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THE SENATE
TWELFTH PARLIAMENT
FOURTH SESSION

Approved
[Signature]
11/12/2020

STANDING COMMITTEE ON LAND, ENVIRONMENT AND
NATURAL RESOURCES

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

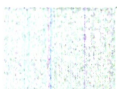
PAPERS LAID	
DATE	Dec. 1. 2020
TABLED BY	Sen. Khaniti
COMMITTEE	Land
CLERK AT THE TABLE	M. Adigboadun

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

NOVEMBER, 2020

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LIST OF ABBREVIATIONS/ SYNONYMS

CS	-	Cabinet Secretary
EACC	-	Ethics and Anti-Corruption Commission
KFS	-	Kenya Forest Service
MOLPP	-	Ministry of Land & Physical Planning
NLC	-	National Land Commission
ODPP	-	Office of the Director of Public Prosecution

PREFACE

Honourable Speaker,

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

Committee Membership

The Committee comprises of the following Members.

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

Chairperson

Vice-Chairperson

At a sitting of the Senate held on 5th December, 2019 the Hon. Speaker, reported to the Senate that a Petition has been submitted through the Clerk of the Senate, by Mr. Joel Kenduiywa on behalf of the Ngerek Community regarding the resettlement of the minority Ngerek Community following their proposed eviction from South Nandi Forest, in Nandi County.

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

The Committee proceeded to invite the Cabinet Secretary for Environment and Forestry accompanied with the Kenya Forest Service Management and the National Land Commission who made submissions to the Committee on the issues raised by the Commissioners.

Based on the findings and observations, the Committee made recommendations on the prayers sought by the Petitioners.



ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioner Mr. Joel Kenduyiwa for bringing the Petition to the Senate. Further, the Committee extends its gratitude to the Cabinet Secretary, Ministry of Environment and Forestry, Cabinet Secretary, Ministry of Lands and Physical Planning and the Chairperson, National Land Commission for providing their submissions and contribution to the resolution of this matter.

Honourable Speaker,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Lands, Environment and Natural Resources by Mr. Joel Kenduyiwa on behalf of the Ngerek Community regarding the resettlement of the minority Ngerek Community following their proposed eviction from South Nandi Forest, in Nandi County.

Signed:  Date: 13/11/2020

SEN. PHILIP MPAAYEI, M.P.

**VICE CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND,
ENVIRONMENT AND NATURAL RESOURCES**

CHAPTER 1

INTRODUCTION

1.0 The Right to Petition

1. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders. Article 37 of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while Article 119(1) of the Constitution provides that *“every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”*
2. Section 5(2) of the Petition to Parliament (Procedure) Act, provides that a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House. In this regard, standing order 232 of the Senate Standing Orders provides for the Committal of Petitions to the relevant Standing Committee. Standing order 233 further requires the Clerk to, within fifteen days of tabling of the report on a petition under Standing Order 232 (Committal of Petitions), submit a copy of the report to the petitioner or petitioners.

1.1. Background to the Petition

3. At a sitting of the Senate held on 27th September, 2018, the Hon. Speaker, reported to the Senate that a Petition has been submitted through the Clerk, by Mr. Joel Kenduiywa on behalf of the Ngerek Community regarding the resettlement of the minority Ngerek Community following their proposed eviction from South Nandi Forest, in Nandi County.
4. The Salient issues raised in the Petition are as follows-
 - (a) That, the minority Ngerek Community, comprising of about 244 families, has resided in the South Nandi Forest, at Ngerek Village, Chepkumia Location, Emgwen Constituency in Nandi County, since before Independence;
 - (b) That, in 1996, the then Government proposed the resettlement of the minority Ngerek Community from the Forest to enable its conservation and protection as a water catchment area;
 - (c) That, under the proposed Chepkumia Exchange Programme, the 244 families

from the Ngerek Community were to be relocated from an area comprising 466 hectares and to be resettled at a parcel of land comprising approximately 1,000 acres in Yala and Kapkangani area in Nandi County;

- (d) That, once the said parcel was identified, prominent persons who were not members of the Ngerek Community immediately moved in and occupied the land, leaving the minority Ngerek Community without a place to relocate to;
- (e) That, subsequently, the Government, through the Kenya Forest Service (KFS), issued eviction notices to the said persons who had unlawfully occupied the identified parcel of land. The said persons moved to court to stop the KFS from evicting them. The court ruled, in the year 2007, that the KFS should proceed with the eviction of the unlawful occupants and resettle the rightful people, who were the minority Ngerek Community;
- (f) That, the National Land Commission (NLC) also investigated the matter and, in mid-2018, issued a two months' notice to the persons unlawfully occupying the land set aside for resettlement of the minority Ngerek Community to vacate the said land. However, the said persons have not moved from the said land;
- (g) That, the Kenya Forest Service has now issued notices to the minority Ngerek Community to vacate the area they occupy in the South Nandi Forest, to enable the KFS to plant trees and conserve the forest as a water catchment area; and,
- (h) That, while this is being done, members of the Ngerek Community are left with nowhere to go as the land identified and set aside by the Government for their resettlement was grabbed by prominent people who have refused to vacate from the said land.

5. The petitioner, therefore, prays that the Senate-

- 1) Investigates this matter, with a view of ensuring-
 - (i) That, the persons unlawfully occupying the land set aside for resettlement of the minority Ngerek Community are immediately evicted from the said land and that any titles issued thereon are revoked;
 - (ii) That, the Government, through the KFS or any other agency, is stopped from evicting the minority Ngerek Community from the South Nandi Forest before it has secured land for their resettlement; and,
 - (iii) That, the rights of indigenous and minority groups in the country, including forest dwelling communities, are protected and upheld.
- 2) The petitioners, therefore, pray that the Senate intervenes on their behalf to have the matter expeditiously addressed so as to ensure that the evictees are allocated

land.

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



CHAPTER 2

CONSIDERATION OF THE PETITION

2.0 Approach taken by the Committee

7. In considering the Petition, the Committee observed that it would be important to verify the facts alleged by the Petitioner. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition. In this regard the Committee invited the Petitioner to a meeting of the Committee for the Petitioner to elaborate further on the issues raised in the Petition and to supply supporting evidence on the issues raised.
8. The Petitioner appeared before the Committee on 20th November, 2019 and the Cabinet, Secretary Ministry of Environment and Forestry on 13th August, 2020.

2.1. Responses by the Ministry of Environment and Forestry

9. Pursuant to a letter Ref: SEN/DCS/LENR/2/2020/(20a) dated 20th May, 2020, the Committee invited the Cabinet Secretary, Ministry of Environment and Forestry and consequently received the following submissions: -

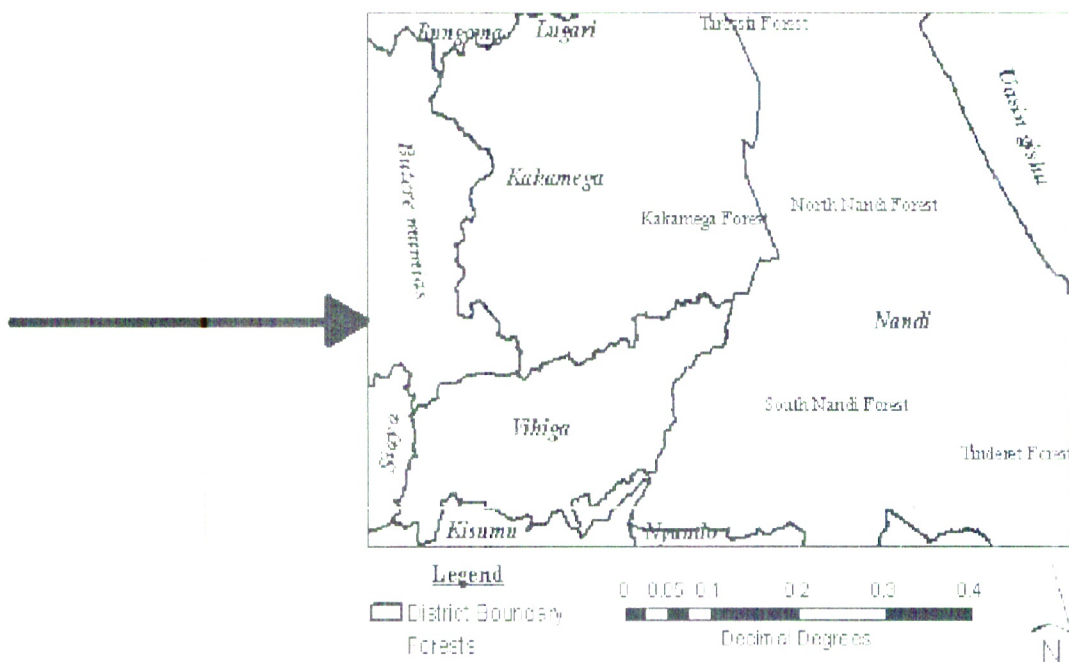
2.1.1. *Gazetted Forests in Nandi County*

10. The Cabinet Secretary submitted that the protected forest reserves in Nandi County are South Nandi Forest which is managed through Kobujoi, Kapchorua, Tinderet, and Cerengoni Forest Stations, and North Nandi Forest managed through North Nandi and Kimondi Forest Stations. The details of these forest reserves which are managed by Kenya Forest Service (KFS) is tabulated below-

S/N	Forest Station	Forest type / Category (Ha)					Encroachment and excisions	TOTAL (Ha)
		Natural	Plantation	Grassland	Wetlands	Nyayo Tea Zone		
1.	Kobujoi	16,626.00	300.00	2,464.00	0	300.00	360.00	20,050.00
2.	Tinderet	7,328.90	40.00	0	0	100.00	0	7,468.90
3.	Kapchorua	3,851.00	9.20	138.80	0	1.00	0	4,000.00
4.	Cerengoni	11,378.00	1,194.00	0	0	6.00	0	12,578.00

5.	Kimondi	4,095.55	1,285.35	61.80	196.90	307.10	796.40	6,743.10
6.	North Nandi	8,000.00	850.56	40.20	149.00	410.00	1,050.05	10,499.81
	TOTAL	51,279.45	3,679.11	2,704.80	345.90	1124.10	2,206.45	61,339.81

11. The map below shows the distribution of these forests in Nandi County:-



2.1.2. The Chepkumia Land Exchange Programme

12. In 1996, there was a government intention of resettling of the minority Ngerek Community from the Ngerek Hill in South Nandi to a portion of the South Nandi Forest. This was to be done under the Chepkumia Land Exchange Programme on an acre for acre basis. This was driven by the desire of removing the Ngerek Community from the ecologically sensitive Ngerek Hill for conversion of this Hill into a conservation area.

13. The resettlement, however, did not materialise because of vested interests among the administrators and politicians in Nandi County. As such, the minority Ngerek Community were not resettled as initially planned.



14. Noteworthy is that the portion of the forest where the Ngerek Community would have been resettled under the Chepkumia Land Exchange Programme was occupied by illegal occupants who were largely backed by the local administrators and politicians;

2.1.3. Alleged Proposed Eviction of The Minority Ngerek Community From South Nandi Forest

15. While the Petitioner alleges that there is a proposed eviction from South Nandi Forest of the minority Ngerek Community, the Cabinet Secretary submitted that this was not the case for the following reasons-

(a) The then Forest Department issued an eviction order to the illegal occupants of the Chepkumia Land Exchange as they had no basis to be settled on the land. This group of persons did not have land to exchange with the Government and are therefore settled on Government land illegally;

(b) These illegal occupants challenged this eviction order by filing suit against the District Forest Officer Nandi and the Permanent Secretary of the Ministry of Environment and Natural Resources in 2003 (*HC Civil Suit No. 67 of 2003 - Abdi Keter and 551 others versus District Forest Officer Nandi, PS MENR and the Attorney-General*). The illegal occupants' case was dismissed in 2007 but they nevertheless continue to reside in South Nandi Forest. They therefore have no legal basis for their continued occupation of the forest;

(c) This eviction order of 2003 issued by the District Forest Officer Nandi was directed at the illegal occupants of South Nandi Forest, and **NOT** the minority Ngerek Community. This is premised on the fact that the minority Ngerek Community are owners of privately titled land where my Ministry has no jurisdiction. There has never been any eviction orders directed towards the minority Ngerek Community from the Ministry of Environment and Forestry.

2.2. Responses by the National Land Commission

16. Pursuant to a letter Ref: SEN/DCS/LENR/2/2020/(20a) dated 20th May, 2020, the Committee invited the Cabinet Secretary, Ministry of Environment and Forestry and consequently received the following submissions-

(a) The matter was handled by National Land Commission through the committee on historical land injustices as lodged by one Joel Kenduiywa on behalf of the Ngerek minority community as NLC/HLI/435/2018 and NLC/256/2017.

(b) The affected community was to be moved from Nandi South forest to be resettled together with Koibem Community in part of forest land around Kapkangani. The

intended area meant for resettlement was excised by KFS after they paid the requisite survey fees but their claim is that the same area was given to another community. They were not settled on the excised land as planned. KFS confirmed the claim by Ngerek to be true.

- (c) KFS, through their representative confirmed Ngerek were 244 people who were to be resettled on a land measuring 450 HA but they have not because a different group was resettled on the space that was intended for the Ngerek people. The Koibem group was given their portion of 260 ha where they have already occupied.
- (d) The Kaptuiya group were resettled in the land parcel meant for the Ngerek group filed a case in high court to challenge the resettlement of the Ngerek group but lost the case. The Kiptuiya Group alleged that they were allocated the land by the District Commissioner. However KFS did not recognise them as they were not part of the exchange programme.
- (e) County Government of Nandi requested to be enjoined in the High Court proceedings where they pledged to request KFS to create additional land to accommodate all the three groups.
- (f) From the evidence adduced both Koibem and Ngerek Communities have a valid claim because they were exchanging land for land with KFS. They contributed money to facilitate survey of the individual land parcels. Whereas the Koibem have taken possession of the area given to them by KFS, the Ngerek Community cannot take possession because their land is occupied by the Kiptuiya Community who were not part of the exchange programme.
- (g) KFS had authorised an excision of 910.6 hectares which include 186 hectares for public utilities 266.86Ha for the Koibem Community and 465.45 Ha for the Ngerek Community. However the survey was extended illegally by 300Ha which KFS was contesting and that the Survey had not provided the map for the perimeter of the land excised and that is why the degazettement had not been concluded.
- (h) The Kiptuiya group of 510 people were not part of the exchange programme and their case should be dealt with separately as both the Ministry of Lands and Physical Planning, County Government of Nandi and KFS conclude the exchange programme between Ngerek, Koibem and KFS.
- (i) Both Ngerek and Koibem Communities still hold their titles awaiting conclusion of the exchange programme by KFS and the Ministry of Lands and Physical Planning.

17. The National Land Commission made the following recommendations as part of their submissions-



- (a) KFS to facilitate the degazettement of excised area from Nandi South Forest to enable issuance of title deeds to Ngerek and Koibem communities on land for land basis.
- (b) The Director of Survey together with Nandi County Government to expedite the excision of the forest area that KFS excised from Nandi South Forest and hand over to the Ngerek and Koibem Communities.

2.3. Responses by the Ministry of Lands and Physical Planning

18. Pursuant to a letter Ref: SEN/DCS/LENR/2/2020/(20a) dated 20th May, 2020, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning and consequently received the following submissions-

- (a) The resettlement exercise was undertaken by the Office of the President and it involved the Ngerek and Koibem communities who settled in Ngerek and Koibem villages in South Nandi.
- (b) Since the settled area was rocky and hilly, and served as a water catchment area, the Government decided to resettle the two communities in Kapkangani and New Koibem areas respectively. The Koibem community would be resettled on 266.8 Hectares and the Ngerek community on 455.4 Hectares. Public utilities for both villages were to take 188.29 Hectares. This was in exchange for land previously held by the two communities in South Nandi Forest.
- (c) The resettlement programme was to be carried out in two phases-
 - (i) Phase one involved resettlement of the Koibem community at New Koibem/ Chepkumia area. This was successfully completed.
 - (ii) Phase two targeted the Ngerek community.
- (d) Phase two encountered many challenges that hindered its implementation. There were allegations that people who never exchanged any land with the Kenya Forest Service became beneficiaries of the land at Kapkangani area. The challenges can be summarized as follows-
 - (i) Political interference
 - (ii) Some original allottees sold their plots
 - (iii) The Ngerek community attempted to forcefully occupy the parcels allocated to them. This led to clashes in the year 2002.
- (e) The Ngerek community is still in occupation of their original land in Ngerek Hills as they did not surrender the title deeds to the Kenya Forest Service as earlier agreed.
- (f) The Ministry of Lands and Physical Planning submitted that there is need for

engagement between the local leadership and relevant government agencies to resolve this matter. This may include the search for alternative land to resettle the community.



CHAPTER 3

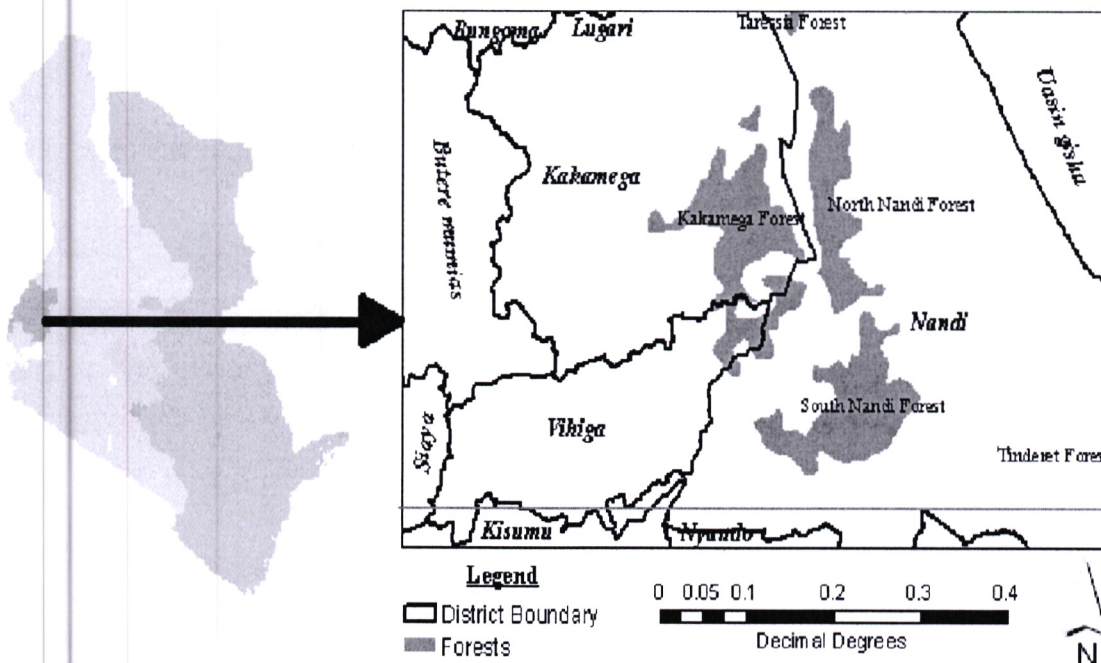
FINDINGS OF THE COMMITTEE

19. Having considered the submissions from the Petitioners, the Cabinet Secretary for Environment and Natural Resources, National Land Commission and the Ministry of Lands and Physical Planning, the Committee made the following findings-

1) Gazetted Forests in Nandi County

20. The Committee established from Ministry of Environment and Forestry protected forest reserves in Nandi County are South Nandi Forest which is managed through Kobujoi, Kapchorua, Tinderet, and Cerengoni Forest Stations and North Nandi Forest managed through North Nandi and Kimondi Forest Stations.

21. The map below shows the distribution of these forests in Nandi County;-



2) The Chepkumia Land Exchange Programme

22. The Committee noted that in 1996, there was a government intention of resettling of the minority Ngerek Community from the Ngerek Hill in South Nandi to a portion of the South Nandi Forest. This was to be done under the Chepkumia Land Exchange Programme on an acre for acre basis. This was driven by the desire of removing the Ngerek Community from the ecologically sensitive Ngerek Hill for conversion of this

Hill into a conservation area.

23. The portion of the forest where the Ngerek Community would have been resettled under the Chepkumia Land Exchange Programme was occupied by illegal occupants who were largely backed by the local administrators and politicians:

3) Alleged Proposed Eviction of the Minority Ngerek Community from South Nandi Forest

24. The Committee established that while the Petitioner alleges that there is a proposed eviction from South Nandi Forest of the Ngerek Community, the Ministry of Environment and Natural Resources stated that it was not true. The Forest Department however issued an eviction order to the illegal occupants of the Chepkumia Land Exchange as they had no basis to be settled on the land. This group of persons did not have land to exchange with the Government and are therefore settled on Government land illegally.
25. The Committee noted that the illegal occupants challenged this eviction order by filing suit against the District Forest Officer, Nandi and the Permanent Secretary of the Ministry of Environment and Natural Resources in 2003 (**HC Civil Suit No. 67 of 2003 - Abdi Keter and 551 others versus District Forest Officer Nandi, PS MENR and the Attorney-General**). The illegal occupants' case was dismissed in 2007 but they nevertheless continue to reside in South Nandi Forest. They therefore have no legal basis for their continued occupation of the forest:
26. This eviction order of 2003 issued by the District Forest Officer Nandi was directed at the illegal occupants of South Nandi Forest, and **not** the minority Ngerek Community. There has never been any eviction order directed towards the minority Ngerek Community from the Ministry of Environment and Forestry.

4) Area of Land to be allocated to Ngerek Community

27. The Committee learnt from the National Land Commission that Ngerek Community was to be moved from Nandi South forest to be resettled together with Koibem Community in part of forest land around Kapkangani. The intended area meant for resettlement was excised by KFS after they paid the requisite survey fees but their claim is that the same area was given to another community. They were not settled on the excised land as planned. KFS confirmed the claim by Ngerek to be true.

28. KFS through their representative confirmed Ngerek were 244 people who were to be resettled on a land measuring 450 HA but they have not because a different group was resettled on the space that was intended for the Ngerek people. The Koibem group was given their portion of 260 ha where they have already occupied.
29. The Kaptuiya group were resettled in the land parcel meant for the Ngerek group filed a case in high court to challenge the resettlement of the Ngerek group but lost the case. The Kiptuiya Group alleged that they were allocated the land by the District Commissioner. However KFS did not recognise them as they were not part of the exchange programme.

5) Land excised by Kenya Forest Service

30. The Committee noted that KFS had authorised an excision of 910.6 hectares which include 186 hectares for public utilities 266.86Ha for the Koibem Community and 465.45 Ha for the Ngerek Community. However the survey was extended illegally by 300Ha which KFS was contesting and that the Survey had not provided the map for the perimeter of the land excised and that is why the degazettement had not been conclude.
31. However, the Kiptuiya group of 510 people were not part of the exchange programme and their case should be dealt with separately as the Ministry of Lands and Physical Planning, County Government of Nandi and KFS conclude the exchange programme between Ngerek, Koibem and KFS.
32. The Ngerek community is still in occupation of their original land in Ngerek Hills as they did not surrender the title deeds to the Kenya Forest Service as earlier agreed. The Cabinet Secretary stated in his submission that since the land exchange did not materialise, the status quo should remain.

CHAPTER 4

COMMITTEE OBSERVATIONS

33. Based on the findings of the Committee upon consideration of the Prayers of the Petitioner and the submissions from the Cabinet Secretary for Environment and Natural Resources, National Land Commission and the Ministry of Lands and Physical Planning, the Committee observes as follows:

- 1) The Ngerek Community were never settled in the forest but instead the land they occupied, that is Ngerek Hills was considered to be ecologically sensitive. The portion of the forest where the Ngerek Community would have been resettled under the Chepkumia Land Exchange Programme was occupied by a different community who were deemed to be illegal occupants by the government.
- 2) The Committee observed that the resettlement under the Chepkumia Land Exchange Programme did not materialise due to various reasons as submitted and as such the Ngerek Community did not hand over their current Title Deeds in exchange for the land they were allegedly allocated. The Ngerek Community were not resettled as initially planned and have therefore no rights to the disputed land in question.
- 3) That the Kenya Forest Service issued an eviction order to the illegal occupants of the Chepkumia Land Exchange initially allocated to the Ngerek Community. However, this does not imply that the land will be available to resettle the Ngerek Community, as such, the Cabinet Secretary for Environment and Natural Resources was of the view that status quo should remain.
- 4) The eviction order quoted by the Petitioners asking them to leave the land they currently occupy will be revoked by the Ministry.

CHAPTER 6

COMMITTEE RECOMMENDATIONS

34. The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders recommends as follows-

That the Cabinet Secretary for Environment and Forestry revokes any previous orders directing the Ngerek Community to leave their land in the Ngerek Hills area and asserts the current position in writing, that the Ngerek Community rightfully occupy the land they are currently settled on.

ANNEX I: MINUTES

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

- **Vice Chairperson**
- Member
- Member
- Member
- 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. Waithaka - 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/SCLNR/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/SCLNR/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/SCLNR/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 seeked 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

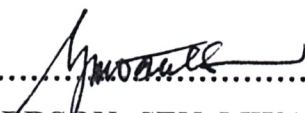
The Committee did not receive any apologies from the NLC and resolved to re-invite them again once new commissioners are sworn to office.

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.)

**MINUTES OF THE 31ST SITTING OF THE SENATE STANDING COMMITTEE
ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON
THURSDAY, 13TH AUGUST, 2020 VIA ZOOM ONLINE PLATFORM AT 1.00 PM.**

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. Gideon Moi, CBS, MP
4. Sen. Sylvia Kasanga, MP
5. Sen. Mwaruma Johnes, MP

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Philip Mpaayei, MP
2. Sen. Boy Issa Juma, MP
3. Sen. (Dr.) Lelegwe Ltumbesi, MP
4. Sen. Ndwiya Peter Njeru, EGH, MP

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

IN ATTENDANCE

1. Sen. (Dr.) Alice Milgo, MP

SENATORS

- Nominated Senator, Bomet County

**MINISTRY OF ENVIRONMENT
AND NATURAL RESOURCES**

1. Mr. Keriako Tobiko, CBS, SC,
2. Mr. Patrick Kariuki
3. Mr. Alex Lemarkoko
4. Mr. Mamo Boru Mamo

- CS, Ministry of Environment and Forestry
- Deputy, Chief Conservator of Forests, KFS
- Deputy, Chief Conservator of Forests, KFS
- Ag. DG, NEMA

SECRETARIAT

1. Mr. Victor Bett
2. Ms. Judy Ndegwa
3. Ms. Clare Kidombo
4. Mr. John Ngang'a

- Clerk Assistant
- Legal Counsel
- Researcher/Policy Analyst
- Audio Recording

MINUTE SEN/SCLNR/171/2020: PRELIMINARIES

The meeting was called to order at 11.25 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNR/172/2020: ADOPTION OF AGENDA



The agenda of the meeting was adopted after being proposed by Sen. Sylvia Kasanga, M.P. and seconded by Sen. Mwaruma Johnes, M.P. as follows –

1. Preliminaries
2. Adoption of the agenda;
3. **Meeting with the Cabinet Secretary, Ministry of Environment & Forestry on the following Petitions and Statements –**
 - Petition by residents of Ganjoni, Mombasa County on the loading and unloading of iron-ore in Ganjoni, Mombasa County;
 - Petition by Mr. John Njogu Njoroge on the resettlement of East Mau Forest evictees;
 - Petition by Dundori Forest Evictees on the forceful eviction from Dundori Forest and compensation of land for the excised area from the forest for resettlement;
 - Statement requested by Sen. (Dr.) Alice Milgo, MP, on 19th May, 2020 concerning waste management in Bomet County Government.
 - Petition by Mr. Joel Kenduiywa on the resettlement of the minority Ngerek Community following their proposed eviction from South Nandi Forest, in Nandi County;
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLENR/173/2020: MEETING WITH THE CABINET SECRETARY, MINISTRY OF ENVIRONMENT & FORESTRY ON THE FOLLOWING PETITIONS AND STATEMENTS –

- **Petition by residents of Ganjoni, Mombasa County on the loading and unloading of iron-ore in Ganjoni, Mombasa County;**

The Committee was informed by the CS that they sent inspectors to the facility and it has since been closed and would be giving periodic updates to the Committee.

- **Petition by Mr. John Njogu Njoroge on the resettlement of East Mau Forest evictees;**

The CS informed the Committee that this was brought to effect by the presidential decree of 1985 and that in dealing with this matter requires adequate research on the history of the matter.

The CS requested for additional time to furnish the Committee with more adequate and concrete responses on the matter.

- **Petition by Dundori Forest Evictees on the forceful eviction from Dundori Forest and compensation of land for the excised area from the forest for resettlement;**

The CS requested for additional time to furnish the Committee with more adequate and concrete responses on the matter since it follows the same background as the previous Petition regarding the East Mau Forest evictees.

- **Statement requested by Sen. (Dr.) Alice Milgo, MP, on 19th May, 2020 concerning waste management in Bomet County Government.**

The Committee requested the Senator who requested the Statement to give a background of her concern to the CS and the CS responded by informing the Committee that the matter is similar across all the counties and that matters involving the waste management cannot be carried out without involving the County Government.

The Committee therefore resolved to invite the Governor Bomet County to respond to the aforementioned statement in the presence of the CS.

- **Petition by Mr. Joel Kenduiywa 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 CS that he needed more time to carefully go through the concerns raised in the Petition since the Petitioner has clearly highlighted the presence of “powerful” forces and he wanted to know who this alleged powerful forces are.

Further, this would require a site visit by the Ministry to the indicated hill and that they were talking caution to prevent a political backlash.

MINUTE SEN/SCLNR/174/2020: ANY OTHER BUSINESS;

The was no other business discussed.

MINUTE SEN/SCLNR/175/2020: DATE OF NEXT MEETING;

The meeting was adjourned at 2.30 pm and the date of the next meeting was scheduled for Wednesday, 19th August, 2020 at 11.00 am via zoom online platform.

Signed: For: Date: **19/11/2020**

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES



MINUTES OF THE 46TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 14TH OCTOBER, 2020 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS

	PRESENT
1. Sen. Mwangi Paul Githiomi, MP	- Chairperson
2. Sen. George Khaniri, MGH, MP	- Member
3. Sen. (Dr.) Lelegwe Ltumbesi, MP	- Member
4. Sen. Sylvia Kasanga, MP	- Member
5. Sen. Mwaruma Johnes, MP	- Member

ABSENT WITH APOLOGY

1. Sen. Philip Mpaayei, MP	- Vice Chairperson
2. Sen. Ndwiga Peter Njeru, EGH, MP	- Member
3. Sen. Gideon Moi, CBS, MP	- Member
4. Sen. Boy Issa Juma, MP	- Member

IN ATTENDANCE

MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES

1. Mr. Keriako Tobiko, CBS, SC,	- CS, Ministry of Environment and Forestry
2. Mr. Mamo Boru Mamo	- DG, NEMA
3. Mr. Patrick Kariuki	- Deputy, Chief Conservator of Forests, KFS
4. Mr. Alfred Gichu	-KFS
5. Mr. Joel Gichu	- Ministry Head Quarters
6. Mr. Rodney Omari	- Ministry Head Quarters
7. Mr. Sammy Wahome	- KFS
8. Mr. Lawrence Thugge	- KFS
9. Mr. Edwin Kihoro	- KFS

SECRETARIAT

1. Mr. Victor Bett	- Clerk Assistant
2. Mr. John Ngang'a	- Audio Recording

MINUTE SEN/SCLNLR/247/2020: PRELIMINARIES

The meeting was called to order at 11.26 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNLR/248/2020: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. George Khaniri, MGII, MP and seconded by Sen. Sylvia Kasanga, MP as follows –

1. Preliminaries
2. Adoption of the agenda:
3. Confirmation of Minutes:
4. Meeting with the **Cabinet Secretary, Ministry of Environment and Forestry on the following Petitions and Statements;**
 - Petition by Mr. Joel Kenduiywa on the resettlement of the minority Ngerek Community following their proposed eviction from South Nandi Forest, in Nandi County;
 - Petition by Mr. John Njogu Njoroge on the resettlement of East Mau Forest evictees;
 - Petition by Dundori Forest Evictees on the forceful eviction from Dundori Forest and compensation of land for the excised area from the forest for resettlement;
 - Petition presented by Sen. Paul Mwangi Githiomi, MP, concerning the resettlement of Internally Displaced Persons in Nyandarua County.
5. Any other Business:
6. Date of the next meeting:
7. Adjournment.

MINUTE SEN/SCLNDR/249/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Committee deferred the confirmation of Minutes to the next meeting.

MINUTE SEN/SCLNDR/250/2020: Meeting with the Cabinet Secretary, Ministry of Environment and Forestry on the following Petitions and Statements;

- a) **Petition by Mr. Joel Kenduiywa on the resettlement of the minority Ngerek Community following their proposed eviction from South Nandi Forest, in Nandi County;**

The Cabinet Secretary presented as follows:

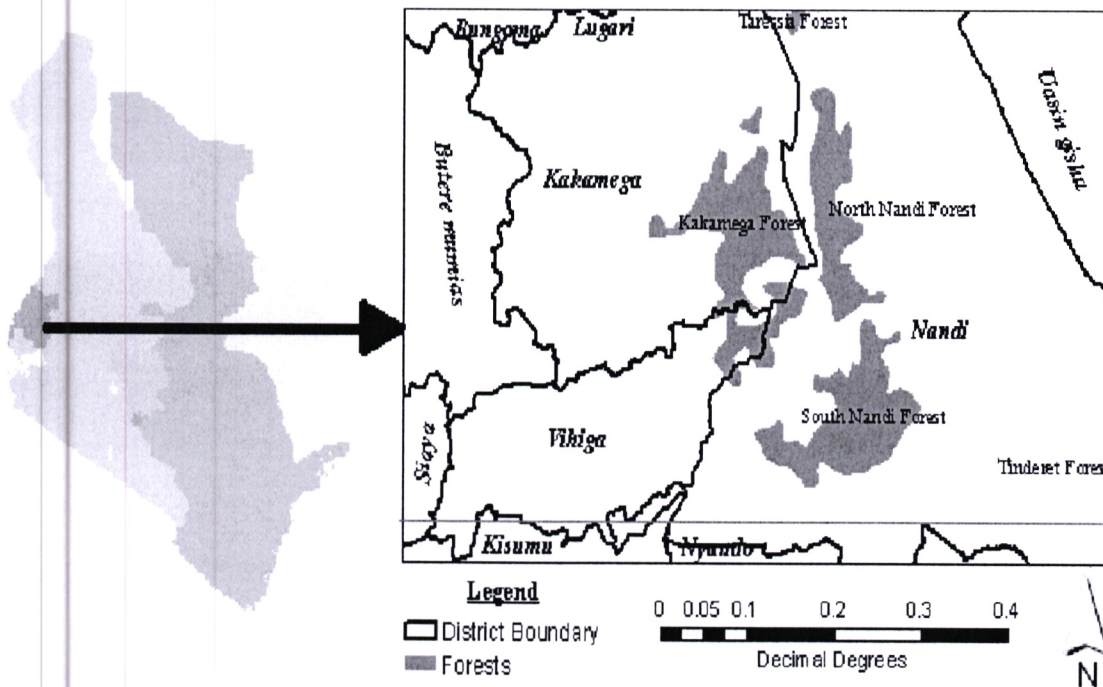
A. GAZETTED FORESTS IN NANDI COUNTY

1. The protected forest reserves in Nandi County are **South Nandi Forest** which is managed through **Kobujoi, Kapchorua, Tinderet, and Cerengoni Forest Stations**, and **North Nandi Forest** managed through **North Nandi and Kimondi Forest Stations**. The details of these forest reserves which are managed by Kenya Forest Service (KFS) is tabulated below:



S/N	Forest Station	Forest type / Category (Ha)					Encroachment and excisions	TOTAL (Ha)
		Natural	Plantation	Grassland	Wetlands	Nyayo Tea Zone		
7.	Kobujoi	16,626.00	300.00	2,464.00	0	300.00	360.00	20,050.00
8.	Tinderet	7,328.90	40.00	0	0	100.00	0	7,468.90
9.	Kapchorua	3,851.00	9.20	138.80	0	1.00	0	4,000.00
10.	Cerengoni	11,378.00	1,194.00	0	0	6.00	0	12,578.00
11.	Kimondi	4,095.55	1,285.35	61.80	196.90	307.10	796.40	6,743.10
12.	North Nandi	8,000.00	850.56	40.20	149.00	410.00	1,050.05	10,499.81
	TOTAL	51,279.45	3,679.11	2,704.80	345.90	1124.10	2,206.45	61,339.81

2. The map below shows the distribution of these forests in Nandi County;-



B. THE CHEPKUMIA LAND EXCHANGE PROGRAMME

3. In 1996, there was a government intention of resettling of the minority Ngerek Community from the Ngerek Hill in South Nandi to a portion of the South Nandi Forest. This was to be done under the Chepkumia Land Exchange Programme on an

acre for acre basis. This was driven by the desire of removing the Ngerek Community from the ecologically sensitive Ngerek Hill for conversion of this Hill into a conservation area:

4. The resettlement, however, did not materialise because of vested interests among the administrators and politicians in Nandi County. As such, the minority Ngerek Community were not resettled as initially planned;
5. Noteworthy is that the portion of the forest where the Ngerek Community would have been resettled under the Chepkumia Land Exchange Programme was occupied by illegal occupants who were largely backed by the local administrators and politicians:

C. ALLEGED PROPOSED EVICTION OF THE MINORITY NGEREK COMMUNITY FROM SOUTH NANDI FOREST

6. While the Petitioner alleges that there is a proposed eviction from South Nandi Forest of the minority Ngerek Community, I wish to state that this is not true;
7. I am aware that the then Forest Department issued an eviction order to the illegal occupants of the Chepkumia Land Exchange as they had no basis to be settled on the land. This group of persons did not have land to exchange with the Government and are therefore settled on Government land illegally;
8. These illegal occupants challenged this eviction order by filing suit against the District Forest Officer Nandi and the Permanent Secretary of the Ministry of Environment and Natural Resources in 2003 (**HC Civil Suit No. 67 of 2003 - Abdi Keter and 551 others versus District Forest Officer Nandi, PS MENR and the Attorney-General**). The illegal occupants' case was dismissed in 2007 but they nevertheless continue to reside in South Nandi Forest. They therefore have no legal basis for their continued occupation of the forest;
9. This eviction order of 2003 issued by the District Forest Officer Nandi was directed at the illegal occupants of South Nandi Forest, and **NOT** the minority Ngerek Community. This is premised on the fact that the minority Ngerek Community are owners of privately titled land where my Ministry has no jurisdiction. There have never been any eviction orders directed towards the minority Ngerek Community from the Ministry of Environment and Forestry.

The Committee observed that the resettlement under the Chepkumia Land Exchange Programme did not materialise due to various reasons as submitted and as such the Ngerek Community did not hand over their current Title Deeds in exchange for the land they were allegedly allocated. The Ngerek Community were not resettled as initially planned and have no rights to the land in question.

It was therefore agreed that the Petitioners submit the letter to the Ministry of Environment and Forestry for the Cabinet Secretary to revoke and that the Ministry should assert the current position in writing, that the Ngerek Community rightfully occupy the land they are currently settled on.

b) Petition by Mr. John Njogu Njoroge on the resettlement of East Mau Forest evictees;

Cabinet Secretary presented as follows:

1. **THAT East Mau Forest Evictees are composed of ten (10) forests which are in the larger Nakuru District (now Nakuru County);**
2. **THAT the members of the East Mau Forest Evictees lived inside the said forests for 70 years legally as caretakers to our forests during the colonial period in Kenya under the Crown of the Queen of England, President Jomo Kenyatta's Government and during President Moi's Government who later evicted us from the forests in the year 1988;**

Ministry's Response

- (a) Since inception of the forestry practice in Kenya in 1907, the formal arrangement was to have laborers (employed to tend trees) residing in forest houses provided by the Government;
 - (b) This arrangement changed in 1988 when the forest laborers were required to work from outside the public forests;
 - (c) This therefore meant that the laborers had to vacate the forest houses and this should not be interpreted to mean evictions.
3. **THAT other persons from other counties e.g. Bomet, Kericho, Baringo etc. were resettled in the same forest areas we were in;**

Ministry's Response

- (a) Eastern Mau Forest Reserve was gazetted vide Legal Notice No. 174 of 1964 (**Annex II**);
 - (b) The said forest has never been degazetted for settlement or any other purpose;
 - (c) Matters of settling Kenyans lies within the jurisdiction of the Ministry of Lands and Physical Planning and not the Ministry of Environment and Forestry.
4. **THAT East Mau Forest Evictees wrote to the TJRC on 21st September 2011 and the National Land Commission on 7th June 2018 but have never responded;**

Ministry's Response

The response to this matter lies with TJRC and the National Land Commission.

5. **THAT members are currently landless and have lived as squatters since 1988 and have never been allocated land;**

Ministry's Response

Matters of settling Kenyans lies within the jurisdiction of the Ministry of Lands and Physical Planning and not the Ministry of Environment and Forestry.

c) Petition by Dundori Forest Evictees on the forceful eviction from Dundori Forest and compensation of land for the excised area from the forest for resettlement;

The Cabinet Secretary presented as follows:

1.0 FORMER RESIDENCY PETITIONER

That they lived in the former Dundori Forest Villages since the early 1930 up to June 1988 when they were forcefully evicted by the Kenya Forest Department (KFS). The names of the villages were Kieni, Kinari and C. Bonza Forest Villages:

Ministry's Response

- (a)** Since inception of the forestry practice in Kenya in 1907, the formal arrangement was to have laborers (employed to tend trees) residing in forest houses provided by the Government;
 - (b)** This arrangement changed in 1988 when the forest laborers were required to work from outside the public forests;
 - (c)** This therefore meant that the laborers had to vacate the forest houses and this should not be interpreted to mean evictions.
- 1. That presently we are residing in the adjacent centre of Dundori Wanyororo, Kabatini, private farms and others are scattered all over Nakuru County.**

Ministry's Response

The Committee was informed by the Cabinet Secretary in charge of Environment and Forestry, that he is not in a position to confirm the assertion by the Petitioners.

- 2. We rely on Dundori forest land for cultivation, grazing and fuel wood collection under plantations establishment and livelihood improvement scheme (PELIS). Currently all forest where we used to cultivate has been fully planted with trees by government hence no space for shamba system as used to be. We are left with no option except casual labourers (daily).**

Ministry's Response



- (a) The Committee was informed that, it is the Government policy to replant all available spaces in all gazetted forests earmarked for development of plantations;
- (b) In the course of establishing the forest plantations, it is Government policy to use PELIS which brings on board communities living adjacent to forests to provide casual labor.

2 EFFORTS MADE BY PETITIONERS

- 3 **THAT in the year 1994, the government through former county council of Nakuru excised 84.49 Ha (200 acres) from Dundori forest land to settle squatters. The land is L.R. No. 19060 Plan No. 175/340 and was gazetted for settlement on 6th July 1994. Unfortunately, none of us benefitted from the programme but outsiders who later sold their plots in December 1997 after realizing what was done to us we peacefully demonstrated to the then Provincial Commissioner's office Rift Valley Province and we told him our grievances. He then referred us to the then District Commissioner Nakuru District who promised us that he will write a report of our grievances and forward it to the government for consideration. Since then there has not been any action taken to address our grievances.**

Ministry's Response

- (a) Bahati Forest was gazetted vide Legal Notice No. 174 of 1964 (**Annex III**);
 - (b) Dundori is a block within Bahati Forest;
 - (c) No degazettement has been made to excise the referred area (L.R. No. 19060) from Bahati Forest Block;
 - (d) As the Cabinet Secretary in charge of Environment and Forestry, I am not in a position to confirm the rest of the assertions by the Petitioners.
- 4 **That in the year 2014 we registered an organization (C.B.O) with Gender and Social Development Office Bahati sub-county.**

Ministry's Response

The Committee was informed by the Cabinet Secretary in charge of Environment and Forestry, that he isn't in a position to confirm this assertion by the Petitioners.

- 5 **That on 8th April 2016 we wrote a letter to his Excellency President Republic of Kenya Honorable Uhuru Muigai Kenyatta requesting him to intervene on our behalf. We also forwarded copies of our letter to then former governor Nakuru County. His Excellency Kinuthia Mbugua, County Commissioner Nakuru County and Deputy County Commissioner Bahati sub-county. Lastly we have**

written to the Taskforce implementation of Arusha case on Ogiek and other communities under the Ministry of Environment and Forestry.

Ministry's Response

The Committee was informed by the Cabinet Secretary in charge of Environment and Forestry that the matters raised in this section of the petition can only be confirmed by the referenced Government institutions and offices.

d) Petition presented by Sen. Paul Mwangi Githiomi, MP, concerning the resettlement of Internally Displaced Persons in Nyandarua County.

The Cabinet Secretary informed the Committee that the information he has is that its only one family residing in the aforementioned region and that they have refused to vacate houses belonging to KFS Staff.

The Committee informed the Cabinet Secretary to embark on further scrutiny of the matters cited in the Petition and respond back to the Committee within 14 days.

MINUTE SEN/SCLNR/251/2020: ANY OTHER BUSINESS;

There was no other business discussed.

MINUTE SEN/SCLNR/252/2020: DATE OF NEXT MEETING;

The meeting was adjourned at 1.25 pm and the date of the next meeting was scheduled for Wednesday, 21st October, 2020 at 10.00 am via zoom online platform.

Signed: For:

Date: 19/11/2020

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON

STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL

RESOURCES



MINUTES OF THE 51ST SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON FRIDAY, 13TH NOVEMBER, 2020 AT SAROVA WHITESANDS HOTEL, MOMBASA AT 9.00 AM.

MEMBERS

1. Sen. Philip Mpaayei, MP
2. Sen. Sylvia Kasanga, MP
3. Sen. Gideon Moi, CBS, MP
4. Sen. Ndwiga Peter Njeru, EGH, MP
5. Sen. Boy Issa Juma, MP

PRESENT

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

ABSENT WITH APOLOGY

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. George Khaniri, MGH, MP
3. Sen. Mwaruma Johnes, MP
4. Sen. (Dr.) Lelegwe Ltumbesi, MP

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

IN ATTENDANCE

1. Mr. Victor Bett
2. Mr. Crispus Njogu
3. Ms. Clare Kidombo
4. Ms. Mitchell Otoro
5. Mr. Abdalla Mbore
6. Mr. John Nganga
7. Mr. Naftali Ondiba

SECRETARIAT

- Clerk Assistant II
- Clerk Assistant II
- Researcher
- Legal Counsel
- Sergeant-At-Arms
- Audio Recording
- Finance Officer

MINUTE SEN/SCLNLR/280/2020: PRELIMINARIES

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

MINUTE SEN/SCLNLR/281/2020: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP as follows –

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Adoption of the following Petition Reports;**

1. Report of the Committee on the Petition regarding the Resettlement of East Mau Forest Evictees:
2. Report of the Committee on the Petition regarding forceful eviction from Dundori Forest and compensation of land for the excised area from the forest for resettlement:
3. Report of the Committee on the Petition regarding the alleged grabbing of public utility and private land at Leleshwa, Gilgil Township (Residents of Gilgil Township, Nakuru County)
4. Report of the Committee on the Petition regarding the resettlement of the minority Ngerek Community following their proposed eviction from South Nandi Forest, in Nandi County
5. Any other Business:
6. Date of the next meeting:
7. Adjournment.

MINUTE SEN/SCLNLR/282/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Committee deferred the confirmation of Minutes to the next housekeeping meeting.

MINUTE SEN/SCLNLR/283/2020: ADOPTION OF THE FOLLOWING PETITION REPORTS;

(a) Report of the Committee on the Petition regarding the Resettlement of East Mau Forest Evictees;

The Committee adopted its report with the following recommendations:

1. That the matter be referred to National Land Commission to be investigated as a historical land injustice
2. That the Petitioners be resettled by Government. The land the Petitioners are to be resettled should be land arable land to enhance farming.
3. That the Petitioners should be compensated for any property that was lost during the eviction.
4. That the Petitioners should be considered for relief accorded to Internally Displaced persons in Kenya through the Ministry of Devolution and Arid and Semi-Arid Lands special programmes department.
5. That the Ministry of Education should facilitate and consider the issuance of certified duplicated education certificates to the aggrieved residents from East Mau who were affected.



The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP

(b) Report of the Committee on the Petition regarding forceful eviction from Dundori Forest and compensation of land for the excised area from the forest for resettlement;

The Committee adopted its report with the following recommendations;

1. That the National Land Commission confirms the true ownership of L.R. No. 19060;
2. That the National Land Commission investigates the case as a historical land injustice matter and provide a report to the Committee and to the Ministry of Lands and Physical Planning within 3 months of tabling this report.
3. That, should their case after investigation by the National Land Commission is found to have been sincere, the Petitioners be resettled by the National Government on Land Similar to what they had before.

The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP

(c) Report of the Committee on the Petition regarding the alleged grabbing of public utility and private land at Leleshwa, Gilgil Township (Residents of Gilgil Township, Nakuru County)

The Committee adopted its report with the following recommendations;

1. That the Ministry of Lands and Physical Planning, in consultation with the County Government of Nakuru conducts an investigation into the conflicting lists of beneficiaries of the land in Leleshwa area submitted to the County Government of Nakuru.
2. That the lists of beneficiaries from previous and current allocations should be vetted and harmonized to ensure transparency and accountability in the process. The Ministry of Lands and Physical Planning is directed to report back to the Committee in three (3) months following the tabling of this report in the Senate.
3. That the County Government of Nakuru expedites the implementation of the Gilgil Development Plan No. 91 of 2008.
4. The County Government of Nakuru ensures that the proposed Part Development Plan is approved after adequate public participation by all stakeholders to pave the way for its implementation.

The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP

(d) Report of the Committee on the Petition regarding the resettlement of the minority Ngerek Community following their proposed eviction from South Nandi Forest, in Nandi County

The Committee adopted its report with the following recommendations:

- 1) That, the persons unlawfully occupying the land set aside for resettlement of the minority Ngerek Community are relocated from the said land and that any titles issued thereon are revoked as they have no legal basis to continue occupying the land;
- 2) That the Kenya Forest Service in consultation with the County Government of Nandi and the Ministry of Devolution and Semi-Arid Lands Special Programmes Department should resettle the Kaptuiya Community;
- 3) That the Kenya Forest Service (KFS) expedites the degazettement of excised area from Nandi South Forest to enable issuance of title deeds for the 465.45 hectares allocated for the Ngerek community; and
- 4) That the Petitioners as well as the Kaptuiya Community once relocated should receive any relief accorded to Internally Displaced Persons in Kenya through the Ministry of Devolution and Semi-Arid Lands Special Programmes Department.

The Report was adopted after having been proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP

MINUTE SEN/SCLENR/284/2020: ANY OTHER BUSINESS;
There was no other business discussed.

MINUTE SEN/SCLENR/285/2020: DATE OF NEXT MEETING;

The meeting was adjourned at 1.00 pm and the next meeting was to follow thereafter at 3.00 pm.

Signed: Date: **19/11/2020**

SEN. PHILIP MPAAYEI, MP
VICE CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL
RESOURCES



ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS
(Attached separately)