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PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

THIRD SESSION

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

REPORT ON THE PETITION TO THE SENATE ON NON PAYMENT OF
COMPENSATION FOR LAND COMPULSORILY ACQUIRED TO
CONSTRUCT MWATATE-TAVETA-HOLILI ROAD

*DC-EG
Recommended & forwarded
04/11/19*

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

OCTOBER, 2019

List of Abbreviations/ Synonyms

1. CS - Cabinet Secretary
2. KENHA - Kenya National Highways Authority
3. MOLPP - Ministry of Land & Physical Planning
4. NLC - National Land Commission

PREFACE

Mr. Speaker sir,

The Standing Committee on Lands, Environment and Natural Resources is established pursuant to Standing Order No. 218(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, EGH, M.P. | - Member |
| 8. Sen. Halake Abshiro, M.P. | - Member |
| 9. Sen. Boy Issa Juma, M.P. | - Member |

This report is on a Petition concerning the nonpayment of compensation for land compulsorily acquired to construct Mwatate- Taveta- Holili Road. The Petitioners submitted their prayers 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 Petitioners prayed that the Senate-

1. Deals with this petition immediately in view of the urgency and seriousness of the matters raised herein.

2. Investigates the circumstances that led to the nonpayment of compensation to the 28 members and any other member eligible for compensation from this project.
3. Recommend that the 28 members and any other person eligible for compensation along the Mwatate-Taveta -Holili road be promptly paid.
4. Takes any other appropriate action it deems fit.

The Petition

Pursuant to the standing order 226(1)(a) and 230(2)(b) of the Senate Standing Orders, the Speaker of the Senate reported to the House a Petition submitted through the Clerk of Senate by seven (7) residents of Mwatate Constituency, Taita Taveta County. Pursuant to standing order 232(1), the petition stood committed to the Land, Environment and Natural Resources Committee.

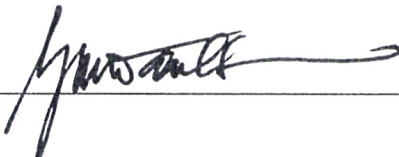
The Committee undertook to investigate and determine the prayers of the petitioners pursuant to standing order 220 of the Senate Standing Orders. It also received submissions from the Petitioners and various key stakeholders including the National Land Commission .

ACKNOWLEDGEMENT

The Committee acknowledges the time and considerable effort made by all parties who volunteered information before it. I also 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 the work of the Committee in undertaking its constitutional mandate. We also 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 concerning nonpayment of compensation for land compulsorily acquired to construct Mwatate-Taveta- Holili Road.

Signed:  Date: 23-10-2019

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

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 119 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 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 standing order 226 (1) of the Senate Standing Order, the petition was submitted, through the Clerk, by residents Chawia ward of Taita Taveta County, being representatives of about 28 persons whose land was compulsorily acquired to construct Mwatate -Taveta-Holili road but were yet to be compensated.

The salient issues raised in the said Petition are:

1. THAT their parcels of land which lie in Chawia-Wumari Sechu land registration section were compulsorily acquired by the National Land Commission to construct Mwatate-Taveta-Holili road via Gazette Notice No. 7709 of 23rd September, 2016.
2. THAT despite being given compensation award letters in 2016, the following were yet to be paid their dues.

| Plot owner | Registration section |
|--|-----------------------------|
| Johnson Mjomba | Chawia/Wumari/Sechu/A52b |
| Griffin Crispus Sikukuu Msagha | Chawia/Wumari/Sechu/A53 |
| Denaise Samba Kafuse | Chawia/Wumari/Sechu/A54a |
| Penina Machcho Mwandoe | Chawia/Wumari/Sechu/A55c |
| Penina Mailengo Kitonga | Chawia/Wumari/Sechu/A55d |
| George Mongo and Florence Manga Kambucha | Chawia/Wumari/Sechu/A55e |
| Samwel Kuwona Cherugha | Chawia/Wumari/Sechu/A55f |

| | |
|--|----------------------------|
| Livingstone Mwawasi Mwangwai | Chawia/Wumari/Sechu/A55g |
| Stanley Kirubai and Gabriel Mcharo Ligha | Chawia/Wumari/Sechu/A55h |
| Florence Mkira Mbokomu | Chawia/Wumari/Sechu u/A55j |
| Ngerere Mwakitau and Rejoice Marura Kezia. | Chawia/Wumari/Sechu/A55k |
| Mgharo Benja | Chawia/Wumari/Sechu/ASSI |
| Mombo Ngala and Timothy Mwakio Mwazo | Chawia/Wumari/Sechu/A55m |
| Fidelis Ngondo Kichimbi | Chawia/Wumari/Sechu/A55n |
| Peter Shake Msagha | Chawia/Wumari/Sechu/A5p |
| Mathias Mghanga Mcharo | Chawia/Wumari/Sechu/A55Q |
| Mwawasi Mwazo Mwangombe | Chawia/Wumari/Sechu/A55R |
| Grazelda Mrunde Mchawia | Chawia/Wumari/Sechu/A55S |
| Caroline Chao Mwdime | Chawia/Wumari/Sechu/A55T |
| James Shake Nyange | Chawia/Wumari/Sechu/A84a |
| Jackan Mwaiyu Mombo | Chawia/Wumari/Sechu/A84b |
| Phenesus Mshimba Koti Kaya | Chawia/Wumari/Sechu/A84c |
| Mhifl Mghanga Mcharo | Chawia/Wumari/Sechu/A84d |
| Kaya Cultural Shrine | Chawia/Wumari/Sechu/A84e |
| Ronald Lela Mwacharo. | Chawia/Wumari/Sechu/A84f |
| Anderson John Isaka Kishere | Chawia/Wumari/Sechu/A84g |
| Peter Muya and James Shake | Chawia/Wumari/Sechu/A84h |
| Fredrick Mwamburi | Chawia/Wumari/Sechu/A52 |
| | |

3. THAT the members have on diverse dates spent huge sums of money and time in following up their payment with the Kenya National Highways Authority (KENHA) without success.
4. THAT the members are concerned that the more the payment delays, the more the money loses value.
5. THAT the delay in payment contravenes section 111 of the Land Act of 2012 which states that “if land is acquired compulsorily under this act, just compensation shall be paid promptly in full to all persons whose interest in the land has been determined”.
6. THAT the members have made every effort to resolve the matters raised in the Petition with the Kenya National Highways Authority (KENHA) to no avail.
7. THAT there is no case pending in a court of law, constitutional or any other legal body on the matters raised in the Petition.

The Petitioners prayed that the Senate -

- a) Deals with the Petition immediately in view of the urgency and seriousness of the matters raised therein.
- b) Investigates the circumstances that led to the nonpayment of compensation to the 28 members and any other member eligible for compensation from the project.
- c) Recommends the 28 members and any other person eligible for compensation along the Mwatate-Taveta -Holili Road be paid immediately.
- d) Takes any other appropriate action it deems fit.

CHAPTER 2

APPROACH OF THE COMMITTEE

The Committee examined and analyzed the issues raised by the petitioners and embarked on a process to identify the necessary action to take on the prayers submitted by the petitioners. The Committee invited the National Land Commission and thereafter conducted a site visit.

The Committee site visit was conducted on 10th May, 2019.

The sole objective of the Committee was to obtain as much information and facts on the subject matter so as to reply to the prayers of the petitioners 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 Petitioners
- (b) The National Land Commission

ii. Documents review

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

- i). Petitioner's presentation,
- ii). Presentation by the National Land Commission

iii. Site Visit to Mwatate-Taveta-Holili Road, Taita Taveta County

The committee also met with the Petitioners at Holili- Mwatate Road to respond to the Petition to the Senate on land used for construction of the Holili – Taveta - Mwatate Road and the Petitioners presented the following issues to the Committee;

- a) That during the construction of the road a survey was done and the affected persons' land was estimated for compensation but since then many people have yet to be compensated.
- b) The process of compensation for those people who were compensated was unfair because some people were paid more for small piece of land while others being paid less for large piece of land hence the valuation was contradicting and not clear to them.
- c) Compensation took so long that the road was completed without them being compensated, with some of the Petitioners being old men and women who seem hopeless and fear that they may die before receiving compensation.
- d) There was land grabbed on Mwatate and used to build a Police station without the consent of the owners or even compensation.



Figure 1: Petitioners and local leaders together with other stakeholders from Holili in Taita Taveta County on 10.5.2019. (Taita Taveta County)

CHAPTER 3

SUBMISSIONS TO THE COMMITTEE

This section contains the summaries of the submissions made to the Committee during the sessions and as contained in documents submitted to it.

3.1 Submissions by the Petitioners

The petitioner submitted as follows-

1. THAT their parcels of land which lie in Chawia-Wumari Sechu land registration section were compulsorily acquired by the National Land Commission to construct Mwatate-Taveta-Holili road via gazette notice 7709 of 23rd September, 2016.
2. THAT despite being given compensation award letters in 2016, various persons were yet to receive their compensation.
3. THAT the members have on diverse dates spent a lot of money and time in following up their payment with the Kenya National Highways Authority (KENHA) without success.
4. THAT the members are concerned that the more the payment delays, the more the money loses value.
5. THAT the delay in payment contravenes section 111 of the Land Act of 2012 which states that *“if land is acquired compulsorily under this act, just compensation shall be paid promptly in full to all persons whose interest in the land has been determined”*.
6. THAT the members have made every effort to resolve the matters raised in this petition with the Kenya National Highways Authority (KENHA) but their efforts have proven futile.
7. THAT there is no case pending in a court of law, constitutional or any other legal body on the matters raised in the Petition.

3.2 Submissions by the National Land Commission

The National Land Commission responded as follows to the issues raised in the Petition:

| ITEM | DETAILS |
|---|--|
| Request for Compulsory Acquisition | From Kenya National Highways Authority (KeNHA) (General Manager - design & construction) Ref. KeNHA/D&C/A23/Vol.3 (67) dated 24 st August 2013. |
| Notice of intention to acquire | Published in the Kenya Gazette notice No. 13942 of 18 th October 2013. |
| Field Inspections for purposes of valuation | Done by Rtd. Valuer Elias G. Rwigi and later handled by Ag. Director Valuation & Taxation Fidelis K. Mburu and Chief Valuation Officer Mariko K. Kaliamoi. |
| Inquiry | Published in Kenya Gazette notice No. 13943 of 18 th October 2013, further sittings gazetted in notice number 1174 of 26 th February, 2016. Inquiry for the subject parcels were gazetted in notice number 7709 of 23 rd September 2016 and held at the Mwatate DCC's office (Chiefs office) as scheduled on 1 1 th October 20 16. |
| Issuance of Awards | Awards issued on 12 th April, 2017 |
| Receipt of compensation funds | From KeNHA vide letter ref. KeNHA/F/NLC/6/VOL. 1/3 110 dated 20 th December 2018 |

That it is a fact that compensation for the entire road project progressed on very well and was almost complete. *However, the petitioners' compensation delayed as a result of a late road corridor re-alignment necessitated by suitability considerations - which is the jurisdiction of KeNHA and the contractors.*

That the initial list had therefore to be de-gazetted (Gazette notice number 1174 of 26th February, 2016) and the new alignment added. Both the NLC and KeNHA have been keen to settle the matter as evidenced by the follow up to gazette the new alignment and remission of compensation funds.

That from the funds remitted, the NLC paid out in March, 2019 the following *two Project Affected Persons who had complete documentation;*

- i). Johnson Mjomba Mwamburi - Chawia/Wumari/Sechu/A52b
- ii). Florence Manga Machila - Chawia/Wumari/Sechu/A55e

That in addition, the NLC in liaison with the office of the Hon. Member of Parliament for Mwatate and the affected persons has prepared compensation payments for *14 project affected persons indicated below.*

- 1. Griphin Crispus Sikukuu Msaga - Chawia/Wumari/Sechu/A53
- 2. Solomon Mwakazo Daudi - Chawia/Wumari/Sechu/A54a
- 3. Penina Machocho Mwandoe - Chawia/Wumari/Sechu/A55c
- 4. Samuel Kuwona Cherezugha - Chawia/Wumari/Sechu/A55f
- 5. Livingstone Mwawasi Mwangwai - Chawia/Wumari/Sechu/A55g
- 6. Stanley Kirubai Mwakwenda - Chawia/Wumari/Sechu/A55h
- 7. Florence Mkiwa Mbokomo - Chawia/Wumari/Sechu/A55j
- 8. Rejoice Marura Kizela - Chawia/Wumari/Sechu/A55k
- 9. Timothy Mwakio Mwazo - Chawia/Wumari/Sechu/A55m
- 10. Fidelis Ngondo Kighimbi - Chawia/Wumari/Sechu/A55n
- 11. Peter Shake Msagha - Chawia/Wumari/Sechu/A55p
- 12. Oliver Mwakughu - Chawia/Wumari/Sechu/A84b
- 13. Phenescus Mshimba Koti - Chawia/Wumari/Sechu/A84d
- 14. Anderson John Isaka Kishere - Chawia/Wumari/Sechu/A84g

That payments for the above project affected persons are on-going. Payment approvals have been granted. The affected persons should expect money in their accounts by Monday 9th September, 2019.

That the following ten land owners are yet to avail complete documentation to enable processing of payment:

1. Penina Nailengo Kitonga - Chawia/Wumari/Sechu/A55d
2. Mgharo Benjamin - Chawia/Wumari/Sechu/A551
3. Mathias Mghanga Mcharo - Chawia/Wumari/Sechu/A55q
4. Mwawasi Mwazo Mwangombe - Chawia/Wumari/Sechu/A55r
5. Grazelda Mrunde Mchawia - Chawia/Wumari/Sechu/A55s
6. Caroline Chao Mwadime - Chawia/Wumari/Sechu/A55t
7. James Shake Nyange - Chawia/Wumari/Sechu/A84a
8. Jackan Mwaivu Mombo - Chawia/Wumari/Sechu/A84c
9. Ronald Lela Mwagharo - Chawia/Wumari/Sechu/A84f
10. Peter Muya & James Shake - Chawia/Wumari/Sechu/A84h

The NLC reiterated its commitment to fulfill the Constitutional and statutory requirement of full and prompt payment to all projected affected persons along the Mwatate-Taveta/Holili (A23) road project. It has already commenced a compensation audit to flag out cases of non-payment for all road projects - 45 projects across the country and expect to complete the exercise by 13th September 2019. Payments shall be made thereafter.

CHAPTER 4

COMMITTEE OBSERVATIONS

The committee made the following observations in line with the prayers of the Petitioner -

1. On the prayer that the Senate deals with the Petition immediately in view of the urgency and seriousness of the matters raised herein;

The Committee observed that the Senate had proceeded with speed to refer the Petition to the Committee and that the Committee, with the same speed, proceeded to intercede for the Petitioners and ensure that their compensation was undertaken even before reporting back to the Senate.

2. On the prayer that the Senate investigates the circumstances that led to the nonpayment of compensation to the 28 members and any other member eligible for compensation from the project;

The Committee observed that it was able to hold discussions with the National Land Commission and facilitate their prioritization of the matter. The National Land Commission speedily began finalizing compensations of persons affected along the entire project.

3. On the prayer that the Senate recommends that the 28 members and any other person eligible for compensation along the Mwatate-Taveta-Holili Road be paid immediately;

The Committee observes that the persons affected have since been paid and the matter has been adequately addressed. Attached to this report is the list of persons compensated.

CHAPTER 5

COMMITTEE RECOMMENDATIONS

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

The Committee recommends that the National Land Commission should liaise with the Kenya Highways Authority (KENHA) to ensure that any other person along the same road Mwatate -Taveta-Holili road is, without any further delay, adequately compensated.



NATIONAL LAND COMMISSION

Telegrams: "MINILANDS", Nairobi
Telephone: Nairobi 2718050
When replying please quote

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

REF: NLC/FIN.1

The Managing Director
National Bank of Kenya Limited
P.O. Box 30121-00100
NAIROBI

Date: 9th September, 2019.

**COMPENSATION PART PAYMENT FOR MWATATE -TAVETA/HOLILI (A23)
ROAD PROJECT KSHS.9,137,273.00**

The above mentioned subject matter refers.

We kindly request you to transfer the above amount from our Account No. 01001032980000 to the Individual Accounts as per the attached schedule.

Cheque No.001896 totaling to Kshs.9,137,273.00 (Shillings Nine Million, One Hundred Thirty Seven Thousand, Two Hundred Seventy Three only) Payable to yourselves is attached.

Kindly return to us the attached copy of this letter stamped received.

.....
Kabale Arero Tache
AUTHORIZED SIGNATORY

.....
Bernard Kibet Cherutich
AUTHORIZED SIGNATORY

② Ag. Valuation & Tax

Kshs. 9,382,015/= is approved based on your confirmation and confirmation that due diligence has been done by you and that no award will court order to be paid.



INTERNAL MEMO

| | | |
|-----------------------|--|--------------------------|
| To: Ag. Secretary/CEO | From: Ag. Director, Valuation & Taxation | for app dmp 9/9/19 |
| Ref: VAL. 1478/H/2 | Date: 3 rd September, 2019 | |

CONSTRUCTION OF MWATATE – TAVETA/HOLILI (A23) ROAD

We refer to the above land acquisition that was initiated through KeNHA's letter Ref. KENHA/DECA/23/Vol.3(67) dated 24th August 2013 and gazette notice numbers 13942 & 13943 of 2013.

The Kenya National Highways Authority deposited into the Commission's Account compensation

We hereby attach a schedule of twenty four (24) PAPs amounting to Kshs. 9,382,015.00 (Read: Nine Million, Three Hundred and Eighty Two Thousand, Fifteen only.) Kindly approve for disbursement of funds as per the Land Acquisition Committee Meeting on 20th November 2018, under 3/20/11/2013 (copy attached)

The Ag. Director has undertaken due diligence and further adhered to the Land Act 2012 on compulsory acquisition in furtherance of advice of the Commission to release compensation.

Kindly approve for the Director, Finance & Administration to process the compensation.

MPURU E. K.
AG. DIRECTOR, VALUATION & TAXATION

Compensation
approved
12.83
9/9/19

①
9,382,015 (Nine Million Three Hundred and Eighty Two Thousand only)
9/9/19

3
Please process payment as per approval at ②
Kshs 9,382,015
10/9/2019

DATE : 9/9/2019

CHQ NO 1890



COMPENSATION PART PAYMENT FOR CONSTRUCTION OF MWATATE -TAVETA /HOLILI (A23)ROAD

| S/NO. | PARCEL NO | ACQ.AREAD | PAYEE | ID NO. | KRA | BANK | Branch | ACCOUNT | CODE | AMOUNT |
|-------|-----------------------------|-----------|--------------------------|---------|-------------|-------|--------|----------------|-------|-------------------|
| 1 | Chawia/Wumari Sechu/A55t | 0.4075 | Caroline Chao Mwadime | 5348480 | A009794871Q | CO-OP | VOI | 01109222459500 | 11059 | 578,986.00 |
| 2 | Chawia/Wumari Sechu/A55t | 0.1325 | Grazeldah Mrunde Mchawia | 5348403 | A008221808E | KCB | VOI | 1208830031 | 01186 | 188,259.00 |
| | TOTAL | | | | | | | | | 767,245.00 |

.....
Kabale Tache Arero
AUTHORIZED SIGNATORY

.....
Bernard Kibet Cherutich
AUTHORIZED SIGNATORY

MINUTES OF THE 27TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 23RD OCTOBER, 2019 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. Godana Hargura, M.P.
4. Sen. Ndwiga Peter Njeru, EGH. M.P.
5. Sen. George Khaniri, MGH, M.P.
6. Sen. Boy Issa Juma, M.P.
7. Sen. Halake Abshiro, M.P.

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Mwaruma Johnes, M.P. - Member
2. Sen. Slyvia Kasanga, M.P. - Member

IN ATTENDANCE

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Caroline Cheruiyot - Legal Counsel
3. Mr. Abdalla Mbore - Sergeant at arms
4. Mr. Eugene Luteshi - Audio Recording

MINUTE SEN/SCLNDR/157/2019: PRELIMINARIES

The meeting was called to order at 11.30am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNDR/158/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Halake Abshiro, M.P. and seconded by Sen. Godana Hargura, M.P as follows.

1. Preliminaries;
 - *Prayer*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. **Adoption of Committee Reports;**
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLNDR/159/2019: CONFIRMATION OF MINUTES

The Minutes of the 24th sitting held on 25th September, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Godana Hargura, M.P. respectively.

The Minutes of the 20th sitting held on 12th August, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Boy Issa Juma, M.P. respectively.

The Minutes of the 11th sitting held on 4th April, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Boy Issa Juma, M.P. respectively.

The Minutes of the 5th sitting held on 20th February, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Prengei Victor, M.P. and seconded by Sen. Halake Abshiro, M.P. respectively.

MINUTE SEN/SCLNDR/160/2019: MATTERS ARISING

There were no matters arising.

MINUTE SEN/SCLNDR/161/2019: ADOPTION OF COMMITTEE REPORTS

The following reports were adopted by the Committee:

- (a) Report on the Petition regarding Adverse environmental and social effects arising from the construction of Phase 2A of the Standard Gauge Railway (Nairobi – Naivasha Section);

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (b) Report on the Petition regarding Budgetary support to Wildlife Conservancies for sustainable conservation and community development;

The report was adopted after having been proposed and seconded by Sen. Prengei Victor, M.P. and Sen. Boy Issa Juma, M.P. respectively.

- (c) Report on the Petition regarding Alleged unlawful deprivation of a parcel of land situated in Kaputiei North, Kajiado County;

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Ndwiga Peter Njeru, M.P. respectively.

- (d) Report on the Petition regarding Ownership of Mgeno Land Reserve;

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Prengei Victor, M.P. respectively.

- (e) Report on the Petition regarding Non-payment of compensation for land compulsorily acquired to construct Mwatate-Taveta-Holili Road;

The report was adopted after having been proposed and seconded by Sen. Boy Issa Juma, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (f) Report on the Petition regarding the Alleged grabbing of the part of the land allocated for settlement of the Petitioners at Kiang'ombe Squatters Settlement Scheme in Thika sub-County, Kiambu County

The report was adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (g) Report on the Petition regarding the effects of iron ore mining at Kishushe in Taita Taveta County.

The report was adopted after having been proposed and seconded by Sen. Prengei Victor, M.P. and Sen. Ndwiga Peter Njeru, M.P. respectively.

- (h) Report regarding the Committee's participation in the 8th World Water Conference held in Brasília, Brazil from 18th – 23rd March, 2018;

The report was adopted after having been proposed and seconded by Sen. George Khaniri, M.P. and Sen. Boy Issa Juma, M.P. respectively.

- (i) Report regarding the Committee's participation in the 14th Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) on Modern Mining Law and Policy 16th – 18th October, 2018.

The report was adopted after having been proposed and seconded by Sen. George Khaniri, M.P. and Sen. Prengei Victor, M.P. respectively.

- (j) Report regarding the Committee's participation in the 18th meeting of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Conference of the Parties (CoP 18) that was held in Geneva, Switzerland from 17th – 28th August, 2019.

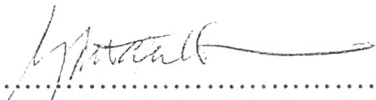
The report was adopted after having been proposed and seconded by Sen. Boy Issa Juma, M.P. and Sen. Prengei Victor, M.P. respectively.

MINUTE SEN/SCLN/162/2019: ANY OTHER BUSINESS;

There were no other matters discussed during the meeting.

MINUTE SEN/SCLNR/163/2019: DATE OF NEXT MEETING;

The meeting was adjourned at 10.29 am and the next meeting was to follow thereafter.

SIGNATURE  DATE 23-10-2019

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

MINUTES OF THE 24TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 25TH SEPTEMBER, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.30AM.

MEMBERS

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

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Prengei Victor, M.P.
2. Sen. Halake Abshiro, M.P.
3. Sen. Boy Issa Juma, M.P.
4. Sen. Sylvia Kasanga, M.P.

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

IN ATTENDANCE

A. SENATORS

1. Sen. Charles Kibiru, MP – Senator, Kirinyaga County

B. MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Ms. Farida Karoney - CS, MOLPP
2. Hon. Gideon M. Mungaro - CAS
3. Mr. Benson Mbiti - MOLPP
4. Mr. Charles Githenya - D/Director Land Administration
5. Ms. Juliana Mutua, PHD - MOLPP
6. Ms. Pauline Pesa - MOLPP

C. NATIONAL LAND COMMISSION

1. Mr. Francis Bor - DCS NLC
2. Mr. Dennis Mutungi - Co-ordinator NLC

D. SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Mr. Caroline Cheruiyot - Legal Counsel
3. Mr. Robert Rop - Audio Recording

MINUTE SEN/SCLNENR/135/2019: PRELIMINARIES

The meeting was called to order at 10.00 am by the Chairperson followed by a word of Prayer. The Chairman led the Committee through a round of introductions and thereafter informed the Committee that there is no response from the County Government of Nakuru following an invitation sent to them.

MINUTE SEN/SCLNENR/136/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. George Khaniri, EGH, MP and seconded by Sen. Godana Hargura, MP as follows;

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. **Meeting with the Cabinet Secretary Ministry of Lands and Physical Planning, County Government of Nakuru and the CEO National Land Commission on Statements and Petitions before the Committee;**
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLNENR/137/2019: CONFIRMATION OF MINUTES

The confirmation of Minutes was differed to the next housekeeping meeting.

MINUTE SEN/SCLNENR/138/2019:

MEETING WITH THE CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING AND CEO NATIONAL LAND COMMISSION ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE;

The Ministry of Lands and Physical Planning submitted as follows:

A. STATEMENT REQUEST BY SENATOR KIBIRU CHARLES REUBENSON, SENATOR FOR KIRINYAGA

On the matter of Mwea, the CS informed the Committee that they are embarking on giving the residents of Mwea conditional leases within 3 months. A technical team is also being set up to come up with resolutions in 90 days on long term measures to deal with the matter.

B. PETITION BY RESIDENTS OF MWATATE CONSTITUENCY, TAITA TAVETA COUNTY ON THE OWNERSHIP OF MGENO LAND RESERVE;

The CS informed the Committee that they have embarked on a Rapid Response Initiative (RRI) to ensure titles are issued for the remaining 6000 acres in Land Reference Number 3880/3. They are currently working on 30,100 titles at the moment.

The Committee was informed that part of the land is being set aside for public utilities and a land bank for future use.

The CS assured the Committee that they are following the Community Land Act and that the County Government is holding the land in trust until the Community is registered for them to get a block title.

C. PETITION ON NON-PAYMENT OF COMPENSATION FOR LAND COMPULSORILY ACQUIRED TO CONSTRUCT MWATATE-TAVETA-HOLILI ROAD;

The CS informed the Committee that NLC is fully responsible and that the information they have, is that they have since submitted the list of beneficiaries.

D. STATEMENT REQUESTED BY SEN. JOHNES MWARUMA ON 21ST FEBRUARY, 2019 ON THE STATUS OF VOI SISAL ESTATE;

The Committee was further informed by the Senator, Taita Taveta that the parcel of land in question has remained private through fraudulent means and that the Ministry of Lands and Physical Planning needs to establish and investigate the procedure that was followed in acquiring the parcel of land.

The CS responded by informing the Committee that the Senator Taita Taveta can seek supplementary questions for answers from the Ministry of Lands and Physical Planning citing clearly the allegations raised.

E. CONCERN OF THE NAYNDARUA VILLAGES

The CS informed the Committee that plans were underway and that the resettlement will be completed by July, 2020 as what was set as the target date to have completed the exercise.

F. STATEMENT REQUESTED BY SEN. ANUAR LOITIPTIP ON 19TH MARCH, 2019 REGARDING THE LAND CRISIS IN LAMU COUNTY;

The Committee was informed that an advisory has been sought from the Attorney General on the matter since they cannot be able to revoke the Title deeds without an opinion for the Attorney General.

The National Land Commission informed the Committee that the section was repealed in 2017 and therefore revocation has now to be done through a court of law and are therefore working with the Attorney General to provide amendments in the law to return these powers back to the Commission.

G. STATEMENT REQUESTED BY SEN. JOHNSON SAKAJA ON 21ST MARCH, 2019 REGARDING THE COMPENSATION OF NAIROBI RESIDENTS IN MIHANG'O WARD, EMBAKASI EAST CONSTITUENCY BY KENYA POWER AND LIGHTING COMPANY FOR THE ILLEGAL DEMOLITION OF THEIR HOUSES;

The CS informed the Committee that this is a matter of Public Land being restored and that the Kenya Power and Lighting Company would be best placed to give a response.

H. PETITION ON THE ALLEGED GRABBING OF THE PART OF THE LAND ALLOCATED FOR SETTLEMENT OF THE PETITIONERS AT KIANG'OMBE SQUATTERS SETTLEMENT SCHEME IN THIKA SUB-COUNTY, KIAMBU COUNTY;

The Committee was informed that the matter has so far been settled and that the remaining part would be for NLC to give a comprehensive response on the matter.

The Committee is therefore waiting for a comprehensive response from the National Land Commission.

I. PETITION BY RESIDENTS OF GILGIL TOWNSHIP CONCERNING THE ALLEGED GRABBING OF PUBLIC UTILITY AND PRIVATE LAND AT LELESHWA, GILGIL TOWNSHIP, NAKURU COUNTY;

The Committee is waiting for a comprehensive response from the National Land Commission.

J. PETITION ON THE COMPENSATION AND RESETTLEMENT OF EVICTEES FROM MARMANET FOREST IN LAIKIPIA COUNTY;

The Committee was informed that the Ministry is trying to seek alternate land for the people of Marmanet. The Ministry currently does not have the money for that purpose.

The Committee was further informed that the Ministry has embarked on setting up a Committee to resettle the people of Marmanet together with NLC and that hopefully by

November, 2019 the Committee will have been in place.

K. PETITION ON IRON ORE MINING IN KISHUSHE AREA OF TAITA TAVETA COUNTY, THAT THEY ALLEGEDLY OBTAINED A TITLE (TITLE DEED NO. CR65748) FRAUDULENTLY THROUGH THE MANAGEMENT OF KISHUSHE COOPERATIVE RANCH

The CS informed the Committee that the matter of the Title deed for this parcel of Land is a matter that is currently active in court and wouldn't want to comment about it.

MINUTE/ SEN/SCLNR/139/2019: ANY OTHER BUSINESS

There was no other business discussed.

MINUTES/SEN/SCLNR/140/2019: ADJOURNMENT

The meeting was adjourned at 12.02 pm. The date of the next meeting was to be called on notice.

SIGNATURE..... DATE.....

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

MINUTES OF THE 21ST MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 4TH SEPTEMBER, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 10.00AM.

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. Mwaruma Johnes, M.P.

PRESENT

- Chairperson
- Vice Chairperson
- Member
- Member
- Member

ABSENT WITH APOLOGY

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

IN ATTENDANCE

NATIONAL LAND COMMISSION

1. Ms. Kabale Tache - Ag. CEO/ Sec. NLC
2. Mr. Francis Bor - DCS NLC
3. Fidelis Mburu - Ag. Dir. Valuation
4. Dennis Mutungi - NLC Coordinator, Taita Taveta

NATIONAL ASSEMBLY

- Hon. Kabinga Wachira - MP Mwea Constituency

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Joyce Chelangat - Audio Recording
3. Ms. Hawa Abdi - SAA

MINUTE SEN/SCLNDR/123/2019: PRELIMINARIES

The meeting was called to order at 10.30 am by the Chairperson followed by a word of Prayer.

Thereafter the Chairperson called for a round of introductions.

MINUTE SEN/SCLNLR/124/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. George Khaniri, MP as follows;

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. **Meeting with the Cabinet Secretary Ministry of Lands and Physical Planning, and the CEO National Land Commission on Statements and Petitions before the Committee;**
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE/ SEN/SCLNLR/125/2019: MEETING WITH THE CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING, AND THE CEO NATIONAL LAND COMMISSION ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE

The Committee discussed the letter received from the Ministry of Lands and Physical Planning indicating that they were unable to attend owing to the fact that they were yet to receive official communication inviting them to the meeting.

The Committee was able to ascertain that indeed there was a letter sent to them and that the matter be discussed further during their appearance before the Committee on Thursday, 12th September, 2019.

Hon. Kabinga Wachira informed the meeting that he is representing the Senator Kirinyaga, Sen. Charles Kibiru who was held up elsewhere and was expected to attend the meeting owing to his statement on the Status of issuance of Title Deeds to the people of Mwea.

The Chairperson then invited the CEO NLC to take the Committee through responses that fall within their mandate and wouldn't require much input from the Ministry of Lands and Physical Planning.

A. STATEMENT REQUEST BY SENATOR KIBIRU CHARLES REUBENSON, SENATOR FOR KIRINYAGA

The NLC began by informing the Committee that the Statement request by Senator Kibiru Charles Reubenson, Senator for Kirinyaga would be better responded to by the Ministry of Lands and Physical Planning considering that matters of settlement schemes, surveying and issuance of title deeds are the domain of the Ministry of Lands and Physical Planning.

The Committee then resolved to revisit the matter when the Ministry of Lands and Physical Planning will be appearing before the Committee.

B. PETITION BY RESIDENTS OF MWATATE CONSTITUENCY ON THE OWNERSHIP OF MGENO LAND RESERVE LR 3880/3

They responded as follows:

The land that is the subject of the petition is public land in Mgeno area measuring approximately 6,404 acres. Within the boundaries of this parcel, there are some public amenities such as Mgeno primary school, churches and a public water pan. There are scattered human settlements inside it. The existing NYS Camp of approximately 20 acres is partly within this parcel of land and partly on the adjacent community land and needs to be protected as it is.

They informed the Committee that;

1. The land is the only available un alienated public land bank within this area.
2. It may be allocated to deserving residents with the approval of the County Government and NLC provided that enough public utilities are set aside.
3. The land has numerous interests and care should be taken so that it doesn't become a source of conflict amongst the interested parties.
4. After independence it was automatic that the land in question is converted to public land, thereafter after the 2010 Constitution of Kenya what was Government Land was converted to Public Land. The relevant records are at the survey of Kenya dominant at the Ministry of Lands and Physical Planning.

Mgeno Community Land 7,280 acres

Next to Mgeno reserve is the Mgeno Community Land that lies in between LR. 3880/3, Ndara "B" group ranch and Teri "B" group ranch. The parcel of land (community land) is approximately 7,280 acres.

This parcel of land has been requested for allocation by Mgeno reserve group ranch and Ndara 'B" group ranch. The request has not been approved since it is community land and it must be subjected to the relevant laws.

In responding to the Prayers they informed the Committee that;

- The process of conversion of community land to private land is provided for in the Community Land Act. They recommend that due process should be followed in the conversion and subsequent issuance of titles.
- The powers of the Commission to recommend revocation of titles lapsed in May 2017. They would appreciate support of the Senate in the extension of Commission mandate under section 14 of the NLC to include another five years. This will enable the Commission to recommend revocation of irregularly or illegally issued titles.

The Committee then resolved to revisit the matter when the Ministry of Lands and Physical Planning will be appearing before the Committee.

C. PETITION ON NON PAYMENT OF COMPENSATION FOR LAND COMPULSORILY ACQUIRED TO CONSTRUCT MWATATE - TAVETA - HOLILI ROAD

They responded as follows:

| ITEM | DETAILS |
|---|--|
| Request for Compulsory Acquisition | From Kenya National Highways Authority (KeNHA) (General Manager -design & construction) Ref. KeNHA/D&C/A23/Vol.3 (67) dated 24 st August 2013. |
| Notice of intention to acquire | Published in the Kenya Gazette notice No. 13942 of 18 th October 2013. |
| Field Inspections for purposes of valuation | Done by Rtd. Valuer Elias G. Rwigi and later handled by Ag. Director Valuation & Taxation Fidelis K. Mburu and Chief Valuation Officer Mariko K. Kaliamoi. |
| Inquiry | Published in Kenya Gazette notice No. 13943 of 18 th October 2013, further sittings gazetted in notice number 1 174 of 26 th February 2016. Inquiry for the subject parcels were gazetted in notice number 7709 of 23 rd September 2016 and held at the Mwatate DCC's office (Chiefs office) as scheduled on 1 1 th October 20 16. |
| Issuance of Awards | Awards issued on 12 th April 2017 |

| | |
|-------------------------------|---|
| Receipt of compensation funds | From KeNHA vide letter ref. KeNHA/F/NLC/6/VOL. 1/3 1 1 0 dated 20 th December 20 1 8 |
|-------------------------------|---|

It is a fact that compensation for the entire road project progressed on very well and is almost complete. *However, the petitioner's compensation delayed as a result of a late road corridor re-alignment necessitated by suitability considerations - which is the jurisdiction of KeNHA and the contractors.*

The initial list had therefore to be de-gazetted (Gazette notice number 1174 of 26th February 2016) and the new alignment added. Both the Commission and KeNHA have been keen to settle the matter as evidenced by the follow up to gazette the new alignment and remission of compensation funds.

From the funds remitted, the Commission paid out in March 2019 the following *two Project Affected Persons who had complete documentation;*

- i). Johnson Mjomba Mwamburi - Chawia/Wumari/Sechu/A52b
- ii). Florence Manga Machila - Chawia/Wumari/Sechu/A55e

In addition, the Commission in liaison with the Office of the Hon. Member of Parliament for Mwatate and the affected persons has prepared compensation payments for *14 project affected persons indicated below.*

- 1. Griphin Crispus Sikukuu Msaga - Chawia/Wumari/Sechu/A53
- 2. Solomon Mwakazo Daudi - Chawia/Wumari/Sechu/A54a
- 3. Penina Machocho Mwandoe - Chawia/Wumari/Sechu/A55c
- 4. Samuel Kuwona Cherezugha - Chawia/Wumari/Sechu/A55f
- 5. Livingstone Mwawasi Mwangwai - Chawia/Wumari/Sechu/A55g
- 6. Stanley Kirubai Mwakwenda - Chawia/Wumari/Sechu/A55h
- 7. Florence Mkiwa Mbokomo - Chawia/Wumari/Sechu/A55j
- 8. Rejoice Marura Kizela - Chawia/Wumari/Sechu/A55k
- 9. Timothy Mwakio Mwazo - Chawia/Wumari/Sechu/A55m
- 10. Fidelis Ngondo Kighimbi - Chawia/Wumari/Sechu/A55n
- 11. Peter Shake Msagha - Chawia/Wumari/Sechu/A55p
- 12. Oliver Mwakughu - Chawia/Wumari/Sechu/A84b
- 13. Phenescus Mshimba Koti - Chawia/Wumari/Sechu/A84d
- 14. Anderson John Isaka Kishere - Chawia/Wumari/Sechu/A84g

Payments for the above project affected persons are on-going. Payment approvals have

been granted. The affected persons should expect money in their accounts by Monday 9th September, 2019.

Finally the following ten land/owners are yet to avail complete documentation to enable processing of payment.

1. Penina Nailengo Kitonga - Chawia/Wumari/Sechu/A55d
2. Mgharo Benjamin - Chawia/Wumari/Sechu/A55l
3. Mathias Mghanga Mcharo - Chawia/Wumari/Sechu/A55q
4. Mwawasi Mwazo Mwangombe - Chawia/Wumari/Sechu/A55r
5. Grazelda Mrunde Mchawia - Chawia/Wumari/Sechu/A55s
6. Caroline Chao Mwadime - Chawia/Wumari/Sechu/A55t
7. James Shake Nyange - Chawia/Wumari/Sechu/A84a
8. Jackan Mwaivu Mombo - Chawia/Wumari/Sechu/A84c
9. Ronald Lela Mwagharo - Chawia/Wumari/Sechu/A84f
10. Peter Muya & James Shake - Chawia/Wumari/Sechu/A84h

The Commission reiterated its commitment to fulfill the Constitutional and statutory requirement of full and prompt payment to all projected affected persons along the Mwatate-Taveta/Holili (A23) road project. They have already commenced a compensation audit to flag out cases of non-payment for all road projects - 45 projects across the country and expect to complete the exercise by 13th September 2019. Payments shall be made thereafter.

The Committee was contended with the response.

D. STATEMENT REQUEST BY SEN. JONES MWARUMA ON THE STATUS OF LAND OWNED BY VOI SISAL ESTATE

They informed the Committee that the matter would well be responded to by the Ministry of Lands and Physical Planning but provided the following information;

Voi Sisal Estate sits on private land which is beyond the scope of NLC mandate. They however informed the Committee that;

1. This is private land.
2. CR No is. 51725
3. Approximate area-1,953ha
4. LR.NO-28683
5. Term 99 years W.e.f 1/1/1993
6. Annual rent payable-353,795/-

7. User- agricultural (owner grows sisal).
8. The parcel was transferred to Voi Plantations Ltd and later to Voi Point Ltd.
9. It was charged to Diamond Trust Bank for Kshs. 4 Billion on 31/1/2019 and further charged to the same bank for Kshs.800Million on 13/2/2019.
10. Some members of public (Mkamenyi residents) have developments on a section of the parcel.

The Committee then resolved to revisit the matter when the Ministry of Lands and Physical Planning will be appearing before the Committee and the glaring matter is why was the lease renewed yet the lease began in 1993.

E. STATEMENT REQUEST ON LAND CRISIS IN LAMU COUNTY BY SEN.ANUAR LOITIPTIP

They informed the Committee;

The National Land Commission reviewed land titles in Lamu upon a directive from his Excellency the President of the republic of Kenya on 31/7/2014. Pursuant to the directive, the Commission summoned parties affected to appear before it through a print media on Monday the 4th August, 2014 to make presentations on how they acquired the said parcels of land in Lamu. After hearings held in public hearings the Commission made recommendation on the various parcels as follows;

| S/No. | Parcel Number | Registered Proprietor | Commission 's recommendation |
|-------|---------------|--------------------------|---|
| 1. | LR No. 29113 | Brick Investment Ltd | Revoke the title and revert to the County Government of Lamu |
| 2. | LR No. 29111 | Rusken Investment Ltd | Revoke the title and revert to the County Government of Lamu |
| 3. | LR No. 29115 | Lamu & Tana Sugar Co Ltd | Revoke the title and revert to the County Government of Lamu |
| 4. | LR No. 29247 | Shanghai Investment Ltd | Revoke the title and revert to the County Government of Lamu |
| 5. | LR No. 29246 | Fincorp Investment Ltd | Revoke the title and revert to the County Government of Lamu |
| 6. | LR No. 29254 | Sheila Ranch Ltd | Revoke the title and revert to the County Government of Lamu |
| 7. | LR No. 29066 | Dynamic Trading CO ltd | Regularize to Dynamic Trading Co Ltd, The County Government of Lamu to consider part of this as an industrial zone. |

| | | | | | |
|-----|-------------|-----|--------------------------------------|----------|---|
| 8 | LR 29067 | No. | Savannah Fruits Ltd | Fresh | Regularize to Savannah Fresh Fruits Ltd, The County Government of Lamu to consider part of this as a conservation zone. |
| 9 | LR 29255 | No. | Khairallah Ranch | | Revoke the title and revert to the County Government of Lamu |
| 10. | LR 29323 | No. | Cyberdom Investment | | Revoke the title and revert to the County Government of Lamu |
| 11 | LR 29322 | No. | Kaab Investment Ltd | | Revoke the title and revert to the County Government of Lamu |
| 12 | LR 29260 | No. | Lamu Investment Ltd | | Revoke the title and revert to the County Government of Lamu |
| 13. | LR 13061 | No. | Engonani Ranch | | Differed for further investigations |
| 14. | LR 29110 | No. | Brick Investment Ltd | | Expunge from the register |
| 15. | LR 29274 | No. | Witu Nyongoro Cooperative Society | | Regularize but NLC and County to consider the interest of farmers, pastoralists and the squatters therein. |
| 16. | LR 29256 | No. | Mokowe Kiboroni | | Regularize and consider settling the squatters |
| 17. | LR 29252 | No. | Baragoni Community | Boni | Regularize the title |
| 18. | LR 29275 | No. | Pandanguo Community | Boni | Regularize the title |
| 19. | LR 26867 | No. | Amu Cooperative Society | Ranch | Regularize the Title |
| 20. | LR 23153 | No. | Maalim Company Ltd | Ranching | Uphold the title |

On 11th June 2019 we wrote to the Chief Land Registrar, Ministry of Lands & Physical Planning to confirm any action taken on the titles recommended for revocation. To date we have not received any response.

To protect innocent land owners from land grabbers the commission committed not to process any ownership documents derived from land grabbing. They encourage other stake holders to also play their role in protecting poor land owners as it is a shared responsibility

The Committee then resolved to revisit the matter when the Ministry of Lands and Physical Planning will be appearing before the Committee to ascertain whether the title deeds were revoked.

F. STATEMENT REQUEST BY SENATOR JONES MWARUMA ON STATUS OF THE LAND OCCUPIED BY IKANGA AIRSTRIP IN VOI

They informed the Committee that;

Ikanga airstrip in Voi is under the management of KAA and it is entirely fenced.

The plot is surveyed and has an FR No. 32/228. LRNo. 6866. The runway has encroached 12 privately owned parcels of land. The affected parcels are within Mbololo/Mraru section.

| SNo. | Parcel number | Area encroached (ha) |
|------|---------------|----------------------|
| 1. | 3588 | 026 |
| 2. | 3071 | 019 |
| 3. | 3584 | 004 |
| 4. | 3070 | 043 |
| 5. | 3582 | 031 |
| 6. | 3313 | 033 |
| 7. | 3352 | 049 |
| 8. | 3976 | 004 |
| 9. | 3975 | 016 |
| 10. | 4014 | 005 |
| 11. | 4015 | 002 |
| 12. | 4028 | 006 |
| 13. | Road reserve | 120 |

The Commission valuers visited the land in question from 27th to 30th August, 2019 and are compiling a valuation report to facilitate direct purchase of the affected land by KAA. Preliminary findings have confirmed that the 12 indicated parcels were affected by the airstrip. Over and above compensation of the land, there is need for KAA to provide an alternative access road. There might also be need to compensate land owners for the entire parcel when the remainder is rendered uneconomical. As agreed during their last appearance before the committee (3rd July, 2019) the compulsory acquisition option would be unnecessarily too long hence the need for direct purchase by the acquiring body.

The Committee requested that a copy of the valuation report that is being sent to KAA is shared with the Committee.

G. STATUS OF THE LAND OCCUPIED BY THE PRISONS DEPARTMENT (ORE AREA) IN VOI

They informed the Committee that;

The parcel of land was initially government land and reservation was made by the former commissioner of lands in 1990.

A part Development plan was drawn in favor of the prisons department in 1990 and approved by the commissioner of lands on 6/12/1991 as approved DP No. 83.

The size of land is approximately 40.50ha.

The section that is developed -approx. 20 acres is the section that was leased by the prisons department to the SGR team. It has site offices, some residential houses and a go downs that were used by the construction team. The rest of it is bushy.

During the construction of the standard gauge railway line, approximately 3.93ha was acquired by the government leaving the department with approx. 36.57ha.

Then, the SGR project manager-China Road and Bridge Cooperation (Kenya) requested the government to set up a temporary camp on this land a request which was granted.

After the project was complete and the construction team having left, a local resident claiming to be the caretaker of the SGR facilities decided to lease out the structures to some local tenants who are now engaged in hotel/kiosk businesses, running a private school and residential tenancy.

The matter was reported to the provincial administration by the Officer in charge (Voi-Prisons) but every time the tenants are being evicted the matter takes a political dimension.

The tenants claim that the land is their ancestral land.

The Committee resolved that:

- **The PDP is shared with the Committee;**
- **Copy of the agreement that was signed for compensation during construction of the SGR;**
- **Who was paid the SGR compensation and how much was the amount;**
- **Copy of the request to government for use of the land that was granted; and**

- An explanation of how the land was left to a caretaker to manage.

The Committee further instructed that no further development should be done on the land until the Committee has finished its inquiry into the matter.

H. REQUEST FOR STATEMENT BY SENATOR JOHNSON SAKAJA ON THE COMPENSATION OF NAIROBI RESIDENTS BY KENYA POWER AND LIGHTING COMPANY FOR DEMOLITION OF HOUSES IN MIHANGO WARD EMBAKASI

They informed the Committee that they indeed sympathize with the residents of Mihango ward following demolition of their houses by Kenya Power and Lighting Company that encroached KPLC way leave. They informed the Committee that this question would be best handled by KPLC since it has internal processes and personnel for acquisition of way leaves. The matter has also not been brought to the Commission by the relevant Cabinet Secretary as a compulsory acquisition concern.

MINUTE/ SEN/SCLNENR/126/2019: ANY OTHER BUSINESS

There was no other business discussed.

MINUTES/SEN/SCLNENR/127/2019: ADJOURNMENT

The meeting was adjourned at 12.48 pm. The date of the next meeting was scheduled for Thursday, 12th September, 2019.

SIGNATURE.......... DATE. 12-09-2019

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

MINUTES OF THE 17TH MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY 3RD JULY, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 11.00AM.

MEMBERS

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

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

A. SENATORS

1. Sen. Charles Kibiru, MP - Senator, Kirinyaga County
2. Sen. Anuar Loitiptip, MP - Senator, Lamu County

B. MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Hon. Gideon M. Mungaro - CAS
2. Mr. Daniel Kithuuka - D/DLAO
3. Dr. Eustace N. Kithumbi - SADLAS
4. Mr. Owino Jacob Cattwright - SLRO
5. Mr. Charles Githenya - D/Director Land Administration
6. Ms. Juliana Mutua - D/Director Physical Planning
7. Ms Gertrude K. Rapong'o - Asst. Director Physical Planning
8. Mr. A. A. Ombima - Liaison Officer
9. Mr. Geoffrey Kibowen - Snr. Land Surveyor
10. Mr. Paul Ndung'u - Snr. Land Surveyor

C. NATIONAL LAND COMMISSION

1. Ms. Kabale Tache - Ag. CEO/ Sec. NLC
2. Mr. Francis Bor - DCS NLC
3. Mr. Dennis Mutungi - Co-ordinator NLC
4. Mr. Benard Cherutich - D/D Finance and Accounting
5. Ms. Judy Kirior - PA Ag. CEO

D. SENATE SECRETARIAT

- | | |
|-------------------------|-------------------|
| 1. Mr. Yussuf Shimoy | - Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Ms. Joyce Chelang'at | - Audio Recording |

MINUTE SEN/SCLNENR/097/2019: PRELIMINARIES

The meeting was called to order at 11.06 am by the Chairperson followed by a word of Prayer.

MINUTE SEN/SCLNENR/098/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Prengei Victor, MP and seconded by Sen. Godana Hargura, MP as follows;

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Meeting with the Cabinet Secretary Ministry of Lands and Physical Planning and CEO National Land Commission on Statements and Petitions before the Committee;
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNENR/099/2019: CONFIRMATION OF MINUTES

The confirmation of Minutes was differed to the next housekeeping meeting.

MINUTE SEN/SCLNENR/100/2019:

MEETING WITH THE CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING AND CEO NATIONAL LAND COMMISSION ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE;

The Committee was informed that the Cabinet Secretary for the Ministry was not available and that the Chief Administrative Secretary, Hon. Gideon Mungáro, was to represent her during the deliberations.

The Committee noted that most of the matters under consideration required policy directions hence the presence of the Cabinet Secretary in person and resolved to schedule another meeting to give the Cabinet Secretary an opportunity to attend.

The Committee directed the Ministry to submit comprehensive responses on all the matters (petitions and statements) it sought through its earlier communications within three (3) weeks.

Further, the Committee requested the following additional information within the same duration-

1. The Ministry's position and policy, if any, on demolitions and way leaves;
2. Update on the whether the Ministry has identified parcel of land to resettle the persons evicted from Marmanet Forest in 1988 in Laikipia;
3. The process, status and progress of titling of colonial villages in the Country particularly the 30 villages in Nyandarua County; and
4. Information on actions the Ministry has taken on all the titles recommended for revocation by the National Land Commission in regard to Lamu County.

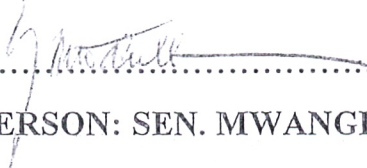
Consequently, the meeting was adjourned without any further discussions.

MINUTE/ SEN/SCLNDR/101/2019: ANY OTHER BUSINESS

Sen. Johnson Sakaja was requested to write a letter to the Committee indicating all issues he has on matters land to enable the Committee to deal with them conclusively.

MINUTES/SEN/SCLNDR/102/2019: ADJOURNMENT

The meeting was adjourned at 12.02 pm. The date of the next meeting was to be called on notice.

SIGNATURE.....  DATE 25-07-2019

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

MINUTES OF THE 3RD MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 13TH FEBRUARY, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.

MEMBERS

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

PRESENT

- Chairperson
- Member
- Member
- Member

ABSENT WITH APOLOGY

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

IN ATTENDANCE

SENATOR

1. Sen. Charles Kibiru - Senator, Kirinyaga County

NATIONAL ASSEMBLY MEMBERS

1. Hon. Kabinga Wachira - MP (Mwea Constituency)

MINISTRY OF LANDS

1. Hon. Gideon M. Mungaro - CAS
2. Mr. Michael Nyamai - Snr. Ass. Dir. Land Adj.
3. Mr. Peter K. Waitthaka - Ag. Dep. Adj
4. Mr. Charles Muemi - D/Director Valuation
5. Mr. Edward Kosgei - Dir. Land Admin.
6. Mr. Charles Githenya - D/Director Land Administration
7. Mr. Owino Jacob Cattwright - SLRO
8. Mr. Paul Ndung'u - Ag. Ass. Director
9. Mr. Kamau J.H.M - CLAO
10. Mr. A. A. Ombima - Liaison Officer
11. Ms. Juliana Mutua - D/Director Physical Planning

SENATE SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Mr. Ahmed Odhowa - Principal Researcher
3. Mr. Mitchell Otoro - Legal Counsel
4. Ms. Hawa Abdi - Sergeant at Arms
5. Mr. Nimrod Ochieng' - Audio Recording
6. Ms. Sharon Eleman - Intern

MINUTE SEN/SCLNDR/012/2019: PRELIMINARIES

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

MINUTE SEN/SCLNDR/013/2019: ADOPTION OF AGENDA

The agenda was therefore proposed by Sen. Godana Hargura, M.P. and seconded by Sen. Mwaruma Johnes, M.P as follows.

1. Preliminaries;
 - *Prayer,*
 - *Chairpersons remarks*
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Meeting with the CS Lands & Physical Planning and the NLC on Statements and Petitions before the Committee;
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNDR/014/2019:

MEETING WITH THE CS LANDS & PHYSICAL PLANNING AND THE NLC ON STATEMENTS AND PETITIONS BEFORE THE COMMITTEE

Ministry of Lands and Physical Planning

The Chief Administrative Secretary made his presentation as follows:

- A. Response to Statement as requested in the Senate by Sen. Kibiru Charles, MP

STATUS OF ISSUANCE OF TITLE DEEDS FOR MWEA RICE FARMERS IN KIRINYAGA COUNTY

- **The actual acreage of Mwea Irrigation Scheme land in Kirinyaga County.**

The Committee was informed that Mwea Irrigation Scheme was set apart vide *Gazette Notice* Nos 3097 and 3099 dated 5th July 1960. The *Gazette Notice* No. 3097 set apart acreage of 8,480 acres while the *Gazette Notice* No. 3099 set apart 7,120 acres for irrigation scheme.

Other *Gazette Notices* relating to the Irrigation Scheme are as tabulated below:

| Gazette Notice | Date | Size (Acres approx.) | Purpose |
|----------------|------------|----------------------|--------------------------------------|
| 3098 | 05.07.1960 | 22 | Mwea/Tebere Scheme Canal |
| 3100 | 05.07.1960 | 27 | Draining of Nguka swamp |
| 3102 | 05.07.1960 | 9.6 | Dam to protect Nguka Irrigation Beds |

| | | | |
|------|------------|-----|---|
| 3101 | 05.07.1960 | 25 | Kiruara Drainage way |
| 3103 | 05.07.1960 | 0.8 | Drainage furrows protecting Nguka Dam |
| 3090 | 26.07.1960 | 60 | Main Thiba Water Canal Serving Mwea/Tebere Scheme |
| 3096 | 26.07.1960 | 125 | Mwea Tebere Scheme Village and Agricultural officer's house and staff lines |
| 3093 | 26.07.1960 | 10 | Protection of Head works |
| 3095 | 26.07.1960 | 54 | Mwea/Tebere scheme village and tree plantation |

The total area of Mwea Irrigation scheme is therefore 15,933 Acres approximately.

• **Status of surveying, beaconing and mapping of the Mwea Irrigation Scheme.**

The Committee was informed that the area in question is covered by Topographical Map Sheet SK 135/2-Embu (see Annex 2). Besides this, the Ministry has no records to indicate that the land has ever been surveyed.

• **Status of preparation of title deeds for the parcels of land owned by Mwea rice farmers.**

The Committee was informed that by virtue of Gazette Notices Nos. 3090, 3093, 3095, 3096, 3097, 3098, 3100, 3101, 3102, 3103 of 1960; the area known as Mwea/Tebere Irrigation Area in the Kirinyanga District of the Central Province was designated as a national irrigation scheme. Pursuant to Section 14 (2) of the Irrigation Act, Cap 347, the title or interest in such land is vested in the National Irrigation Board.

The Committee is not in agreement with most of the issues as presented by the Ministry, terming them as inaccurate and that a visit to the ground would possibly shed more light. A view that was also shared by the Senator, Kirinyaga County and the MP Mwea whose constituency Mwea Irrigation Scheme is in.

The Committee therefore made the following resolutions:

- i.) Invite the Ministry of Agriculture, National Irrigation Board and Ministry of Lands and Planning.
- ii.) Visit the Mwea Irrigation Scheme

B. Response to Petitions

1. PETITION BY THE RESIDENTS OF GILGIL TOWNSHIP CONCERNING ALLEGED GRABBING OF PUBLIC UTILITY AND PRIVATE LAND AT LELESHWA, GILGIL TOWNSHIP, IN NAKURU COUNTY.

The Committee was informed that the claim by the petitioners that the Anti-Stock Theft Unit (ASTU) officers invaded and occupied approximately 40 acres of land, part

of which included residential plots that had already been allocated to individuals is not true and that 118 acres were zoned off for the ASTU from the land set aside for public purpose. It is therefore proper for the ASTU to occupy the land.

Further the CAS informed the Committee that the Petitioners in their Petition want the original Approved Development Plan to be upheld, including safeguarding of the public utility land as well as the allotted residential plots in which the CAS responded by informing the Committee that Gilgil Development Plan No. 91 (the Plan) zoned the land into 8 broad approved development uses as follows:

| USE | APPROXIMATE ACRES |
|------------------|-------------------|
| Residential | 379892.2 |
| Industrial | 123.5 |
| Educational | 6707.4 |
| Recreational | 28.6 |
| Public purpose | 4029.5 |
| Commercial | 152.9 |
| Public utilities | 17 |
| Transportation | 299 |
| Total Acreage | 391,250.1 |

The Committee therefore made the following resolutions:

- i.) To conduct a site visit with the Ministry of Lands and Planning and the County Government of Nakuru to the meeting at a date to be communicated.

2. PETITION ON THE RESETTLEMENT OF THE MINORITY NGEREK COMMUNITY FOLLOWING THEIR PROPOSED EVICTION FROM SOUTH NANDI FOREST, IN NANDI COUNTY.

The Committee was informed by the CAS that the resettlement exercise was undertaken by the Office of the President and involved Ngerek and Koiben communities who settled in Ngerek and Koiben villages in South Nandi.

Since the settled area was rocky, hilly and served as a water catchment, the Government decided to resettle the two communities in Kapkangani and New Koiben areas, respectively. The Koiben community would be resettled on 266.8 Ha and the Ngerek Community on 455.4 Ha. This was in exchange of land previously held by the two communities in South Nandi Forest.

The resettlement programme was to be carried out in two phases:

- a.) Phase one involved resettlement of the Koiben Community at New Koiben/Chepkuma area and this was successfully completed.

- b.) Phase two would involve resettlement of the Ngerek Community but was accompanied by the following challenges:
- i). political interference;
 - ii). some original allottees sold their plots;
 - iii). The Ngerek community attempted to forcefully occupy the parcels allocated to them but this led to clashes in 2002;
 - iv). The Ngerek are still occupying their original land (Ngerek Hill) as they did not surrender their title deeds to the Kenya Forest Services as earlier agreed.

The Ministry therefore informed the Committee that; in these circumstances, there is need for engagement between the local leadership and relevant government agencies to resolve the issue.

The Committee therefore made the following resolutions:

The Ministry of Lands and Physical Planning should organise a team, visit the area and spearhead the engagement between the Local Leadership and the relevant Government agencies and report back to the Committee within 3 months.

3. PETITION BY RESIDENTS OF KIANG'OMBE SQUATTERS SETTLEMENT SCHEME IN THIKA SUB-LOCATION, KIAMBU COUNTY, CONCERNING ALLEGED GRABBING OF LAND ALLOCATED FOR THEIR SETTLEMENT.

The Committee was informed that the Ministry has a part development plan (PDP) for Kiang'ombe village departmental reference No.TKA/4/03/2A prepared on 30/10/2009, certified by the Director of Physical Planning on 4/12/2013 and approved on 4/12/2013 as approved Development Plan No. 365.

There are 585 plots allocated in total in the PDP out of which 13 are set aside for public utilities as shown in the table below:-

| USE | NO. OF PLOTS | AREA IN HA |
|----------------------------|--------------|---------------|
| Residential and Commercial | 574 | 17.277 |
| Transport | 1 | 6.226 |
| Churches | 2 | 0.189 |
| Conservation area | 1 | 1.775 |
| Garbage collection plant | 1 | 0.028 |
| Dispensary | 1 | 0.179 |
| Nursery schools | 3 | 0.399 |
| Police post | 1 | 0.105 |
| Proposed primary school | 1 | 1.176 |
| | 585 | 27.304 |

The approved part Development Plan was prepared and published as per the requirements of the Physical Planning Act Cap 286 and superseded PDF NO. KBU/93/22 of 19.10.1993 and TKA/4/03/2 of 21.11.2003.

However the CAS sought leave for two weeks to furnish the committee with a ground report as to who is in occupation of the parcels set aside for public utilities.

The Committee therefore made the following resolutions:

- i.) To invite the Petitioners
- ii.) The Ministry of Lands and Physical Planning to forward the actual map indicating the allocations;
- iii.) The Ministry of Lands and Physical Planning to visit the area together with the Committee to ascertain facts on the Parcels of Land.

4. PETITION FROM EVICTEES OF MARMANET FOREST IN LAIKIPIA COUNTY CONCERNING THEIR COMPENSATION AND RESETTLEMENT.

The Committee was informed that the matter is currently before the National Land Commission for resolution. They committed to follow up with the National Land Commission and were seeking more time to also consult with other relevant government agencies.

The Committee however had the following concerns:

- How comes that the forest has not been degazetted but titles are there?
- Who exactly was allocated the parcels of land?
- What was the basis of issuing out the titles?

The Committee therefore made the following resolutions:

- i.) To invite the Petitioners
- ii.) The Ministry of Lands and Physical Planning to follow up with NLC and report back to the Committee on the Status;
- iii.) The Committee would also engage the National Land Commission & the Kenya Forest Service.
- iv.) The Committee to visit the area to ascertain facts in the alleged forest.

5. PETITION TO THE SENATE CONCERNING UNLAWFUL DEPRIVATION OF A PARCEL OF LAND IN KAPUTEI NORTH KAJIADO (KJD/KAJIADO/KAPUTIEI NORTH/28126).

Mr. DAVID MUNGAI NG'ANG'A, the petitioner claims the parcel belongs to his wife JECINTA NJERI NGANGA, while his neighbor claims to be the owner of the property. The petitioner wants the ownership of the land to be reinstated.

The Committee was informed that according to the records, the above parcel is registered to JECINTA NJERI NGANGA of ID 3243898 and title deed issued. (Annex 1)

There is no ownership dispute as the land in question belongs to JECINTA NJERI NGANGA. It is therefore clear that the petition touches on a boundary dispute. In terms of section 18 (2) of the Land Registration Act, a proprietor of registered land with a boundary dispute is obliged to first seek redress or resolution from the land registrar.

The petitioner should thus lodge a formal boundary dispute at the Kajiado lands office for the same to be resolved.

The Committee therefore made the following resolutions:

In view of the Petition being at the Senate, that Committee directs that the Registrar goes to the site and assist the Petitioner.

6. PETITION TO THE SENATE CONCERNING MGENO RESERVE LAND REGISTRATION NUMBER 3880/3

The Petitioner is a resident of Mwatate Constituency, in Taita Taveta County. The Petitioner's prayers are:

- To have members of Mgeno committee gazetted;
- The Government to survey and register Mgeno community land and issue title deeds and
- Revoke titles illegally issued.

The Committee was informed that all parcels subdivided from LR. No. 3880 including LR. No. 3880/3 was surrendered to the Government for Community Settlement. LR. No. 3880/3 was allocated except some 6000 acres (south of the Railway line). Titles were issued to the community or beneficiaries under the MODAMBOGHO ADJUDICATION SECTION.

The un-alienated part of LR. No. 3880/3 (approx. 6000 acres), was sparsely inhabited until recently when people started moving in. The National Youth Service (NYS) is currently occupying approximately 300 acres of the un-alienated land. LR. No. 3880/3 borders Community Land measuring approximately 7300 acres-popularly known as "Mgeno Grazers". It also borders Mugeno Ranch LR. No. 12178 measuring 20,920 Ha.

Further, the Committee was informed that the Ministry has embarked on a Rapid Response Initiative (RRI) to ensure titles are issued for the remaining 6000 acres in LR 3880/3. (Attached is a sketch showing the referenced parcels).

The Committee therefore made the following resolutions:

- i.) To invite the Petitioners;**
- ii.) The Ministry of Lands and Physical Planning to visit the area together with the Committee to ascertain facts on the disputed Parcels of Land.**

National Land Commission

The Committee did not receive any apologies from the NLC and resolved to re-invite them again once new commissioners are sworn to office.

MINUTE SEN/SCLNLR/015/2019: ANY OTHER BUSINESS;

There was no other business discussed.

MINUTE SEN/SCLNLR/016/2019: DATE OF NEXT MEETING;

The meeting was adjourned at 11.35 am and the next meeting was to be held thereafter.

SIGNATURE.......... DATE..........

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

MEMO

THE SENATE

To : The Speaker
 Thro' : The Clerk of the Senate
 Thro' : Deputy Clerk
 Thro' : Director, Committee Services
 From : Clerk Assistant
 Date : 4th November, 2019

Rt. Hon. Speaker
You may approve for tabling.
0009
05/11/19
Recommended for approval for tabling
Recommended or forwarded
Eg 05/11/19
04/11/19
Approved
[Signature]

SUBJECT: FORWARDING OF REPORT ON PETITION

The Senate Standing Committee on Land, Environment and Natural Resources at its sitting held on 23rd October, 2019 adopted Committee Reports as follows:

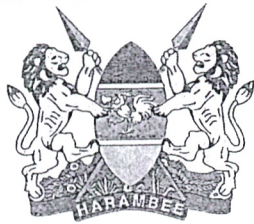
1. Report on the Petition regarding Adverse environmental and social effects arising from the construction of Phase 2A of the Standard Gauge Railway (Nairobi – Naivasha Section);
2. Report on the Petition regarding Budgetary support to Wildlife Conservancies for sustainable conservation and community development;
3. Report on the Petition regarding alleged unlawful deprivation of a parcel of land situated in Kaputiei North, Kajiado County;
4. Report on the Petition regarding Ownership of Mgeno Land Reserve;
5. Report on the Petition regarding Non-payment of compensation for land compulsorily acquired to construct Mwatate-Taveta-Holili Road;
6. Report on the Petition regarding the effects of iron ore mining at Kishushe in Taita Taveta County;
7. Report regarding the Committee's participation in the 8th World Water Conference held in Brasília, Brazil from 18th – 23rd March, 2018;
8. Report regarding the Committee's participation in the 14th Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) on Modern Mining Law and Policy 16th – 18th October, 2018; and
9. Report regarding the Committee's participation in the 18th meeting of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Conference of the Parties (CoP 18) that was held in Geneva, Switzerland from 17th – 28th August, 2019.

This is to request for your approval for tabling of the aforementioned and attached reports.

[Signature]
Victor Bett

04 NOV 2019

REPUBLIC OF KENYA



CoC
Recommended for approval for tabling.
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, KISHI COUNTY

| PAPERS LAID | |
|--------------------|--------------------|
| DATE | 31/07/2018 |
| TABLED BY | Changara |
| COMMITTEE | Land & Environment |
| CLERK AT THE TABLE | Getrude |

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

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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. Prengi 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

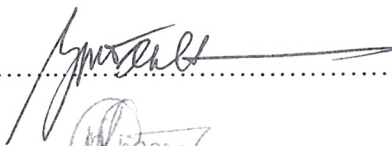
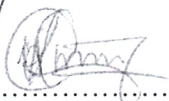
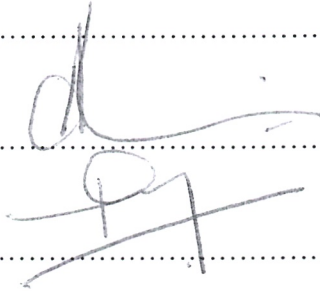
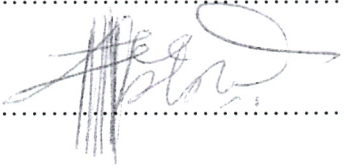
SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

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 gazettment 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 2: The Committee was able to see the newly gazetted forest areas on 6.4.2018. (Insaria Hill Forest)

The Committee on its way to Nyangweta Forest had a chance to visit three areas that have since been gazetted to form part of the Forest Land that is being expected to be used as compensation for Nyangweta Forest. Among the areas visited by the Committee was Insaria Hill, where the Committee observed that deforestation was high and that encroachment into the forest land was also quite high.



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.

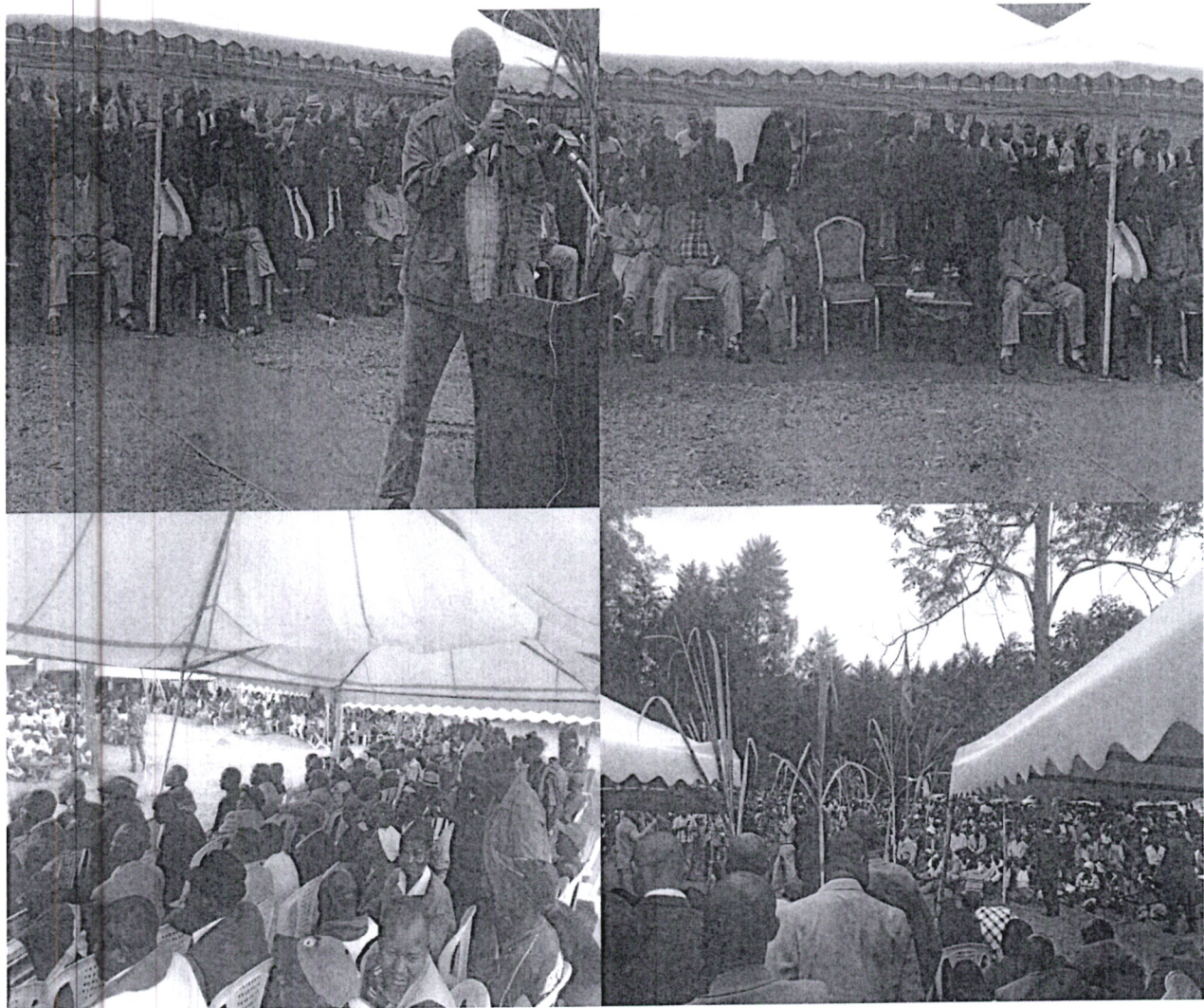


Figure 4: The Committee was able to conduct public Hearings and stakeholder involvement at Nyangweta Forest, Kisii County on 6.4.2018.

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 Mugirango 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 gazettment 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 gazettelement 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/Cache/107 | 10.4 |
| 6. | Sombogo | Kitutu Cache North | 5 |
| 7. | Taracha Hill Kemu | Nyaribari Cache/Birongo/589 | 3.84 |
| 8. | Nyaturago Swampo | Nyaribari Cache & Bobasi,Nyaturago Scheme 711 | 360 |
| 9. | Emborogo Hill | Nyaribari Masaba/Bonyakani/1055 | 8.2 |
| 10. | Kionganyo | Nyaribari Cache South | 4 |
| 11. | Nyakeiri | Kitutu Cache 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 |
| 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 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 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

- vi. The Ministry has been conducting land clinics to sensitize the public on land issues. These clinics have been very instrumental in addressing long-standing issues
- vii. We have constructed and operationalized additional land registries in Ruiru, Kiritiri, Tigania West and Marimanti.
- viii. We have a service charter that is displayed in all our offices. The document is also available on our website. The service charter has provided uniform requirements (documents, cost) and timelines for registration to apply in all our registries

The Ministry further informed the Committee that they have a functional Customer Care Desk where public concerns are addressed. We have revamped the Customer Care Desk to provide for a toll-free number that enables our clients to receive automated responses on Frequently Asked Questions (FAQs). Piloting has been initiated.

The Committee resolved to proceed with report writing since all parties were satisfied and recommendations to the relevant authorities would then follow accordingly in the report.

MINUTE SEN/SCLNDR/120/2020: ANY OTHER BUSINESS;

The Cabinet Secretary Ministry of Lands and Physical Planning was requested to present submissions on the Petitions and Statements as shared with her office, and a resolution was made to have the Ministry and National Land Commission appear before the Committee to respond on all the issues raised.

MINUTE SEN/SCLNDR/121/2020: DATE OF NEXT MEETING;

The time being 1.00 pm the meeting was adjourned. The next meeting was to be called on notice.

Signed: _____

Date: 4/08/2020

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES

We have set up a stakeholder-engagement team to coordinate regular meetings with stakeholders. This offers opportunity for feedback on the Ministry's activities and programmes. The table below shows the stakeholders we have engaged on the development of NLIMS:

| NO. | STAKEHOLDER | DATE |
|-----|---|----------------------------|
| 1. | National Land Commission (NLC) | 3 rd June 2020 |
| 2. | Ministry of Lands & Physical Planning – All Technical Departments | 16 th June 2020 |
| 3. | Kenya Private Sector Alliance (KEPSA), Kenya Property Developers Association (KPSA) | 17 th June 2020 |
| 4. | The Institution of Surveyors of Kenya (ISK) and Land Surveyors Board (LSB) | 18 th June 2020 |
| 5. | Kenya Institute of Planners (KIP), Town and County Planners Association of Kenya (TCPAK), Architectural Association of Kenya (AAK) | 19 th June 2020 |
| 6. | Law Society of Kenya (LSK), Kenya Bankers Association (KBA) | 22 nd June 2020 |
| 7. | Food and Agriculture Organization (FAO), FIDA-Kenya, Resource Conflict Institute (RECONCILE), Centre for Minority Rights Development (CEMIRIDE) | 23 rd June 2020 |
| 8. | Estate Agents Registration Board (EARB), National Construction Authority (NCA), Valuers Registration Board (VRB) | 24 th June 2020 |
| 9. | The National Treasury, Ministry of EAC and Regional Development, Ministry of Transport, Judiciary, Office of the Director of Public Prosecution (ODPP), Information and Communication Technology Authority (ICTA), Ethics and Anti-Corruption Commission (EACC) and Kenya Revenue Authority (KRA) | 2 nd July 2020 |