii County.
- c) The Environmental Impact Assessment Study report proposes promotion of agroforestry as a measure to increase the forest cover in the County. The Department of Agriculture is working to turn this proposal into reality by engaging farmers to embrace this method of farming.
- d) The Kisii County Government will collaborate with Kenya Forest Service to enhance forest cover and protect existing and future planted forests in the County.
- e) The County Government did employ and deploy guards to some forests to protect them from illegal felling

4. The Sugar Factory (Sugar Complex)

In order to realize the intentions of establishing a Sugar Factory at Nyangweta, Kisii County Government (KCG) entered a Memorandum of Understanding (MOU) dated 2nd March 2016 with investors, the **Kanoria Group** from India who will set up a Sugar Complex with a capacity of crushing 2500 tons of cane per day (TCD) with potential to expand to 5000 TCD, Distillery production capacity of 45KL per day and Power CO-generation Capacity of 10MW.

A copy of the MOU signed is herewith attached as appendix III.

The sugar complex will consist of three production plants, namely;

1. Sugar Production Plant
2. Ethanol Production plant
3. Electric Power Production Plant

5. Kisii Renewable Energy & Sugar Factory Ltd

The Kanoria Group of Companies will operate in Kisii under a newly registered company, Kisii Renewable Energy & Sugar Company Limited (KRESP1), a copy of the certificate of incorporation of the said company is attached as appendix IV.

6. Engagements with the Kenya Forest Service

The procedure of getting land at Nyangweta Forest to establish a sugar complex required the County Government to work with the Kenya Forest Service. To this end, engagements with the Forest Conservancy Committee (FCC), Nyanza Conservancy started in October 2014 when the head of conservancy at that time and members of the committee visited Nyangweta Forest to familiarize themselves with the forest and contextualize the request of the County Government.

Thereafter, the FCC held a special meeting on 24 June 2015 with the Kisii County Government. In that meeting, the County Government requested the Kenya Forest Service to consider varying the boundaries of the forest and avail 60 acres of the forest land for the establishment of the sugar factory. This was the envisioned requirement for land at that time based on the intended set up of a sugar production plant only. This land requirement was subjected to public participation engagement with the residents of Kisii County and approved by the Kisii County Assembly and Executive. The investor that was identified at that time did not however pursue their interest to translate these plans into reality. This caused the County Government to re-initiate the process of searching for interested investors.

7. Identification of Investor and Signing of MOU

It was until February 2016, when the County Government identified the Kanoria Group of Companies from India and entered into an MOU. This group has shown seriousness and commitment to set up a Sugar Complex at Nyangweta Forest. They have vast experience in the Sugar and related products Industry in India. The Group has the capacity to establish a Sugar complex that will have three main plants, namely; Sugar production, Ethanol production and Electric Power Production.

8. Projected Land Use of the 120 acres required to establish the Sugar Complex

Taking cognizance of the provisions of the MOU which the County Government signed with the Kanoria Group, and considering the larger area required for purposes listed hereunder, a need was generated for more land than what the county Assembly had initially approved. The County Government therefore revised the requirement for land from Sixty (60) acres to One Hundred and Twenty (120) acres which is the minimum required to adequately accommodate the planned Sugar complex. The additional request of 60 acres, to make total 120 acres, was subjected to public/stakeholders participation engagements, County Executive and County Assembly approvals and further engagements with the Kenya Forest Service.

The projected land use of the 120 acres will be as follows:

LAND USE	APPROXIMATE SIZE OF LAND (total acreage is 120 acres)	PERCENTAGE (%)
a) Cane tractor/vehicle movement,	3.6	3
b) Weigh-bridge services	3.6	3
c) Parking	8.4	7
d) cane handling/storage	6	5
e) Human movement	3.6	3
f) Movement for sugar trucks	3.6	3
g) Movement for Ethanol tankers	3.6	3
h) Process plants for Sugar and ethanol	10.8	9
i) Power Plant housing boiler and turbine	9.6	8
j) Electrical switch yard	8.4	7
k) Residential colony for employees	12	10
l) Greenbelt	8.4	7
m) Administration block and canteen	3	2.5
n) Large storage areas for ethanol and molasses	7.2	6
o) Sugar godowns	6	5
p) Bagasse yard.	6	5
q) Access Road	3	2.5
r) Pre School Unit/Amenities like fire station, health centre, petrol pump etc.	6	5
s) Social centre/shopping	7.2	6

9. The Sugar Complex Capacities

The Sugar Complex will have the capacities outlined below and will be implemented in two phases as shown in the table below:

COMPONENT	PHASE I 2016-2019	PHASE II-20202-2022
Sugarcane Crushing Capacity/day	2,500MTs	5,000 MTs
Sugar Production Capacity	105,000MTs	210,000MTs
Cultivated Plantation Size	10,000 ha	10,000 ha
Distillery Capacity	45KLpd	45KLpd
Power Co-generation capacity	10MW	20MW
Estimated Investment	50Mn USD	
Sugar Production	86,250MTs	172,500 MTs
Ethanol Production	7.5 mnlitres	15mn litres
Power Production	80,000 MWh	160,000MWh

10. Public Participation/stakeholder Engagements

The Public participation/stakeholder engagements regarding the sugar complex at Nyangweta were with the publics from Kisii County, various Government Departments, Kisii County Assembly and wider public notices in the daily newspapers, radio and Kenya Gazette. These engagements aimed at giving all interested parties and wider audience in Kisii County and the Country at large opportunity to make comments about the project. The engagements also aimed at meeting the constitutional requirements on public participation and specific provisions of the law relating to variation of boundaries of forests and environment management.

Below is an outline of the public participation engagements that were undertaken:

- 1) **The first public/stakeholder participation meeting was on 15 April 2014, at Nduru Boys Secondary School hall** in South Mugirango Sub County. The Stakeholders meeting was convened with objective of consulting the Sugarcane farmers, the Members of the County Assembly, the Chiefs and other Community leaders to identify a suitable land for the proposed Sugarcane factory in South Mugirango Sub County.

The County Government Team was led by the Chairman of the County Public Service Board, Hon David Kombo, the County Executives (CEC) for Trade and Industry, Ibrahim Moiro, CEC for Education, Labour and Manpower Planning, Dr Kodek Omwancha, CEC for Land, Physical Planning and Urban Development, Moses Onderi.

The Members of the County Assembly that participated were; Minority Leader, Daniel Apepe, Deputy County Assembly Speaker, Evans Mkororo. Others included, MCAs Elkanah Nyandoro, Reuben Moreka, Ronald Onduso and Albert Oino.

Each of the six wards of South Mugirango Sub County was allowed 25 delegates to the meeting that included all Chiefs, community leaders, religious leaders, member of the general public, teachers and farmers. The stakeholder meeting resolved that:

- a) The Kisii County Government establishes a sugarcane factory in South Mugirango Sub County on priority.
- b) That the suitable land for establishing the factory was at Nyangweta forest. The participants recommended that the County Government take appropriate measures for varying the boundaries of Nyangweta forest and avail 60 acres of the forest land for establishment of the Sugar Factory.

However, the likely investor at that time did not pursue their interest. The current investor who was identified in February 2016, requires more land as will be shown in the follow up stakeholder/public participation meeting on 4 September 2016, (see below)

See appendix V for the record of the proceedings and list of participants.

2) **The Follow up Stakeholders/Public Participation meeting on 4 September 2016** on the proposed Sugar Complex at Nyangweta Forest was necessitated due to the changes that had taken place in the plans to establish a Sugar factory. The changes which had taken place were;

- a) **Change of Investor.** The early investor that was identified in 2014 had intended to establish a sugar factory but changed his interests. Consequently, another Investor, the Kanoria Group from India was identified in February 2016.
- b) **Memorandum of Understanding.** The County Government signed a memorandum of understanding in February 2016 with the Kanoria Group from India to establish a Sugar Complex at Nyangweta .
- c) **Production Plants.** The first investor was to establish a sugar production plant only, but the Kanoria Group intends to establish a Sugar Complex with three plants , namely,
 - (i) Sugar Production plant
 - (ii) Ethanol Production Plant and
 - (iii) Electric Power Plant
- d) **Land requirement.** The first stakeholder/public Participation meeting which was in 2014 had approved availing 60 acres from Nyangweta forest for the establishment of a Sugar Factory but the Kanoria Group required 150 acres of land which was scaled down to 120 acres after negotiations with the investor. The 120 acres was a compromise arrived at which recognized scarcity of land and the need to conserve part of Nyangweta forest under the Kenya Forest Service.

Considering the above changes, it was necessary to hold a follow up meeting with stakeholders to seek their views and recommendations on the way forward.

It was clarified that the Environmental Impact Assessment Study report included covered the entire area under forest cover at Nyangweta and beyond.

The Stakeholders meeting approved the changes and urged the County Government to take urgent measures to implement the proposals.

See appendix VI for the record of proceedings and list of participants.

3) **The third public participation/Stakeholder meeting was 29 March 2016.** This was a workshop which drew participants from the six wards of South Mugirango. The workshop was attended by the six Members of the County Assembly from South Mugirango, farmers, Religious leaders, County Executive committee members, Teachers and members of the general public.

The objective of the workshop was to discuss the Environmental Impact Assessment Study Report on the proposed Sugar Complex at Nyangweta Forest. The scope of the study included the entire area under forest cover at Nyangweta.

The consultant who carried out the EIA Study conducted the workshop using three languages, that is, English, Kiswahili and Ekegusii to ensure that all those participating followed the proceedings.

Participants of the workshop approved the study report and urged the County Government to submit it to the Environmental Management Authority (NEMA) on priority for appropriate action.

The record of the proceedings and list of participants is attached as appendix VII.

4) **The 4th stakeholders/public participation meeting at Nyakeyo Secondary School with the Forest Conservancy committee on the proposed sugar complex at Nyangweta Forest in South Mugirango Sub County on 6 September 2016.**

The stakeholders /public participation meeting was organized to provide a forum for the stakeholders to interact with the members of the Forest Conservancy Committee, Nyanza Conservancy, who were visiting to monitor on compliance issues relating to the planned variation of boundaries and familiarize themselves with Nyangweta forest.

The National Government was represented by the Kisii County Commissioner and Deputy Commissioner in charge of South Mugirango Sub County.

Participants of the stakeholder/Public participation meeting were drawn from the areas surrounding the forest. They included farmers, chiefs, and general public. There were more than 200 people that turned up for the meeting. However, the County Government team was able to register part of the participants since majority of them were taken up by the engagements with the Forest Conservation Committee and participants.

The stakeholders were provided a summary of the project as follows:

- a) In 2014 the County Government identified an Investor who was to establish a Sugar factory at Nyangweta. The investor did not continue to pursue their interest. Therefore, another Investor, the Kanoria Group from India was identified in February 2016.
- b) The County Government signed a memorandum of understanding in February 2016 with the Kanoria Group from India to establish a Sugar Complex at Nyangweta .
- c) The first investor was to establish a sugar production plant only, but the Kanoria Group intends to establish a Sugar Complex with three plants , namely,
 - (iv) Sugar Production plant
 - (v) Ethanol Production Plant and
 - (vi) Electric Power Plant
- d) The land requirement for the expanded plants was 120 acres of land.
- e) That this meeting was organized to provide the stakeholders an opportunity to meet with the Forest Conservancy Committee and give them feedback about the plans to establish a Sugar Complex at Nyangweta.

The FCC had an open interactive session with stakeholders in which the general disposition of the residents of South Mugirango about the project became evidently clear. They urged the FCC to assist the Kisii County Government to get 120 acres of land from Nyangweta forest to establish the Sugar Complex.

The record of the proceedings of the meeting and list of participants is attached as appendix VIII

11. Summary of reasons for the Sugar Complex

During the various public participation/stakeholder meetings participants that included the residents of Kisii County, Members of the County Assembly, County Executive, heads of the relevant departments, participants gave various reasons why they wanted a Sugar Complex established at Nyangweta Forest. Below is a summary of the reasons:

- a) South Mugirango and the surrounding Sub Counties of Banchari, Bogetutu, Bomachoge and Bobasi have red soils which are fertile and suitable for growing sugarcane and other agricultural crops.
- b) Sugarcane is already a major cash crop grown by the farmers of South Mugirango, Banchari and Bomachoge. With the planned setting up of the sugar complex, more farmers will embrace sugarcane farming due to the ready market and increased net earnings due to reduced transport costs.
- c) The illegal cutting of trees at Nyangweta forest and other areas within the catchment zone at night by Jaggery producers will come to an end. This will ensure that the remaining part of Nyangweta forest is conserved with participation of the community.
- d) The transport costs to the sugar factories in the neighbouring counties are high thus leading to recovery of considerable earnings to pay for the transport expenses. The proposed sugar complex is therefore expected to reduce the transport expenses and increase the net earnings for the farmers from their deliveries to the factory since the distance will reduce by an average of about 50%.
- e) The proposed sugar complex is expected to create about 3000 indirect employment opportunities which will benefit the local people in addition to about 1500 skilled employment opportunities that the complex might require. Although the skilled workforce is not to be entirely sourced from the locality, some of the skilled people from the area are likely to be employed in the complex.
- f) The proposed sugar complex will have direct interactions with the people of Kisii County in terms of the benefits resulting from social corporate responsibility of the sugar complex including agriculture extension services, support to schools, sports grounds development, sponsorship to sports activities, support to health centres and road opening up (access roads) and maintenance just to mention a few.
- g) CESS is one of the benefits expected from the deliveries of sugarcane to other factories. For the several years the Kisii County farmers have been delivering their sugarcane to other factories, it is not clear how the resulting CESS has been utilized to benefit the sugarcane growing farmers in the area. It is expected that Kisii County will directly

benefit from the resulting CESS from the Sugar complex, which revenue will be pumped back to developing and improving access roads.

- h) Nyangweta Forest is accessible, with a tarmac and murram roads passing through it. Etago Health centre, Nduru Hospital and Etago police station are located within a distance of about 3 kilometres.
- i) River Nyangweta passes to the Northern part of the forest and a small stream to the Southern part marks the boundary between the forest and free holding land. The complex, will therefore extract water from nearby river Nyangweta.
- j) The forest is served with electricity from the national grid and surrounded with rich agricultural land which extends to Bomachoge, Bonchari, Bogetutu and Eobasi sub counties.
- k) The community further recognized that Nyangweta was a community forest. If granted the 120 acres from the forest, they will form themselves into associations that will work with the Kenya Forestry to protect the remaining forest (38 acres).
- l) Participants also recognized that the establishment of Sugar Factory in Kisii County will create a first major Factory that will address the needs of the sugarcane farmers situated to the lower part of the County. Tea factories serve the upper part of the County where tea is a major cash crop.

12. Consultative Workshop between the County Government and Forest Conservancy Committee on 6-7 September 2016 at Kisumu

This workshop followed a stakeholders /public participation meeting that was at Nyangweta which was organized to provide a forum for the stakeholders to interact with the Members of the Forest Conservancy Committee who were visiting to monitor on compliance issues and familiarize with Nyangweta forest.

The workshop brought together representatives of the National Government, County Government and members of the Forest Conservancy Committee.

The Chairman of the Forest Conservancy Committee opened the meeting and gave the County Government opportunity to make their presentation and build a case for an additional 60 acres from Nyangweta forest to make the total 120 acres.

The County Government was represented in the workshop by the Departments of Land, Agriculture, Environment and Trade and Industry.

The workshop resolved that the County Government should submit an application for the 120 acres required at Nyangweta, submit a map of the area, a certificate of official search and indicate clear measures of compensations of the forest that will be degazetted.

Detailed record of proceedings and list of the workshop participants is attached as appendix IX

13. Environmental Impact Assessment Study Report

The Kisii County Government commissioned an Environmental Impact Assessment Study based on the recommendation of the Kenya Forest Service. The Study covered the entire area under forest cover at Nyangweta and beyond. It was submitted to the National Environmental Management Authority (NEMA), which after review, gave it a preliminary approval and prepared public notices which were widely circulated by placing the notices in two daily newspapers, on radio and the Kenya Gazette to meet the legal requirements related to EIA study reports. Copies of the notices are attached to this letters as appendices as follows;

- a) A copy of the Kenya Gazette Notice No 4278 is attached as appendix XI
- b) A copy of the of documents of the radio notices is attached as appendix XII
- c) A copy of the notice placed in the Standard Newspaper of June 6, 2016 is attached as appendix XIII
- d) A copy of the notice placed in the Star Newspaper of June 6, 2016 is attached as appendix XIV

The issues that were raised by the Sugar Directorate and the Forest Conservation Committee, Nyanza Conservancy following the wider Public Participation were subsequently addressed and the EIA study cleared.

NEMA has since issued EIA License NO NEMA/EIA/PSL/4393 for the Nyangweta Sugar Project, a copy of the said License is attached as appendix 1B.

14. Approval from the Kisii County Assembly

- a) Following the stakeholder/Public participation meeting that was on 15 April 2014, in which the land requirement at that time was 60 acres, the County Executive Committee submitted an Advisory to the County Assembly dated 30th day of April 2014 seeking approval of the County Assembly to vary the boundaries of Nyangweta Forest and avail the said acres for establishment of a Sugar factory in South Mugirango Sub County. The approval of the County Assembly was granted and communication thereof made through the Honourable Speaker's letter dated 29 August 2014

The Speaker's letter of approval is attached as appendix XV and Advisory is attached as appendix XVI.

However, it should be noted that the investor at that time did not pursue their interest of setting up a sugar factory at Nyangweta.

- b) Consequent to a) above, the County Government re-initiated a search for an investor in the Sugar and related products industry. It was until February 2016 that the Government identified the Kancra Group from India and signed an MOU with them to set up a Sugar Complex at Nyangweta. The MOU is attached as appendix III.

The Kanoria Group of Companies will operate in Kisii in the name of Kisii Renewable Energy & Sugar Company Limited (KRESP1). The Group requires a minimum of 120 acres to set up the Sugar Complex, being the compromise arrived at after much negotiation.

The County Government consequently a follow up public participation meeting on 4 September 2016 to give the stakeholders opportunity to make comments and recommendation for the changes which had taken place regarding the setup of the Project. The changes were in acreage from 60 acres to 120 acres, change of investor, changes from one production plant to three plants including Sugar production plant, ethanol production plant and Electric Power production plant. The stakeholders approved the changes.

An advisory for the variation of boundaries of Nyangweta Forest to avail 120 acres of land from Nyangweta forest dated 15 July 2016 was submitted to the County Assembly and approved on 6 September 2016 and communicated through the Honourable Speaker's letter dated 28 September 2016.

The Honourable Speaker's letter of approval is attached as appendix XVIII and the Advisory as appendix XIX.

It is evident from the above summaries of the various public participation/stakeholder meetings that the publics were fully involved and the Kisii County Assembly and County Executive gave approvals for the variation of boundaries and availing of 120 acres of land from Nyangweta forest for setting up a Sugar Complex. In addition, the County Government complied with requirement of lead agencies including the Kenya Forest service and National Environment Management Authority relating to getting forest land for establishment of projects.

15. Proposed Sugar Factory to Transform the Economy and Change livelihoods

The establishment of the sugar complex at Nyangweta is an investment that is expected to significantly transform the economy of the County, and would greatly change the livelihoods of not only the sugarcane farmers but also those of the residents of the County and the Country at large. Examples of the likely changes in livelihood include, better prices for cane delivered, creation of employment opportunities for the residents, ready market for farm produce and other products, improvement of infrastructure and social services among others. The county Government will also earn revenue in terms of rent and license fees.

16. Conclusion

The engagement with lead agencies including National Environmental Management Authority, the Kenya Forest Service, the public notices placed in the newspapers, radio and Kenya Gazette, the public participation/stakeholders meetings, the debate in the County Assembly and discussions at the County Executive Committee have taken measures which ensures that:

- a) The variation of boundaries of Nyangweta Forest will not endanger any rare, threatened or endangered species and will not adversely affect its value as a water catchment area. It will not prejudice biodiversity conservation, cultural site protection of the forest or its use for educational, recreational, health or research.

It is therefore my humble petition to Senate on behalf of the residents of Kisii County and the Kisii County Government to vary the boundaries of Nyangweta Forest to avail land for the development of the Sugar Complex project which will have three plants including Sugar Production Plant, Ethanol production plant and CO₂-Generation plant.

Yours



H. E. Hon. James E. O. Ongwae, CBS, EBS, OGW,
Governor,
KISII COUNTY.

CC: Hon. Prof. Samson Ogeri,
Senator, Kisii County Government,
The Senate Parliament Building,
NAIROBI.