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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEES ON ENVIRONMENT & NATURAL
RESOURCES AND LANDS

REPORT OF THE CONSIDERATION OF A PETITION BY THE EXECUTIVE
REGARDING THE VARIATION OF THE BOUNDARIES OF MT. ELGON FOREST
RESERVE

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 04 JUL 2019 DAY: Thursday
TABLED BY: The chairperson Departmental Committee on Environment & Natural Resources
CLERK-FOR-THE-TABLE: Getrude Chebet

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

JULY, 2019

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Chairperson's foreword

The Petition by the Executive regarding the Variation of the Boundaries of Mt. Elgon Forest Reserve was tabled in the House on 5th July 2018, pursuant to Article 119 (1) of the Constitution and Standing Order No. 225 (2) (b). The Petition was signed by the Cabinet Secretaries, Ministries of Environment & Forestry and Lands & Physical Planning.

The House, pursuant to Standing Order 227, referred the petition jointly to the Departmental Committees on Environment & Natural Resources and that one on Lands for consideration. The Committees received the Petition on Thursday, 5th July, 2018 and set out a procedure for its consideration and to report to the House as set out in Standing Order No 227(2).

In considering the Petition, the Joint Committee held a meeting with the Cabinet Secretary, Ministry of Lands & Physical Planning and the Chief Administrative Secretary, Ministry of Environment & Forestry. The Committees also undertook a field visit to Bungoma County on Friday 21st to Saturday 22nd September 2018 and held meetings with interested groups. Further the Joint Committee received submissions from the following stakeholders following an advertisement that was placed in the Daily Nation Newspaper on 26th July, 2018 in line with Article 118 of the Constitution: -

- a) Ogiek / Dorobo Council of Elders
- b) Mr. Elijah Kipkorir Kaibei
- c) Mr. Pete Kemei
- d) Mr. Benson M. Motwoi and others
- e) Chepkitale Indigenous People Development Project

The Joint Committee is thankful to the offices of the Speaker and that of the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings. The Committee is also thankful to the Cabinet Secretaries, Ministries of Environment & Forestry and Lands & Physical Planning and the various stakeholders for the submissions they made which have informed this report.

On behalf of the Joint Committee, and pursuant to Standing Order, 227 it is our pleasant duty to table in the House the Report of the Departmental Committees Environment & Natural Resources and Lands on their consideration of a Petition by the Executive regarding the variation of the boundaries of Mt. Elgon Forest Reserve.

**HON. KAREKE MBIUKI, MP
CHAIRPERSON,**

**DEPARTMENTAL COMMITTEE
ON ENVIRONMENT AND
NATURAL RESOURCES**

**HON. (DR.) RACHAEL NYAMAI, MP
CHAIRPERSON,**

**DEPARTMENTAL COMMITTEE ON
LANDS**

EXECUTIVE SUMMARY

The purpose of this report is to respond to prayers made by the Executive in a Petition regarding the Variation of the Boundaries of Mt. Elgon Forest Reserve. The Joint Committee having considered all the views collected observed that approval of a legal notice to effect variation of the boundary or revocation of state or local authority forests is vested on a resolution of Parliament upon a recommendation by the Kenya Forest Services Board, pursuant to section 34 of the Forest Conservation and Management Act, 2016. The recommendation by the Kenya Forest Services Board should be guided by the following:

- a) Intent of variation must be approved by the Forest Conservation Committee for the area.
- b) Rare or threatened species should not be endangered.
- c) Value of the forest for water catchment should not be affected.
- d) Biodiversity conservation, cultural site protection, educational, research and recreational roles are not prejudiced.
- e) Independent environmental impact assessment should be carried out.
- f) Public participation should be carried out (Third Schedule of the Forest Conservation and Management Act no. 34 of 2016)

The Joint Committee noted that although all the submissions received by the joint Committee regarding the Petition, apart from the submissions made by Mr. Pete Kemei, supported the de-gazettement of Chepyuk phases II and III. The Committee also noted that the residents of Chepkitale disagreed with the assertions made by the Executive in the Petition that Chepyuk phase II and III was intended to be an exchange for Chepkitale and were not ready to discuss the relocation from Chepkitale.

The Committee noted that the government had facilitated due process for the de-gazettement of Chepyuk phases II and III which included conducting public participation, seeking approval from the Kenya Forest Service and conducting the Environmental Impact Assessment to ascertain that the de-gazettement would not endanger the biodiversity.

The Committee further observed that the Petition discloses adequate grounds for variation of the boundaries of Mt Elgon Forest Reserve by 4,607 hectares given the security challenges associated with land in Chepyuk. However, mechanisms should be put in place by the government to ensure that only deserving persons benefitted, in case the request for de-gazettement is approved by the National Assembly.

In response to the prayers by the Petitioners, the Committee recommends that pursuant to Section 34 of the Forest Conservation and Management Act, 2016 the National Assembly **approves** the variation of the boundaries of Mount Elgon Forest Reserve to exclude Chepyuk Phases II and III comprising 4,607 hectares.

Further, the government should properly secure the remaining forest area within Mt. Elgon Forest Reserve particularly in Chepkitale considering the need to achieve the United Nations recommended 10% forest cover in the country

1.0 PREFACE

1.1 Mandate of the Committees

1. The Departmental Committees on Environment & Natural Resources and Lands are established pursuant to the provisions of Standing Order No. 216 with the following terms of reference:

- (i) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- (ii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
- (iii) study and review all legislation referred to it;*
- (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- (v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- (vi) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve except those under Standing Order 204 (Committee on Appointments);*
- (vii) Examine treaties ,agreements and conventions;*
- (viii) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- (ix) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- (x) examine any questions raised by Members on a matter within its mandate*

1.2 Committee subjects

2. The Departmental Committee on Lands mandated to consider the matters related to lands and settlement

3. The Departmental Committee on Environment & Natural Resources is mandated to consider matters related to:
- Matters relating to climate change
 - Environmental management and conservation.
 - Forestry.
 - Water resource management
 - Wildlife
 - Mining and natural resources
 - Pollution and waste management

1.3 Oversight

4. **Departmental Committee on Lands:**
- The Ministry of Lands and Physical Planning
 - The National Land Commission
5. **Departmental Committee on Environment & Natural Resources:**
- The Ministry of Water and Sanitation
 - The Ministry of Environment and Forestry
 - The State Department for Wildlife
 - The State Department for Mining

1.4 Committee Membership

Departmental Committee on Lands

6. The Committee comprises:

Member	Constituency	Party
Hon. Dr. Rachael Nyamai, MP - Chairperson	Kitui South	Jubilee Party
Hon. Khatib Mwashetani, MP – V/Chairperson	Lunga lunga	Jubilee Party
Hon. Jayne Wanjiru Kihara, MP	Naivaisha	Jubilee Party
Hon Joshua Kutuny Serem, MP	Cherangany	Jubilee Party
Hon. Kimani Ngunjiri, MP	Bahati	Jubilee Party
Hon. Mishi Mboko, MP	Likoni	ODM
Hon. Omar Mwinyi, MP	Changamwe	ODM
Hon. Ali Mbogo, MP	Kisauni	WDP
Hon. Babu Owino, MP	Embakasi East	ODM
Hon. Caleb Kipkemei Kositany, MP	Soy	Jubilee Party

Hon. Catherine Waruguru, MP	Laikipia County	Jubilee Party
Hon George Aladwa, MP	Makadara	ODM
Hon George Risa Sunkuyia, MP	Kajiado West	Jubilee Party
Hon. Jane Wanjuki Njiru, MP	Embu County	Jubilee Party
Hon. Josphat Gichunge Kabeabea, MP	Tigania East	PNU
Hon. Owen Yaa Baya, MP	Kilifi North	ODM
Hon. Samuel Kinuthia Gachobe, MP	Subukia	Jubilee Party
Hon. Simon Nganga Kingara, MP	Ruiru	Jubilee Party
Hon. Teddy Mwambire, MP	Ganze	ODM

7. Committee Secretariat

Clerk Assistant I	Mr. Leonard Machira
Clerk Assistant III	Mr. Ahmad Guliye
Fiscal Analyst III	Mr. Adan Abdi
Legal Counsel I	Ms. Jemimah Waigwa
Research Officer III	Mr. Joseph Tiyan
Audio Recording Officer	Mr. Nimrod Ochieng
Media Relations Officer	Ms. Winfred Kizia
Serjeant At Arms	Ms. Peris Kaburi

Departmental Committee on Environment and Natural Resources

8. The Committee comprises:

No.	Name	Constituency	Party
1.	The Hon. Kareke Mbiuki, M.P., Chairperson	Maara	Jubilee Party
2.	The Hon. Sophia Abdi Noor, M.P. Vice Chairperson	Ijaara	PDR
3.	The Hon. Benjamin Jomo Washiali, M.P., CBS	Mumias East	Jubilee Party
4.	The Hon. David Kangogo Bowen, M.P.	Marakwet East	Jubilee Party
5.	The Hon. Francis Chachu Ganya, M.P.	North Horr	FAP
6.	The Hon. Ali Wario Guyo, M.P.	Garsen	Wiper Party
7.	The Hon. Beatrice Cheron Kones, M.P.	Bomet East	Jubilee Party
8.	The Hon. Charity Kathambi Chepkwony, M.P	Njoro	Jubilee Party

9.	The Hon. Hilary Kiplang'at Kosgei, M.P.	Kipkelion West	Jubilee Party
10.	The Hon. Peter Kimari Kihara, M.P	Mathioya	Jubilee Party
11.	The Hon. Benjamin Dalu Tayari, MP.	Kinango	ODM
12.	The Hon. Charles Ong'ondo Were, M.P.	Kasipul	ODM
13.	The Hon. Nasri Sahal Ibrahim, M.P.	Nominated	FORD K
14.	The Hon. Rozaah Buyu. M.P.	Kisumu County	ODM
15.	The Hon. Said Hiribae, M.P.	Galole	FORD K
16.	The Hon. Hassan Oda Hulufu, M.P.	Isiolo North	KPP
17.	The Hon. Amin Deddy Mohamed Ali, M.P.	Laikipia East	Jubilee Party
18.	The Hon. Rehema Hassan, M.P.	Tana River County	MCC
19.	The Hon. (Eng.) Paul Musyimi Nzengu, M.P.	Mwingi North	Wiper Party

9. Committee Secretariat

- | | |
|-----------------------------|-------------------------------------|
| 1. Ms. Esther Nginyo | - Second Clerk Assistant/Lead Clerk |
| 2. Mr. Dennis Mogare Ogechi | - Third Clerk Assistant |
| 3. Mr. Sydney Lugaga | - Legal Counsel II |
| 4. Ms. Winnie Kulei | - Research officer III |
| 5. Ms. Yunis Amran | - Fiscal Analyst III |

2.0 INTRODUCTION

10. The Petition regarding the variation of the boundaries of Mt. Elgon Forest Reserve was tabled in the House on 5th July 2018, pursuant to Article 119 (1) of the Constitution and Standing Order No. 225 (2) (b). The Petition is signed by the Cabinet Secretaries, Ministries of Environment & Forestry and Lands & Physical Planning.
11. The Petition was referred jointly to the Departmental Committees on Environment & Natural Resources and Lands on 5th July 2018 for consideration and reporting back to the House. The Joint Committee considered the Petition pursuant to the provisions of Standing Order 227.
12. The Petitioners wished to draw to the attention of the House to the following, that: -
 - i. The Petition was submitted pursuant to section 34 of the Forest Conservation and Management Act 2016;
 - ii. A Cabinet in a meeting held on 22nd November, 2016 acceded to the proposed de-gazettement of 4,647 hectares of Mount Elgon Forest Reserve in Bungoma County. The Cabinet also directed the two Cabinet Secretaries Ministries of Environment & Forestry and Lands & Physical Planning to seek the requisite Parliamentary approval;
 - iii. The settlement proposed for de-gazettement comprises Chepyuk Settlement Scheme Phases II and III in Cheptais Sub – County, Bungoma County;
 - iv. Chepyuk settlement is within Mt. Elgon Forest Reserve and the forest reserve was gazetted on 30th April 1932. It covers an area of 91,890 hectares;
 - v. The Kenya Forest Service Board (KFS) approved the request to degazette Chepyuk Settlement Scheme, during its 17th meeting held on 14th November 2017.
 - vi. The National Environmental Management Authority (NEMA) issued an Environmental Impact Assessment Licence approving the Settlement on 24th January 2011;
 - vii. Public participation and stakeholder engagement had been undertaken at various levels.
 - viii. The processing of title deeds for Chepyuk Phases II and III could not commence since the schemes were still part of Mt. Elgon Forest Reserve and had not been degazetted;
 - ix. The de-gazettement of Chepyuk Phase II and III would:
 - a) Provide the beneficiaries with a secure land tenure which would minimize the current trend of poor land use, land speculation and encroachment into the forest reserve.
 - b) Result in improvement of the security situation in the area, spur development leading to improved livelihoods.

- x. All beneficiaries of the plots already had letters of offer from the Ministry of Lands and Physical Planning; and
- xi. The Cabinet Secretaries prayed that the National Assembly approves the variation of the boundaries of Mount Elgon Forest Reserve to exclude Chepyuk Phases II and III comprising of a total area of 4,607 hectares.

3.0 SUBMISSIONS

3.1 Submissions by the Cabinet Secretary Ministry of Lands and Physical Planning and the Chief Administrative Secretary, Ministry of Environment and Forestry

13. The Joint Committee held a meeting with Cabinet Secretary, Ministry of Lands and Physical Planning and the Chief Administrative Secretary, Ministry of Environment & Forestry on Tuesday 28th August 2018. During the meeting the Committee was informed that the Petition was submitted pursuant to Section 34 of the Forest Conservation and Management Act, 2016. The Joint Committee was further informed that a Cabinet meeting held on 22nd November 2016 had acceded to the de-gazettement of 4,647 hectares of Mount Elgon Forest Reserve in Bungoma County.
14. **Background:** The Joint-Committee was further informed that Mt. Elgon Forest Reserve. was gazetted on 30th April 1932. It covered an area of 91,890 hectares. Since then, various amendments had been made on the forest boundaries as follows:
- a) The 1939 Ordinance – changed the boundaries of Kavirondo Native Land Unit and created Elgon Native Land Unit, now known as Chepkitale, comprising 17,000 hectares.
 - b) In 1973, the Government agreed to resettle the Elgonyi Dorobo from Elgon Native Land Unit, because of the cold weather to an area covering 3,686 hectares that is located at the lower slopes of the mountain through Legal Notice No. 51 of 1974. The area is currently known as Chepyuk.
 - c) In mid-1992, Chepyuk Settlement Scheme Phases II and III were surveyed. The two schemes comprise of 5,252 hectares and 2,576 plots. 80% of the occupancy is by Dorobo (Mosop) community while 20% is by Soy (Sabaot). Chepyuk Phase III covers an area of 2,865.42 hectares (1,893 plots) while Phase II covers 1,741.99 hectares (683 plots). The boundaries of Chepyuk Settlement Scheme Phases II and III were later regularized to cover 4,607 hectares as per the approved Boundary Plan No. 175/419.
 - d) In 2000, Chepkitale area was gazetted as Mt. Elgon National Reserve (Chepkitale). The Reserve is managed by the Kenya Wildlife Service, but it is still occupied by members of the Elgonyi Dorobo Community.
15. **Inter-Ministerial Taskforce:** The Committee was further informed that the then Minister of State for Provincial Administration and Internal Security formed an Inter-Ministerial Taskforce in 2008, vide Kenya Gazette Notice No. 11411 of 4th December, 2008 to
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coordinate and oversee the settlement of persons displaced from Chepyuk Phase III due to inter-communal conflict. The Taskforce undertook the following activities:

- a) Coordinated the resettlement of 1,735 beneficiaries in Chepyuk Phase III Settlement Scheme.
- b) Supervised a planning and surveying exercise which resulted in 1,776 plots being demarcated.
- c) Allocated 1,735 plots of approximately 2.5 acres each to beneficiaries through secret ballot.
- d) Reserved 41 plots for public utilities.

16. Processing of title deeds: Processing of title deeds for Chepyuk Phases II and III could not commence since the schemes were still part of Mt. Elgon Forest Reserve and two schemes had not been degazetted.

17. Kenya Forest Service Board approval: The Joint Committee was also informed that the Kenya Forest Services Board approved the request to degazette Chepyuk Settlement Scheme during its 17th meeting held on 14th November 2017.

18. Environmental Impact Assessment: The National Environmental Management Authority (NEMA) issued an Environmental Impact Assessment licence approving the settlement on 24th January, 2011.

19. Public participation and stakeholder engagement: The Committee was also informed that public participation and stakeholder engagement had been undertaken at various levels as follows:

- a) Grassroot consultations carried out by the then Provincial Administration through several public barazas within Cheptais Sub-County.
 - b) Local leaders, the District Commissioner and the District Settlers Selection Committee held meetings, vetted and identified the plot beneficiaries.
 - c) During the EIA process, public consultations were carried out by NEMA and other stakeholders.
 - d) The Village Land Committee Members elected through public barazas and the Ministry of Lands and Physical Planning undertook ground verification and captured results in the Ministry's records.
 - e) At the national level, the KFS Board, before granting its approval, undertook public participation through engaging Community Forest Associations and the Forest Conservation Committee.
 - f) The Chepyuk Settlement Scheme Inter Ministerial Taskforce established Vide Kenya Gazette Notice No. 11411 of 4th December, 2008 in execution of its
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mandate also engaged the public through public barazas and leaders' consultative meetings.

20. **Inter-clan clashes:** The Joint Committee was also informed that the lack of transparency during the initial land allocation exercise in phase III contributed to the conflict witnessed in the scheme involving two clans; the Soy (Sabaot) and the Dorobo (Mosop). The Dorobo (Mosop) demanded an equal share of land within the scheme arguing that the greater Chepyuk Scheme was originally established to cater for the clan. The conflict intensified in 2007 when internal clashes were aggravated by the clandestine Sabaot Land Defence Force (SLDF)
21. Inter-clan clashes led to genuine plot owners being displaced by outsiders. The violence in the area had hampered development initiatives. The road network in the scheme was poor further fueling insecurity.
22. **Justification for the degazettement:** The Joint Committee was informed that the degazettement of Chepyuk Phase II and III would:
 - a) Provide the beneficiaries with a secure land tenure which would minimize poor land use, land speculation and encroachment into the forest reserve.
 - b) Improvement the security situation in the area, spur development and contributed to improved livelihoods.

3.2 Submissions by Representatives of Government Departments and Agencies in Bungoma County

23. The Joint Committee, through a Sub-Committee, undertook a field visit to Bungoma County on Friday 21st September 2018. During the visit, the Committee held a meeting with representatives of Government Departments and Agencies in Bungoma County. The officers led by the County Commissioner informed the Committee as follows, that: -
24. Phase I of the Chepyuk Settlement Scheme was first opened for settlement in 1973. Phase II and III, covering an area of 4607 hectares were initiated by the government mid-1992.
25. In 2011, the Minister for Lands approved the allocation and letters of offer for the beneficiaries were prepared. The beneficiaries were shown their individual plots and issued with beacon certificates. However, the processing of title deeds could not commence since the area had not been de-gazetted, despite being fully settled;
26. In 2018, an Inter-Ministerial team comprising of Interior & Coordination of National Government, County Government of Bungoma and Ministry of Lands & Physical Planning undertook a ground verification exercise in Chepyuk Phase II and III. The objective of the exercise was to resolve conflict between the Dorobo and Soy communities who populate the area and to help settle the allottees;

27. **Public utility plots in the two phases:** 90 parcels of land had been set aside for public utility plots in the two phases as contained in table 1:-

Table 1: Public utility plots in Phase I& II of Chepyuk Settlement Scheme

PHASE	SIZE	NO. PLOTS	NO OF PUBLIC UTILITIES
II	1741.99 HA (4304.45 Acres)	683	31
III	2865.42 HA (7080.45 Acres)	1893	59

Source: Submissions received from the County Commissioner, Bungoma County

28. The officers also informed the Committee that Mt. Elgon Forest was divided into three management units, namely: Kaberwa Forest Station, Kaboywa Forest Station and Cheptais Forest Station. The forest was also categorised into various ecological zones as follows.

Table 2: Ecological zones in Mt. Elgon Forest Reserve

S/N	Category	Size
1	Area under Plantations	1,096.10 Ha
2	Natural Forest	
3	High Forest	24,038 .70 Ha
4	Bush Land	6,901.70 Ha
5	Lades/grass	4,046.70 Ha
6	Bamboo Forest	11,479.30Ha
7	Wetlands	- 2,000.00Ha

Source: Submissions received from the County Commissioner, Bungoma County

29. **Justification for the proposed degazettement:** On the justification for degazettement the officers stated that:

- a) Insecurity and inter-clan clashes in Chepyuk settlement were aggravated by land ownership conflicts. Therefore, the proposed degazettement would improve security in the region.

- b) It would provide the beneficiaries with secure lands tenure. The current trend of poor land use practices would be minimized and spur greater socio- economic development
- c) It would enable proper planning within the schemes to ensure orderly and harmonious land development.
- d) Once degazettement was done, the perennial encroachment into the forest reserve would be controlled as the residents would settle in their land.
- e) The National Government, County Government and other development partners had invested heavily in various projects including roads, security and administrative installations, communication and water facilities in the two phases.
- f) The two phases are already settled and any relocation of the residents to alternative land would be only achieved at a huge cost.
- g) The degazettement of the two phases was supported by 99% of the population living in the two phases. The exercise therefore had the blessing of the public.

3.3 Submissions by the County Government of Bungoma

- 30. The Hon. Sabwani Keya, the County Executive Committee Member, Public Service Management and Administration, Bungoma County on behalf of the Governor, informed the Committee that:
- 31. The County Government of Bungoma supported the degazettement of 4,607 hectares of Mount Elgon forest for the resettlement of members of the Sabaot and Ndorobo communities to resolve historical land injustices, reduce security conflicts and spur local development.
- 32. Several investors, including banks, had shown interest in investing in the area, However, the lack of land ownership documents due to delayed degazettement had hindered the realization of the economic opportunities.

3.4 Submissions by residents of Kipsigon/ Cheptais

- 33. The Joint Committee held public hearings at Kipsigon area, Cheptais in Bungoma County on Friday 21st September, 2018. During the hearings the members of the public presented their views on the petition as follows, that:
- 34. The residents supported the proposed degazettement and indicated that the matter was of great concern to the Sabaot Community. Further, they stated that there was need to seek a

lasting and amicable solution to the land-based conflict in the area for residents to realize peace and development.

35. In 1971, the Government of Kenya had decided to settle the Ndorobos and Soy in Chepyuk Settlement Scheme to address landlessness and ensure food security.
36. The beneficiaries in Phase I of the scheme were allocated portions of land measuring 20-50 acres per person depending on the size of the family.
37. In 1989 a rationalization of the plots in scheme done was due to increased population leading to each beneficiary be reallocated 5 acres through balloting process and the establishment Phase I and Phase II of the scheme in 1989 and 1991 respectively.
38. In 2018, the Minister for Interior and National Government visited Mt. Elgon Chepyuk Settlement Scheme Phase III and directed that: -
 - a) Verification of allottees in Phase II and III be done immediately in view of ascertaining the true ownership.
 - b) Collect data of all beneficiaries.
 - c) Arbitration of any land in Dispute.
39. They prayed that Chepyuk Phase II and Phase III should be urgently degazetted and title deeds issued to the residents to avert future conflicts.

3.5 Submissions by residents of Chepkitale

40. The Joint Committee held public hearings at Chepkitale within Mt Elgon Forest Reserve in Bungoma County on Saturday 22nd September, 2018. During the hearings, the members of the public led by Prof John Chengeiywo informed the Committee as follows, that:
 41. The residents of Chepkitale supported the degazettement of Chepyuk Phase II and III. However, they disagreed with the assertion made by the Executive in the Petition that, Chepyuk phase II and III was intended to be an exchange for Chepkitale. They insisted that they were not ready to discuss the exchange of their ancestral land. They also argued that there were many settlement schemes in the County where the Government had settled people without the beneficiaries losing their ancestral land.
 42. The residents also opposed the gazettement of Chepkitale as Mt. Elgon National Reserve area in 2000 and the attempt made by the Government to evict the Elgonyi Dorobos from Chepkitale.
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43. They also stated that they had lodged a historical injustice claim with the National Land Commission contesting the gazettement of Chepkitale as a game reserve through the Ogiek / Dorobo Council of Elders. The Council had also filed two court cases on the matter. One case challenging the gazettement of Chepkitale as a game reserve had been filed in Kitale and another case seeking to prevent the State from evicting the community from Chepkitale had been lodged at the Land and Environment Court in Bungoma.
44. Chepyuk Settlement Scheme was started in 1989 to settle the Ogiek/ Dorobo on part of Mt Elgon Forest Reserve to enable them to grow food crops due to numerous bouts of hungry experience in the area at the time.
45. Chepkitale was managed by the community using customary bylaws This had ensured that the area was maintained as forest as it has been for centuries. The community had also worked with the Kenya Wildlife Service in curbing poaching through community scouts. They argued that the government needed to support the model rather than seeing it as a threat to conservation.

3.6 Memoranda received the joint Committee

46. The Joint Committee placed an advertisement in the print media inviting the public to submit memoranda on the petition on 26th July 2018. The following memoranda were received by the Committee:
 - a) **The Ogiek / Dorobo Council of Elders**
 47. The Ogiek / Dorobo Council of Elders through a memorandum received by the Committee on 1st August 2018 signed by Mr. Mamoss Simotwo Maru, the Secretary to the Council made the following submissions:
 48. The Council supported the degazettement of Chepyuk phase II and III. The Council stated that the degazettement would contribute to the reduction of communal conflict caused by lack of land ownership documents that gave rise to land speculation and incitement.
 49. The Council however, disagreed with the assertion made by the Executive in the Petition that Chepyuk Phase II and III was intended to be an exchange for Chepkitale.
 50. The Council further noted that Chepyuk Settlement Scheme was started in 1989 to settle the Ogiek/ Dorobo on part of Mt Elgon Forest Reserve to enable them to grow food crops and each family was allocated 15 to 50 acres depending on the family size.
-

51. The Ogiek / Dorobo Council of Elders had lodged a historical injustice claim with the National Land Commission contesting the gazettelement of Chepkitale as a game reserve. The Council had also filed two court cases on the matter. One case challenging the gazettelement of Chepkitale as a game reserve had been filed in Kitale and another case seeking to prevent the State from evicting the community from Chepkitale had been lodged at the Land and Environment Court in Bungoma.

52. The Council also disputed assertions made by the Petitioners that the percentage of allocation of land in Chepyuk Phase II was 60% for Ogiek/ Dorobo and 40 % for the Sabao and the percentage was 50%: 50% in phase III.

b) Mr. Elijah Kipkorir Kaibei

53. Mr. Elijah Kipkorir Kaibei, in a letter received by the Joint Committee on 6th August, 2018, supported the de-gazettelement of Chepyuk Phase II and II. He stated that it would minimize cases of insecurity caused by land injustices. He indicated that the residents had been living in an area that was still considered a forest since 1971, when they were allocated land following a request made by the then Member of Parliament the late Hon Daniel Moss for the Government to settle the Ogiek / Ndorobo and the Soy Community that had been evicted from Kaptegea in Uganda.

c) Mr. Pete Kemei

54. Mr. Pete Kemei, a resident of Mt Elgon Constituency in a letter received by the Committee on 6th August, 2018 opposed the intended variation of the boundaries of Mt Elgon Forest on the following grounds.

55. He argued that land problems were not the cause of insecurity in Mt Elgon region and that the insecurity was caused by organized crime which should be dealt with by the security agents.

56. Revising the boundaries of the forest reserve with the aim of settling the landless was not in the best interest of the ecosystem. The forest was not only a water catchment area but also the core of Mt Elgon traditional ceremonies and invasion into the forest had led to the extinction of rare tree species that were traditionally used as herbs.

57. The sub-division of the said land into small parcels that were individually owned would lead to family conflicts as some of the beneficiaries may opt to sell the allocated parcels of land.

58. The proposed settlement schemes were in a steep area and continuous cutting down of trees could lead to soils erosion and eventually render the land unproductive and uneconomical and eventually lead to more encroachment into the forest.

59. He proposed that the government continues to own the forest but allow the residents to farm in the forest by planting ecofriendly crops that could preserve and conserve the forest.

d) Mr. Benson M Motwol and others

60. Mr. Benson M. Motwol and others in a letter received by the Committee on 8th August, 2018 supported the degazettement of the two phases of Chepyuk Settlement Scheme. They indicated that they were beneficiaries of the scheme and had lived in the area for the last 20 years. They also stated that Chepyuk Settlement Scheme was not meant to be an exchange for Chepkitale game reserve but remained a grazing land for the community.

e) Chepkitale Indigenous People Development Project

61. The Committee received written submissions from Chepkitale Indigenous People Development Project, signed by Prof. Johnson Changeiywo, on 2nd August, 2018. The group supported the proposed de-gazettement of Chepyuk Phases II and III but raised several concerns affecting the Ogiek/ Dorobo Community as follows:

62. Insecurity in Mt Elgon was mainly caused by politics and the land issue in Chepyuk had always been used as an excuse. Therefore, the group disagreed with the Petitioners' assertions that the de-gazettement of Chepyuk II and III would address the historical land injustices experienced by the Ogiek / Dorobo community.

63. Article 67 (2) (e) mandated the National Land Commission to address issues of historical land injustice and not the Cabinet. The Ogiek / Dorobo Community had lodged a historical injustice complaint with the National Land Commission under claim number NLC /HLL/198/2018 seeking the registration of Chepkitale as community land and compensation for property destroyed and human rights violation due to effort by the Government to deny them rights to their ancestral land in Chepkitale.

64. The group disagreed with the assertion made by the Executive in the Petition that Chepyuk Phase II and III was intended to be an exchange for Chepkitale. They also stated that they were not ready to discuss the exchange of their ancestral land. They also argued that the community had always resisted attempts by the Government to evict them from Chepkitale and assertions made by the Petitioners that the residents agreed to be relocated to Chepyuk because Chepkitale was too cold were untrue as evidence by the continued stay in the area.

65. Chepkitale had always been managed by the community using customary bylaws. This had ensured that the area was still maintained as forest as it has been for centuries. The community had also worked with the Kenya Wildlife Service in curbing poaching through community scouts.
66. Article 63 (2) (d) (ii) of the Constitution classified ancestral land and land traditionally occupied by hunters and gatherer communities as community land. Therefore, the Government needed to use the Community Land Act as the basis for the proposed degazettement instead of Forest Conservation and Management Act, 2016.

4.0 COMMITTEE OBSERVATIONS AND FINDINGS

The Joint Committee made the following observations from evidence adduced in the meetings, that:

1. Submissions received by the Joint Committee from nine groups, including the Petitioners, supported the degazettement of Chepyuk Phases II & III on the following grounds:
 - i. Insecurity and inter-clan clashes in Chepyuk Settlement Scheme were aggravated by land ownership conflicts. Degazettement would ensure clarity on ownership of land and improve security in the region;
 - ii. It would provide the beneficiaries with secure lands tenure. The trend of poor land use practices would be minimized and spur greater socio- economic development;
 - iii. It would enable proper planning within the schemes and spur development;
 - iv. The National Government, County Government and other development partners had invested heavily in various projects including roads, security and administrative installations, communication and water facilities in the two phases of the scheme;
 - v. The area is already settled and the relocation of the residents to alternative areas would be more costly than the degazettement of the two phases.
 - vi. The moorland area of Chepkitare was the origin of all major rivers in the surrounding area. It was therefore important that it was protected from encroachment.
 2. Mr. Pete Kemei, a resident of Mt Elgon Constituency, opposed the proposed degazettement of Chepyuk phases II & III on the following grounds;
 - i. Land problems were not the cause of insecurity in Mt Elgon region and that the insecurity was caused by organized crime which should be dealt with by the security agents;
 - ii. Revising the boundaries of the forest reserve with the aim of settling the landless was not in the best interest of the ecosystem. The forest was not only a water catchment area but also the core of Mt Elgon traditional
-

ceremonies and invasion into the forest had led to the extinction of rare tree species that were traditionally used as herbs;

- iii. The sub-division of the said land into small parcels that were individually owned would lead to family conflicts as some of the beneficiaries may opt to sell the allocated parcels of land;
 - iv. The proposed settlement schemes were in a steep area and continuous cutting down of trees could lead to soils erosion and eventually render the land unproductive and uneconomical and eventually lead to more encroachment into the forest; and
 - v. He proposed that the government continues to own the forest but allow the residents to farm in the forest by planting ecofriendly crops that could preserve and conserve the forest.
3. The residents of Chepkitala disagreed with the assertions made by the Executive in the petition that Chepyuk phase II and III was intended to be an exchange for Chepkitala. They stated that they were not ready to discuss the exchange of their ancestral land for the allocation of land in Chepyuk phase II and III.
 4. The Petition disclosed grounds for variation of the boundaries of Mt Elgon Forest Reserve by 4,607 hectares given the security challenges associated with land. The area was also already settled and the relocation of the residents to alternative areas would be more costly than the degazettement of the two phases. However, mechanisms ought to be put in place by the government to ensure that only deserving cases benefitted, in case of the request for de-gazettement is approved by the National Assembly.
 5. There is need to for the government to ensure a balance between environmental conservation and the need to create opportunities for human settlement considering that Kenya had forest cover of 7.8 % which was below the recommended 10% forest cover.
 6. The government had facilitated the due process for the degazettement, which included conducting public participation, seeking approval from the Kenya Forest Service and conducting the Environmental Impact Assessment to ascertain that the degazettement would not endanger the biodiversity.

5.0 COMMITTEE RECOMMENDATIONS

In response to the prayers by the petitioners, the Committee recommends that:

1. Pursuant to section 34 of the Forest Conservation and Management Act, 2016 the National Assembly approves the variation of the boundaries of Mount Elgon Forest Reserve to exclude Chepyuk Phases II and III comprising 4,607 hectares.
2. The government should properly secure the remaining forest area within Mt. Elgon Forest Reserve particularly in Chepkitale considering the need to achieve the United Nations recommended 10% forest cover in the country

Date 4/7/2019

SIGNED

THE HON. KAREKE MBIUKI, MP
CHAIRPERSON,

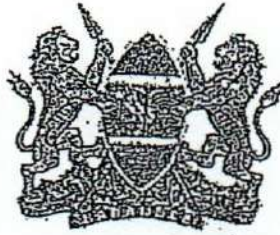
DEPARTMENTAL COMMITTEE ON
ENVIRONMENT AND NATURAL
RESOURCES

Date 4/7/2019

SIGNED

THE HON. DR. RACHAEL NYAMAI, MP
CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON
LANDS



MINISTRY OF ENVIRONMENT AND FORESTRY
Office of the Cabinet Secretary

Telegrams: "NATURE", Nairobi
Telephone: 0254-20-2730808/9
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NHIF BUILDING
RAGATI ROAD
P.O. BOX 30126-00100
NAIROBI



Ref: DENR/C/1/17/VOL .III (76)

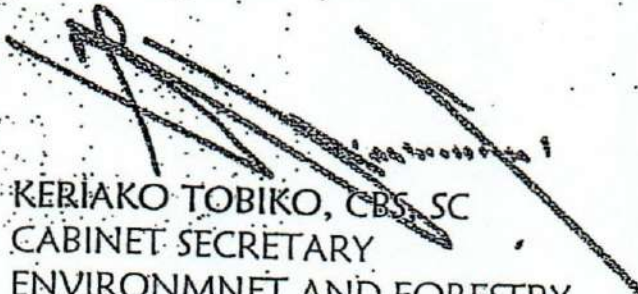
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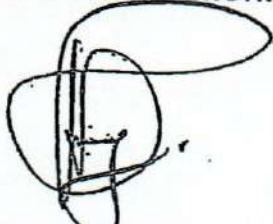
Michael Sialai Rotich
The Clerk of National Assembly
P.O. Box 41842 - 00100
NAIROBI

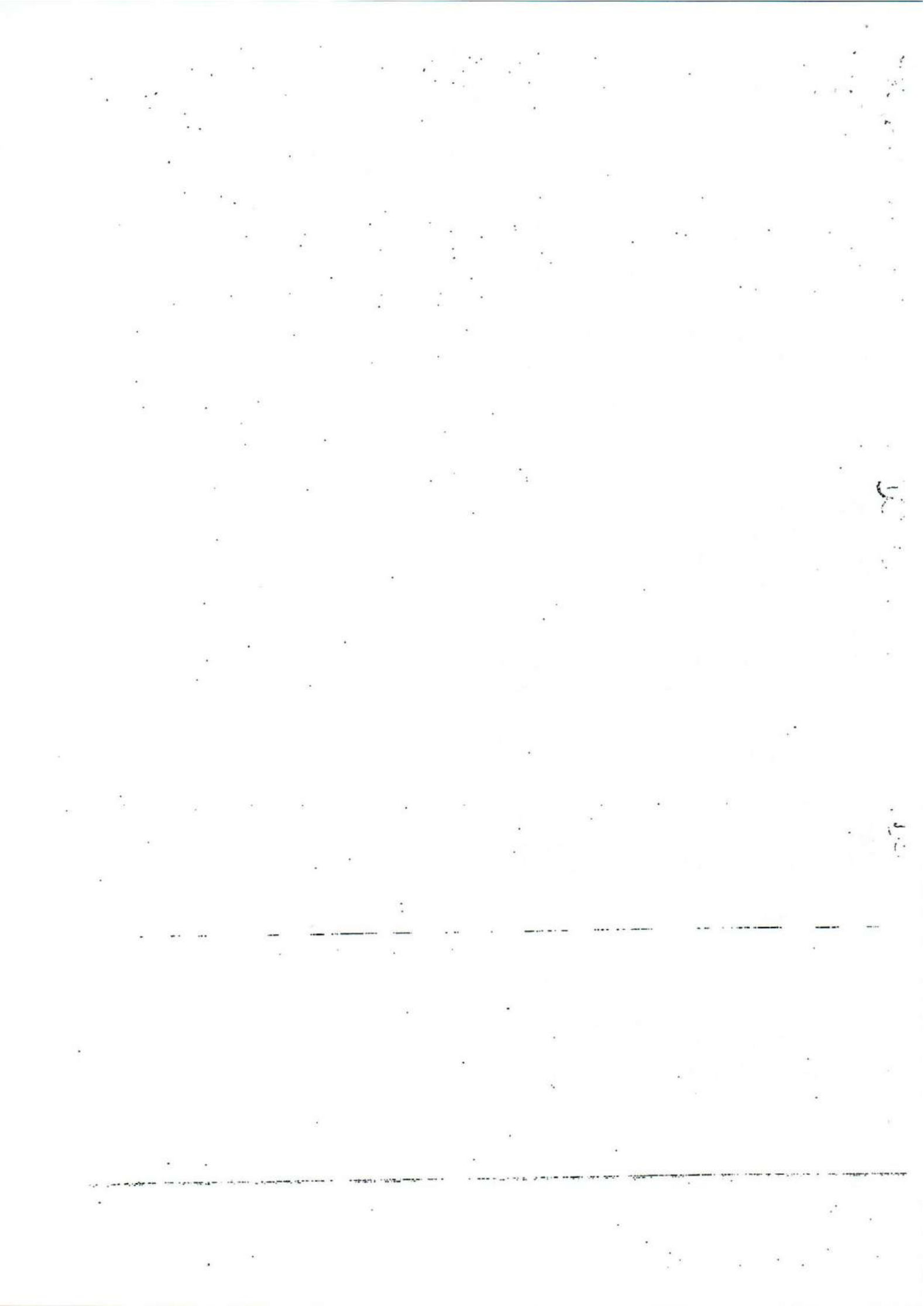
PETITION UNDER SECTION 34 OF THE FOREST CONSERVATION AND
MANAGEMENT ACT, 2016

Reference is made to the decision of the cabinet on its eight meeting held on 22nd November, 2016 on the de-gazettement of various forest areas.

Pursuant to Section 34 of the Forest Conservation and Management Act, 2016, we forward herewith a petition for variation of the forest boundaries of Mt. Elgon Forest Reserve for your consideration and further action.


KERIAKO TOBIKO, CBS, SC
CABINET SECRETARY
ENVIRONMENT AND FORESTRY


FARIDA KARONEY, OGW
CABINET SECRETARY
LANDS AND PHYSICAL PLANNING



PETITION TO NATIONAL ASSEMBLY BY THE CABINET SECRETARY MINISTRY OF ENVIRONMENT AND FORESTRY FOR VARIATION OF BOUNDARIES OF MOUNT ELGON FOREST RESERVE IN BUNGOMA COUNTY

Honorable Members,

We, the undersigned, Cabinet Secretaries for Ministry of Environment and Forestry and Ministry of Lands and Physical Planning, pursuant to Section 34 of the Forest Conservation And Management Act

DRAW the attention of the National Assembly to the following:

1.0 The Cabinet meeting held on Tuesday 22nd November 2016, considered a memorandum jointly tabled by the Cabinet Secretary for Environment and Natural Resources and the Cabinet Secretary for Lands and Physical planning and approved de-gazettement of 4,647 hectares of Mt. Elgon Forest Reserve within Cheptais Forest Station in Bungoma County for settlement and directed the Cabinet Secretary to seek requisite Parliamentary approval. The settlement comprises of Chepyuk Settlement Scheme known as Phases (II) and (III) in Cheptais Sub-County in Bungoma County.

2.0 BACKGROUND

Chepyuk settlement is within Mt. Elgon Forest Reserve which was gazetted through Proclamation No. 44 of 30th April 1932 and covered an area of 91,890 hectares. Since then, various amendments have been made on the boundary of the forest as here given:

2.1 The 1939 Ordinance Vol. XXII, changed the boundaries of Kavirondo Native Land Unit and created Elgony Native Land Unit, "now known as Chepkitale" that covers 17,000 hectares. The area, Chepkifale located at 11,000 feet (Approximately 3,350 m) above sea level is too cold but was inhabited by the Elgonyi Dorobos.

2.2 In 1973, the Government agreed to exchange Elgonyi Native Land Unit with 3,686 hectares of Mt Elgon Forest Reserve that was located at the lower slopes of Mt Elgon for resettlement of the Elgonyi Dorobos through Legal Notice No. 51 of 1974. This site had been earlier declared an adjudication area through legal notice No. 35 of 1968 under the Lands Consolidation Act (Cap 283). On the knowledge that the land was

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Government Land and therefore not subject to land adjudication, the area was then converted into a settlement scheme; named Chepyuk Phase I.

- 2.3 The area was then excised on 22nd January 1974 through Legal Notice No. 51 and made available for resettlement.
- 2.4 In mid-1992, Chepyuk phase II and III was surveyed. This area comprising of 5252 hectares was divided into 2576 plots. 80% of the occupants of the plots were Dorobo (Mosop) while 20% were Soy (Sabaot). The Boundary of Chepyuk Phase II and Phase III was regularized to cover an area of 4607 hectares as per the approved Boundary Plan No. 175/419 Annex 1.
- 2.5 Chepyuk phase III covers an area of 2865.42 hectares (comprising 1893 plots) while Chepyuk phase II covers 1741.99 hectares (comprising 683 plots). Ground verification to determine occupancy is being carried out by the Ministry of Lands and Physical Planning ongoing. In Chepyuk Phase III, 66 plots were for public utility and 95 were reserved for Laibon (Spiritual Leaders) of the two communities of the Dorobo (Mosop) and Soy (Sabaot) and the remaining 1732 plots were then available for the rest of the identified beneficiaries.
- 2.6 In the year 2000, Chepkitale area that was to be vacated by the Elgoni Dorobos was gazetted as Mt Elgon National Reserve (Chepkitale). The area is now managed by Kenya Wildlife Service (KWS) but still occupied by the Elgoni Dorobos.

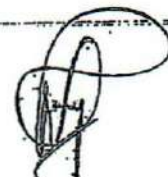
3.0 INTERMINISTERIAL TASKFORCE

3.1 In 2008, the Minister of State for Provincial Administration and Internal Security constituted an Inter-Ministerial Task Force vide Kenya Gazette Notice No. 11411 of 4th December, 2008 to coordinate and oversee the resettlement of persons displaced from Chepyuk phase III Settlement Scheme resulting from inter-communal conflict.

3.2 The taskforce undertook the following:

- Coordinated and implemented the re-settlement of 1735 beneficiaries in Chepyuk Phase III settlement Scheme.

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- Supervised the planning and surveying exercises which resulted to 1,776 plots being demarcated.
- Allocated 1,735 plots of approximately 2.5 acres each were allocated to the beneficiaries through secret ballot.
- Reserved 41 plots for public utilities.

3.3 On 29th August 2011, the Minister for Lands approved the allocation and letters of offer were prepared in favor of the beneficiaries. The beneficiaries were shown their individual plots and issued with beacon certificates in July 2011.

3.4 The Ministry of Lands and Physical Planning has surveyed and demarcated all the plots and taken on record the list of beneficiaries that have been verified and vetted by the Taskforce.

3.5 Processing of title deeds for Chepyuk Phase II and III could not commence since the schemes were still part of Mt. Elgon Forest Reserve and had not been de-gazetted.

4.0 LEGAL PROVISION FOR ALTERATION OF FOREST BOUNDARY

4.1 In compliance with Section 34 of the Forests Conservation and Management Act No. 34 of 2016 and the conditions required to be met before de-gazettement of any part of a state or local authority forest, Members of Parliament are advised to note that approval of the legal notice to effect variation of boundary or revocation of State or Local Authority forests is vested on the resolution of Parliament upon recommendation by Kenya Forest Service Board. The recommendations of KFS must however be guided by the following considerations:

- Intent for variation of boundary or revocation has been approved by Forest Conservation Committee for the area.
- Rare or threatened species will not be endangered
- Value of the forest for water catchment will not be affected.
- Biodiversity conservation, cultural site protection, educational, research and recreational roles are not prejudiced.
- Independent Environmental Impact Assessment has been carried out and no serious adverse effect that cannot be mitigated is likely.

 CS



- Public consultation is carried out as given in the third schedule of the Forest Conservation and Management Act 2016.

4.2 CABINET APPROVAL

- The Cabinet approved the de-gazettement of 4,647 Hectares of Mt. Elgon Forest Reserve in its Eighth Cabinet Meeting held on 22nd November, 2016 comprising of Chepyuk Phase II and Phase III. Annex II
- The Cabinet also directed Cabinet Secretary Environment and Natural Resources to present the request to Parliament for approval.

4.3 KFS BOARD APPROVAL

The Kenya Forest Service Board of Management approved the request to de-gazette Chepyuk Settlement Scheme during its 17th meeting held on 14th November vide Minute no.8.

4.4 ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

The National Environmental Management Authority (NEMA) issued an Environmental Impact Assessment (EIA) license approving the resettlement on 24th January 2011 Annex III.

4.5 PUBLIC PARTICIPATION AND STAKEHOLDER INVOLVEMENT

1. Grass root consultations were carried out by the Provincial Administration through several public Barazas held within the Cheptais Sub-County.
2. Local leaders and the then District Commissioner under the guidance of District Settlers Selection Committee held meetings, vetted and identified the beneficiaries of the plots.
3. During the EIA process for the Scheme, public consultation with all the stakeholders including the general public was carried out.
4. The Village Land Committee members elected through public Barazas jointly with the Ministry of Lands and Physical Planning undertook ground verification which involves confirming bio-data of the beneficiaries, the identity of the ground occupier of the plots and confirmation of the

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existing development on the sites and thereafter captured results in the Ministry records.

5. At the National level, Kenya Forest Service undertook public consultations which began with the Community Forest Associations followed by deliberation of the Forest Conservation Committee. Subsequently, the Kenya Forest Service Board gave its approval for the variation of Mt. Elgon Forest Reserve boundaries and forwarded the recommendation to the Cabinet Secretary for Environment and Forestry.
6. The Chepyuk Settlement Scheme Inter-Ministerial Taskforce was established through Gazette Notice No. 11411 of 4th December 2008. Pursuant to its mandate, the taskforce undertook Public Participation through public Barazas, consultative leaders meeting and fora.

5.0 INTER CLAN CLASHES

5.1 The methodology, criteria applied and transparency during the initial land allocation in Phase III contributed to the conflicts witnessed in the Settlement Scheme. The long standing controversy pitted the two clans from the Soy (Sabaot) and the Dorobo (Mosop). The Dorobo (Mosop) have been demanding an equal share of land premised on the argument that the greater Chepyuk Scheme was originally established to cater for them.

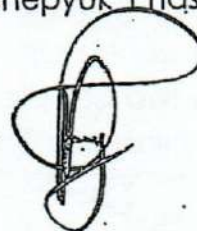
5.2 In 2007, these contentious issues generated insecurity in form of bloody skirmishes and internal clashes in the area resulting in the displacement of the initial beneficiaries in Phase III.

5.3 These conflicts became more pronounced in 2007 when internal clashes aggravated by the clandestine Sabaot Land Defense Force (SLDF) forced the settlers to flee from Phase III of the Scheme.

6.0 CHEPYUK SETTLEMENT SCHEME AND ITS ENVIRONS

6.1 The Map attached to this petition shows Mount Elgon Ecosystem and the Chepyuk Settlement Scheme Phase I, II and III. It also shows Mt. Elgon National Reserve, National Park and the environs (Annex IV).

6.2 In the Map, Chepyuk Phase I covers an area of 3,751.13 Hectares, Chepyuk Phase II covers 1,741.99 Hectares and Chepyuk Phase III covers 2865.49



Hectares. Consequently the area to be de-gazetted under this petition covers 4607 hectares.

6.3 The total area that would be de-gazetted under Chepyuk Settlement Phase I, II and III covers a total area of 8,358.54 Hectares. This translates to a loss of forest cover of 9% of the original gazetted Mt. Elgon Forest Reserve.

7.0 THE STATUS OF CHEPYUK SETTLEMENT SCHEME

7.1 Chepyuk settlement programme Phase I began in 1974 and was meant to settle the Elgonyi Dorobos.

7.2 The area that had been identified for this settlement programme was excised and officially made available for the settlement programme. It covered 3751.13 hectares from Mt. Elgon Forest Reserve.

7.3 Immediately after the adjudication exercise that was carried out by, the Department of Adjudication and Settlement within the Ministry of Lands, the beneficiary Dorobos sold off most of their parcels and returned to the Chepkitale Native Land Unit.

7.4 In 1989, there was an influx of squatters into the Scheme. They settled to the East and West of the legally excised and adjudicated area. These squatters have all along agitated for formalization of their settlement within the forest area. To date, these two areas have not been excised and therefore effectively remains part of the Mount Elgon Forest Reserve.

7.5 The need for extra land for settlement at Chepyuk has continued to increase over the years. It is clear that only 3,686 hectares have been officially excised for resettlement of Elgonyi Dorobos however, at present an extra 4,607 hectares have been settled on. These squatters need to be evicted if the settlement is not regularized.

~~7.6~~ Current assessment carried out by the Ministry of Lands and Physical Planning confirms that several Public Utilities have already been developed as detailed in Annex V attached herein.

8.0 ANALYSIS OF THE PROBLEM

The long standing controversy affecting Chepyuk Phase.III is the Land ownership conflict between two clans of the Soy (Sabaot) and the Dorobo (Mosop). The genesis of this problem is as follows:

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- 8.1 Since establishment of the Scheme, the Dorobo (Mosop) have been demanding equal consideration and share of the land allocation based on the justification that the greater Chepyuk Scheme was originally established to cater for them.
- 8.2 The available plots for allocation under Chepyuk Phase III were 1893.
- 8.3 These plots were then allocated as follows: 66 reserved for public utilities, 95 given to Laibons, 1732 given to Allotees.
- 8.4 The 1732 deserving applicants (Allotees) who were successful in allocation included 866 Soy (Sabaot) and 866 Dorobos (Mosop).
- 8.5 Chepyuk Settlement Phase II and Phase III although fully allocated, the owners cannot be issued with title deeds because the area is still a forest reserve.
- 8.6 The inter clan clashes opened opportunity for genuine plot owners to be displaced by outsiders. The scheme has witnessed lot of murders, rape and lawlessness hampering development within the scheme.
- 8.7 Infrastructure and development within the scheme is very poor further aggravating the security situation.

9.0 CONCLUSION

- 9.1 The de-gazettement of Chepyuk Phase II and III shall provide the beneficiaries with secure land tenure. Current trend of poor land use practices will be minimized. Additionally, the prevalent trend of land speculation and encroachment into Forest Reserve shall be contained.
- 9.2 Illegal leasing resulting from eviction and occupation of public utility plots by the gangs operating in the area will come to an end.
- 9.3 De-gazettement of Chepyuk Phase II and III shall result to improvement of security of the region, spur development that shall lead to positive outcome on livelihood improvement.





9.4 All beneficiaries of the plots already have letters of offers from the Ministry of Lands and Physical Planning.

It is therefore my humble petition to the National Assembly to approve the variation of the boundaries of Mount Elgon Forest Reserve to exclude Chepyuk Phase II and III comprising of a total area of 4607 Hectares.

KERIAKO TOBIKO, CBS, SC
CABINET SECRETARY
MINISTRY OF ENVIRONMENT & FORESTRY


Date: 29th June, 2018

FARIDA KARONEY, OGW
CABINET SECRETARY
MINISTRY OF LANDS & PHYSICAL PLANNING

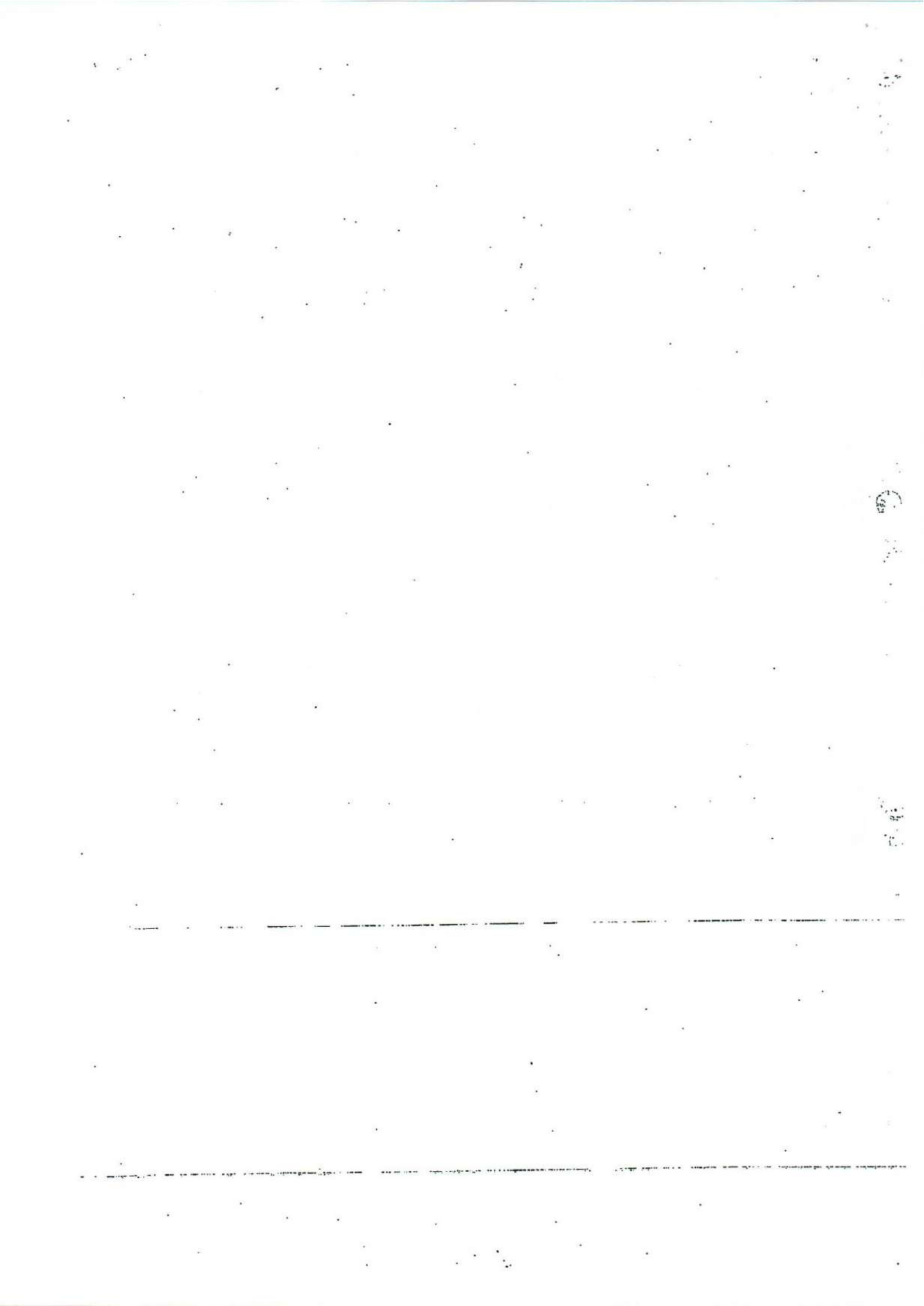

Date: July 3, 2018

ANNEXES

- I. Boundary Plan No 175/419
- II. Cabinet Action Letter Ref. OP/CAB.58/4A dated 22nd November 2016
- III. Environmental Impact Assessment License for Chepyuk Settlement Scheme Phase II and III
- IV. Map of Chepyuk Settlement Scheme and its Environs
- V. List of Public utilities within Chepyuk Phase II and III



Handwritten signature and initials, possibly 'CS' and a stylized 'D'.



THE PRESIDENCY
EXECUTIVE OFFICE OF THE PRESIDENT
CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE

Telegraphic Address
Telephone: +254-20-2227436
When replying please quote

STATE HOUSE

P.O. Box 40530-00100

Nairobi, Kenya

22nd November, 2016

20.....

Ref. No. OP/CAB.58/4A
and date

Mr. Charles T. Sunkuli
Principal Secretary/Environment
Ministry of Environment & Natural Resources
NAIROBI

Dr. Margaret W. Mwakima
Principal Secretary/Natural Resources
Ministry of Environment & Natural Resources
NAIROBI

Ms. Mariamu El Maawy, CBS
Principal Secretary
Ministry of Lands & Physical Planning
NAIROBI

Dear

**DEFACTO SETTLEMENT SCHEMES AND IRREGULARLY
ALLOCATED LAND WITHIN GAZETTED FOREST RESERVES**

I refer to the **Eighth Cabinet Meeting** held on **Tuesday, 22nd November, 2016** during which Cabinet Memorandum **CAB(15)81 REV.** jointly submitted by the Cabinet Secretary for Environment & Natural Resources; and the Cabinet Secretary for Lands & Physical Planning was presented and discussed.

I wish to inform you that Cabinet **considered** the Memorandum and;

- (i) **Noted** the contents of the Memorandum.

Ambe

- (ii) Approved the de-gazettement of 1,241.5 hectares of Turbo Forest Reserve comprising of the Manzini Settlement Scheme in Uasin Gishu County.
- (iii) Approved the degazettement of 4,647 hectares of Mt Elgon Forest Reserve within Cheptais Forest Station comprising Chepyuk Settlement Scheme known as Phases II and III in Cheptais District in Bungoma County.
- (iv) Directed the Cabinet Secretary for Environment & Natural Resources to present the request to Parliament for approval to the de-gazette forest area under Chepyuk and Manzini Settlement Schemes.
- (v) Directed the Cabinet Secretary for Land & Physical Planning to undertake or cause to be undertaken EIA and Public Consultations on the 17 settlement schemes.
- (vi) Noted of the forest areas irregularly allocated and the recommendations.
- (vii) Directed the Cabinet Secretary for Environment & Natural Resources; and the Cabinet Secretary for Land & Physical Planning to take appropriate action.

Please proceed and take action as directed by Cabinet.

Yours

JOSEPH K. KINYUA, EGH, CBS
CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE

Copy to:

Prof. Judi W. Wakhungu, EGH
 Cabinet Secretary
 Ministry of Environment & Natural Resources
NAIROBI

Prof. Jacob Kaimenyi, EGH
 Cabinet Secretary
 Ministry of Lands & Physical Planning
NAIROBI



Application Reference No. ETA/567
Registration No. 0008055

For official use

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT
ENVIRONMENTAL IMPACT ASSESSMENT LICENCE

This is to certify that the Project Report/Environmental Impact Assessment Study Report received from
PERMANENT SECRETARY, MINISTRY OF STATE FOR ADMINISTRATION & SECURITY (Name)
INTERNAL
INDIVIDUAL/FIRM (individual/firm) P.O. BOX 30510-00100, NAIROBI (Address)

submitted to the National Environment Management Authority in accordance with the Environmental Impact Assessment & Audit Regulations regarding PROPOSED RESETTLEMENT PROGRAMME, CHEPYUK SETTLEMENT SCHEME PHASES II & III, MT. ELGON DISTRICT
(title of project) whose objective is to carry on EXCISION AND DEGAZETEMENT OF CHEPYUK SETTLEMENT SCHEME FROM MT. ELGON FOREST

(briefly describe purpose) located at CHEPYUK LOCATION, EMIA LOCATION, KOPSIRO DIVISION, MT. ELGON DISTRICT, WESTERN PROVINCE (locality and district)

Area

has been reviewed and a licence is hereby issued for implementation of the project, subject to attached conditions.

Dated this 24TH day JAN of 2011

Signature [Signature]

(SEAL)

As Director General
The National Environment Management Authority

CONDITIONS OF LICENCE

1. This licence is valid for a period of 24 MONTHS (time within which the project should commence) from the date

1. General Conditions

- 1.1. This approval is for resettlement of communities in Chepyuk Phase I & III only.
- 1.2. The proponent shall submit separate EIA reports for the proposed coffee and tea factories before commencement of works.
- 1.3. The license shall be valid for 24 months from the date of issue
- 1.4. Without prejudice to the other conditions of this license, the proponent shall implement and maintain an environmental management system, organizational structure and allocate resources that are sufficient to achieve compliance with the requirements and conditions of this license.
- 1.5. The Authority shall take appropriate action against the proponent in the event of breach of any of the conditions stated herein or any contravention to the Environmental Management and Coordination Act, 1999 and regulations thereunder.
- 1.6. This licence shall not be taken as statutory defence against charges of pollution in respect of any manner of pollution not specified herein.
- 1.7. The proponent shall ensure that records on conditions of licenses/approval and project monitoring and evaluation shall be kept on the project site for inspection by NEMA's Environmental Inspectors.
- 1.8. The proponent shall submit an Environmental Audit Report in the first year of occupation/operation/commissioning to confirm the efficacy and adequacy of the Environmental Management Plan.
- 1.9. The proponent shall comply with NEMA's improvement orders throughout the project cycle

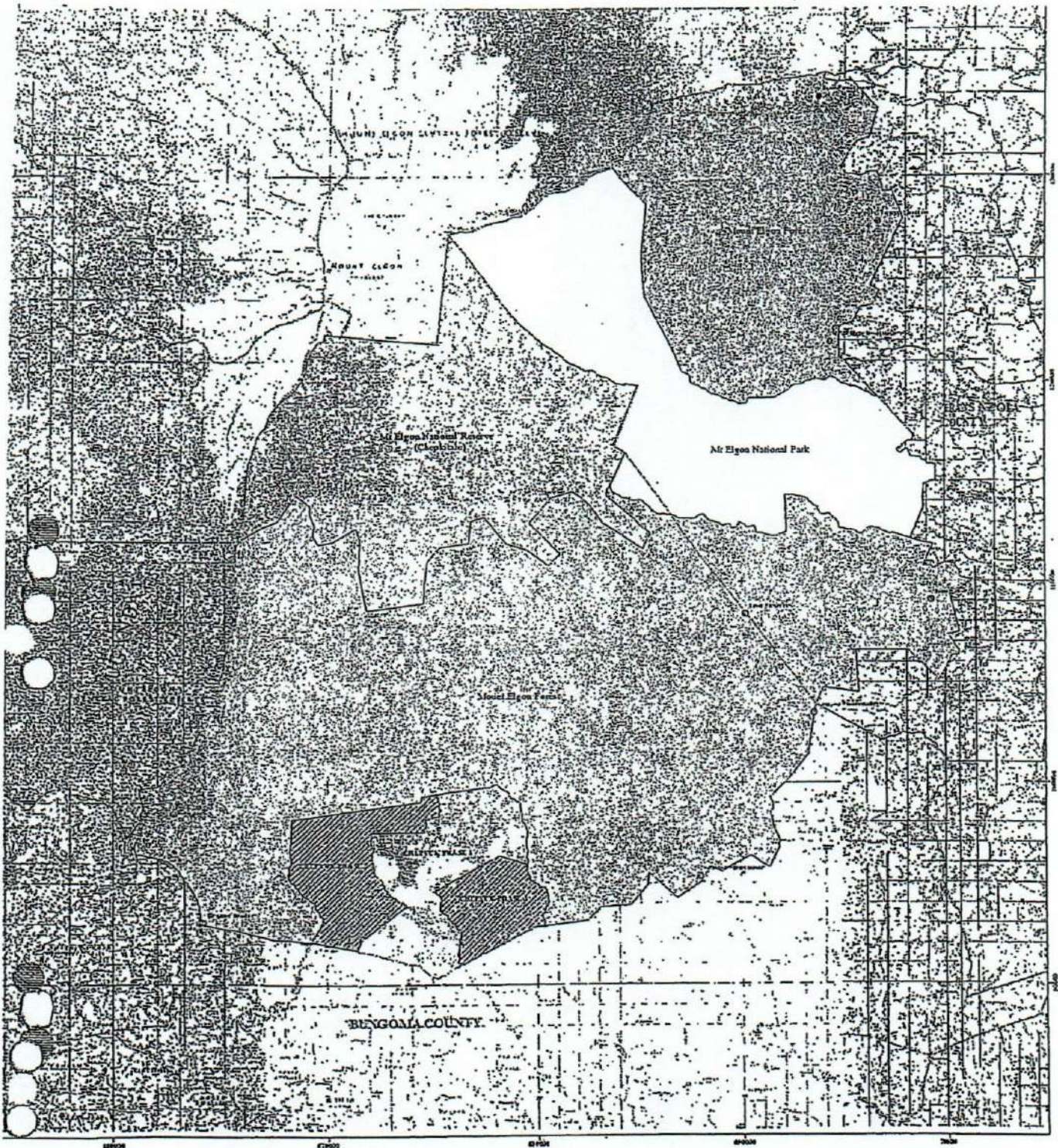
2. Demarcation Conditions







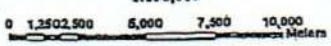

- 2.1. The proponent shall ensure that the water catchments and water springs are delineated and protected before actual resettlement.
- 2.2. The proponent shall ensure that the riparian boundary is clearly demarcated and permanent recognisable beacons are placed at sufficient intervals to adequately represent the riparian boundary.
- 2.3. The proponent shall ensure that the County Council delineates and establishes adequate solid waste management mechanisms as per the Environmental Management and Coordination (Waste Management) Regulations 2006.
- 2.4. The proponent shall ensure that wildlife conservation measures as well as adequate mitigation for human wildlife conflict are in place.
- 2.5. The proponent shall ensure that the resettled community is adequately educated on appropriate farming methods and environmental conservation particularly spring protection, afforestation, soil conservation measures.
- 2.6. The proponent shall put up a project signboard as per the Ministry of Works Standards indicating the NEMA license number among other information
- 2.7. The proponent shall ensure strict adherence to the provisions of Environmental Management and Coordination (Noise and Excessive Vibrations Pollution Control) Regulations 2009.
- 2.8. The proponent shall ensure strict adherence to the Occupational Safety and Health Act (OSHA), 2007.

- 2.9. The proponent shall ensure that construction workers are provided with adequate personal protection equipment (PPE), sanitary facilities as well as adequate training.
- 2.10. The proponent shall ensure strict adherence to the Environmental Management Plan developed throughout the project cycle.
- 2.11. The proponent shall ensure that the development adheres to zoning specifications issued for development of such a project within the jurisdiction of County Council of Mt Elgon with emphasis on approved land use for the area.
3. Operational Conditions
- 3.1. The proponent shall ensure that adequate measures are in place to stop any further encroachment of the Mt Elgon Forest.
- 3.2. The proponent shall ensure that all waste water is disposed as per the standards set out in the Environmental Management and Coordination (Water Quality) Regulations 2006.
- 3.3. The proponent shall ensure that rain water harvesting facilities are provided to supplement surface and ground water.
- 3.4. The proponent shall ensure that all equipment used are well maintained in accordance with the Environmental Management and Coordination (Noise and Excessive Vibration Pollution Control) Regulations 2009.
- 3.5. The proponent shall ensure that all solid waste is handled in accordance with the Environmental Management and Coordination (Waste Management) Regulations 2006.
- 3.6. The proponent shall ensure that all workers are well protected trained as per the OSHA, 2007
- 3.7. The proponent shall comply with the relevant principal laws, by-laws and guidelines issued for development of such a project within the jurisdiction of Kenya Forest Services, Kenya Wildlife Service, Ministry of Public Health and Sanitation, Ministry of Lands, Ministry of Forestry and Wildlife, Ministry of Agriculture, Provincial Administration, Water Resources Management Authority and other relevant Authorities.
- 3.8. The proponent shall ensure that environmental protection facilities or measures to prevent pollution and ecological deterioration such as water catchment and spring protection works, appropriate farming methods, riparian reserve conservation, wildlife protection and conservation are designed, constructed and employed simultaneously with the proposed project.
4. Notification Conditions
- 4.1. The proponent shall ensure that the Authority is notified of any attempts to encroach into the forest.
- 4.2. The proponent shall seek written approval from the Authority for any operational changes under this licence
- 4.3. The proponent shall ensure that the Authority is notified of any malfunction of any system within 12 hrs on the NEMA hotline 020 6006041 and mitigation measures put in place
- 4.4. The proponent shall keep records of all pollution incidences & notify the Authority within 24 hrs.

5. **Decommissioning Conditions**

- 5.1. The proponent shall ensure that a decommissioning plan is submitted to the Authority for approval at least three (3) months prior to decommissioning
- 5.2. The proponent shall ensure that all pollutants and polluted material is contained and adequate mitigation measures provided during the phase.



LEGEND	SCALE AND DIRECTION	DATA SOURCE	PREPARED BY
<ul style="list-style-type: none">  BEACONS  COUNTY BOUNDARY  NATIONAL PARK  NATIONAL RESERVE  FOREST 	<p style="text-align: center;">SCALE AND DIRECTION</p> <div style="text-align: center;">  </div> <p style="text-align: center;">1:100,000</p> <div style="text-align: center;">  </div>	<p>GPS COORDINATES MANAGEMENT SHEETS MT ELGON BOUNDARY PLANS DATUM: ARC 1960 PROJECTION: UTM ZONE 36N</p>	<p>KENYA FOREST SERVICE SURVEY AND MAPPING PO BOX 30513 NAIROBI</p> <div style="text-align: right;">  </div>

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EXISTING PUBLIC UTILITIES IN CHEPYUK PHASE II

SURVEYED UTILITIES

S/No	Parcel No	Area ha	Sheet No	USER NAME
1	2259	0.67	18	MARANATHA CHURCH
2	2179	8.08	24	KAPKIRWOK PRI. SCHOOL
3	2127	18.51	24	DIVISIONAL HQ
4	2150	7.41	24	KAPKIRWOK SEC. SCHOOL
5	2178	1.89	24	CATHOLIC CHURCH
6	2720	0.59	24	KAIMUGUL CATTLE DIP
7	2773	4.47	20	KIBUMET PRI SCHOOL
8	2420	6.68	19	CHEPTOROR MARKET
9	2419	5.74	25	CHEPTOROR PRI. SCHOOL
10	2418	8.25	20	CHEPTOROR SEC. SCHOOL
11	2456	4.07	25	KIBUMET MARKET
12	718	0.26	25	CHURCH
13	2500	8.05	18	KAPSOGOM PRI. SCHOOL
14	2581	0.83	26	KAIMUGUL R.C. CHURCH
15	2583	6.97	27	KAIMUGUL MARKET
16	2595	0.77	27	KAIMUGUL S.D.A CHURCH
17	2632	0.42	27	CHIEF'S CAMP KAIMUGUL
18	2611	0.26	27	SIMATWET CATHOLIC CHURCH
19	2612	1.02	27	SIMATWET MARKET
20	2636	9.85	27	KAIMUGUL PRI. SCHOOL
21	2250	0.67	27	ELGON A.R. TRAINING CENTRE
22	2133	4.81	18	MAKUTANO MARKET
23	2181	0.89	24	CHURCH
24	2192	0.92	24	SALVATION ARMY
25	2193	7.54	24	AGRICULTURAL/LIVESTOCK FARM
26	2301	2.22	24	ICM CHURCH
27	2395	0.69	25	POLYTECHNIC SCHOOL/MAKUTANO
28	823	0.36	24	TREE NURSERY
29	2422	0.43	25	MOSQUE
30	854	0.36	24	TREE NURSERY
31	2423	1.16	25	CHIEF'S CAMP KAIMUGUL

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EXISTING PUBLIC UTILITIES IN CHEPYUK PHASE III

SURVEYED UTILITIES

S/No	Parcel No	Area_ha	Sheet_No	USER NAME
1	75	1.347	88/1/16	MARKET CENTRE
2	102	8.587	88/1/16	CHURCH AND PRIMARY SCH
3	276	2.755	88/1/16	KORNGOTUNY PRIMARY SCH
4	277	3.752	88/1/16	KORNGOTUNY SECONDARY SCH
5	388	1.108	88/1/16	ECD
6	402	4.092	88/1/17	MURMOI KIPSIGON PRIMARY
7	419	8.074	88/1/11	GSU CAMP CHEPKURKUR
8	425	0.907	88/1/12	MARKET
9	595	5.697	88/1/11	CHEPKURKUR PRIMARY SCH
10	600	0.977	88/1/11	MARKET CENTRE
11	645	5.413	88/1/11	MARKET CENTRE
12	779	4.796	88/1/11	MARKET CENTRE
13	883	3.004	88/1/11	KAMUBUS PRIMARY SCH
14	889	3.569	88/1/11	KAMUBUS MARKET CENTRE
15	922	3.142	88/1/11	CEMETARY
16	923	1.316	88/1/11,16	ECD
17	976	1.976	88/1/11	POLICE CAMP
18	1052	7.088	88/1/11	MARIEKUTE MARKET
19	1157	4.279	88/1/11	KAPUTUM PRIMARY SCH
20	1203	2.827	88/1/11	KAPORIOT PRIMARY SCHOOL
21	1208	3.827	88/1/11	KAPORIOT SECONDARY SCH
22	1230	3.852	88/1/11	GSU CAMP
23	1500	2.439	88/1/11	BANANTEGA PRIMARY SCH
24	1525	0.979	88/1/11	AP CAMP BANANTEGA
25	1548	3.290	88/1/11	BANANTEGA MARKET
26	1772	4.213	88/1/12	KAPKERWA PRIMARY SCH
27	1779	1.270	88/1/11	HEALTH CENTRE
28	1780	2.084	88/1/11	POLYTECHNIC
29	1781	1.796	88/1/11	CHURCH
30	1782	1.376	88/1/11	MOSQUE
31	1783	2.036	88/1/16	KAPCHEBUK PRIMARY
32	1786	3.302	88/1/11,16	GSU SCHOOL
33	1831	11.072	88/1/16	KORNGOTUNY MARKET CENTRE
34	1835	2.635	88/1/11	MARKET
35	1841	2.838	88/1/11	CHEMTA PRIMARY SCH
36	1478	5.439	88/1/11	SHRINE AND BAMBOO CAVES
37	1761	1.098	88/1/12	WATER CATCHMENT AREA
38	1773	1.570	88/1/11	CHEPKURKUR AP CAMP

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S/No	Parcel_No	Area_ha	Sheet_No	USER NAME
39	1775	2.670	88/1/16	PLANTED AREA
40	1776	3.767	88/1/11	LAND RESERVED FOR SCH
41	1777	1.337	88/1/11	CHEPKURKUR CHIEFS CAMP
42	1778	2.579	88/1/11	CHEPKURKUR POLICE POST
43	1787	1.001	88/1/11	VACANT PUBLIC UTILITY
44	1788	20.056	88/1/16	ROCKY AREA
45	1849	2.653	88/1/12	TUYOPEI PRIMARY SCH
46	1850		88/1/16	AP CAMP KORNGOTUNY
47	644	0.363	88/1/11	WATERPOINT
48	1767	1.310		UTILITY PLOT
49	1774	1.955	88/1/11	WATER POINT
50	1802	0.268		ECD
51	1829	0.378	88/1/11,16	WATER POINT
52	1846	0.354	88/1/11	WATERPOINT
53	1847	0.348	88/1/11	WATERPOINT
54	1848	0.393	88/1/11	WATERPOINT
55	1851	0.352	88/1/11	WATER POINT
56	1852	0.434	88/1/11	WATER POINT
57	1822	0.358	88/1/11	WATER POINT
58	1845	0.345	88/1/11	WATERPOINT
59	1828	0.416	88/1/16	WATER POINT

Variation of boundaries or revocation of public forests

- (1) Any person may petition the National Assembly or the Senate, for the variation of boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest.
- (2) A petition under subsection (1) shall demonstrate that the variation of boundaries or revocation of the registration of a public forest or a portion of a public forest does not—
- endanger any rare, threatened or endangered species; or
 - adversely affect its value as a water catchment area; and prejudice biodiversity conservation, cultural site protection of the forest or its use for educational, recreational, health or research purposes.
- (3) A petition made under subsection (1) shall be considered in accordance with the provisions of the Petitions to Parliament (Procedure) Act and the Standing Orders of the relevant House.
- (4) The Cabinet Secretary shall, within thirty days of the petition being committed to the relevant Committee, submit a recommendation on whether the petition should be approved subject to—
- the petition being subjected to an independent Environmental Impact Assessment; and
 - public consultation being undertaken in accordance with the Second Schedule.
- (5) If the relevant Committee, reports that it finds that the petition—
- does not disclose a ground for the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest, no further proceedings shall be taken; or
 - discloses a ground for the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest, the National Assembly or the Senate shall vote on whether to approve the recommendation.
- (6) If the resolution under subsection (5)(b) is supported by a majority of the members of the National Assembly or the Senate, present and voting, the Cabinet Secretary shall publish a notice in the *Gazette*.

~~Handwritten signature~~

D, L E P

S. 34 allows a petition on
variation of boundaries of
forests
D. L. E. P.
09/07/18





REPUBLIC OF KENYA
TWELFTH PARLIAMENT - (SECOND SESSION)
THE NATIONAL ASSEMBLY
PETITIONS

CONVEYANCE OF A PETITION REGARDING VARIATION OF THE
BOUNDARIES OF MT. ELGON FOREST RESERVE

Honourable Members,

Standing Order 225(2)(b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I therefore wish to convey to the House that my office has received a Petition regarding the variation of boundaries of Mt. Elgon Forest Reserve.

Honourable Members,

The Petition is signed by Mr. Kerjako Tobiko, Cabinet Secretary for Environment & Forestry, and Ms. Farida Karoney, Cabinet Secretary for Lands & Physical Planning on behalf of the executive. The Executive is seeking the approval of the National Assembly for the alteration of the boundaries of Mt. Elgon Forest Reserve, pursuant to provisions of section 34 of the Forest Conservation and Management Act, 2016.

Section 34(1) of the aforementioned law states that-

34. (1) Any person may petition the National Assembly or the Senate for the variation of boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest.

Section 34(5) and (6) further states that-

(5) If the relevant Committee, reports that it finds that the petition—
(a) does not disclose a ground for the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest, no further proceedings shall be taken; or

(b) discloses a ground for the variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest, the National Assembly or the Senate shall vote on whether to approve the recommendation.

(6) If the resolution under subsection (5)(b) is supported by a majority of the members of the National Assembly or the Senate, present and voting, the Cabinet Secretary shall publish a notice in the Gazette.

Honourable Members, the two State Departments are seeking Parliamentary approval for degazettement of 4,607 Hectares comprising of Phases II and III of Chepyuk Settlement Scheme in the Mt. Elgon Forest Reserve within Cheptais Forest Station in Bungoma County. The purpose of the degazettement is to resettle the Soy(Sabaot) and Dorobo(Mosop) communities in the area to resolve historical land injustices, reduce security conflicts and spur local development.

In this regard **Honourable Members,** the two State Departments pray that

(1) The National Assembly resolves that this Petition discloses a ground for the variation of the boundaries of a public forest; and

- (ii) The National Assembly, approves the alteration of the boundaries of Mt. Elgon Forest Reserve to allow for resettlement on Phase II and III of Chepyuk Settlement Scheme.

Honourable Members,

A Petition of this nature is new to the House, being one that emanates from the Executive having been approved by the Cabinet. Allow me, therefore, to guide the House that, pursuant to the provisions of Standing Order 227(1), this Petition stands committed to the Departmental Committees on Environment and Natural Resources and Lands for joint consideration. The Committees should guide the House, by way of a report, on whether the Petition satisfies the requirements of section 34 of the Forest Conservation and Management Act, 2016 relating to the grounds for variation of the boundaries of a public forest, having ensured sufficient public participation with relevant stakeholders as required by the law.

The Joint Committee has sixty (60) days within which to submit their report for consideration and decision by the House as required under section 34(5) of the Forest Conservation and Management Act and Standing Order 227(2).

I thank you!



THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Thursday, July 5, 2018

