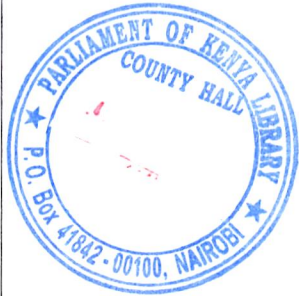


# REPUBLIC OF KENYA



## KENYA NATIONAL ASSEMBLY-SIXTH SESSION

### REPORT ON THE VISIT TO MT. ELGON AREA BETWEEN 17<sup>TH</sup> AND 19<sup>TH</sup> APRIL, 2007

#### DEPARTMENTAL COMMITTEE ON ADMINISTRATION, NATIONAL SECURITY AND LOCAL AUTHORITIES

CLERKS CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

MAY 2007

## **INTRODUCTION**

**Mr. Speaker, Sir,**

1. The Departmental Committee on Administration, National Security and Local Authorities was constituted at the commencement of the Ninth Parliament pursuant to the provisions of Standing Order 151 and has executed its mandate in accordance with the provisions of the said Standing order 151(1) 4 which mandates the Committee to:
  - (i) *to 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) *to study the programme and policy objectives of Ministries and Departments and the effectiveness for implementation;*
  - (iii) *to study and review all legislation after First Reading, subject to the exemptions under Standing Order 101 A (4);*
  - (iv) *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;*

v) *to investigate and inquire into all matters relating to assigned Ministries and Departments as they may deem necessary , and as may be referred to them by the House or a Minister; and*

vi) *to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

The Committee oversees the following Ministries:

- i. Office of the President;
  - o Ministry of State for Immigration and Registration of Persons;
  - o Ministry of State for Special Programmes;
- ii. Office of the Vice-President and Ministry of Home Affairs;
  - o Ministry of State for National Heritage;
  - o Ministry of State for Youth Affairs; and
- iii. Ministry of Local Government.

2. The Committee comprises the following members:

The Hon. Ramadhan S. Kajembe, MP- Chairman  
The Hon. Musa C. Sirma, MP  
The Hon. Alfred M. Nderitu, MP  
The Hon. Odhiambo H. Omamba, MP  
The Hon. Abdalla Ngozi, MP  
The Hon. David F. Mwanzia, MP  
The Hon. Joseph K. Korir, MP

The Hon. Kipkalya Kones, MP  
The Hon. Patrice M. Ivuti, MP  
The Hon. Noah N. arap Too, MP

**Mr. Speaker, Sir,**

The objectives of the visit were to:

- (i) Find the root cause of the skirmishes in the area
- (ii) Meet with the warring clans, religious leaders, the civil society and local leaders
- (iii) Perpetrators of the clashes
- (iv) Propose solutions and recommendations

The Committee which visited Mt. Elgon area comprised the following Members:

The Hon. Ramadhan Kajembe, MP - **Chairman**

The Hon. Musa Sirma, MP

The Hon. Kipkalya Kones, MP

The Hon. Abdallah Ngozi, MP

The Hon. John Serut, MP- Mt. Elgon Constituency and  
Assistant Minister for Planning

Representative of the AMANI Forum (Kenya Chapter) who accompanied the Committee were:

The Hon. Wycliffe Osundwa, MP

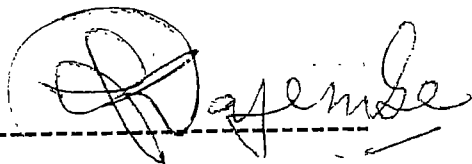
The Hon. Franklin Bett, MP

The Committee is grateful to the Speaker and the Liaison Committee for allowing them to undertake the visit and the Office of the Clerk for providing the necessary technical support. The Committee would also wish to thank the Office of the President for its facilitation and ensuring that the Committee fulfils its mandate of visiting the Mt. Elgon area. The Provincial administration played a major role of providing logistical support during their visit to the area.

**Mr. Speaker, Sir,**

On behalf of Members of the Committee, I wish to commend this report of the Committee on the Committee visit to Mt. Elgon area, pursuant to Standing Order Number 162.

Signed: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'Ramadhan S. Kajembe', written over a horizontal dashed line.

**(Hon. Ramadhan S. Kajembe, MP)**

**Chairman-Administration, National Security and Local  
Authorities Committee**

**Date: 18<sup>th</sup> May 2007**

## **1.0 Executive Summary**

The Parliamentary Departmental Committee on Administration, National Security and Local Authorities accompanied by the Great Lakes Parliamentary Forum on Peace - AMANI Forum (Kenya Chapter).

The objective of the mission was to conduct a contextual analysis of the conflict in terms of the causal factors, key perpetrators and the effects, and develop recommendations, to be tabled in Parliament for adoption and action, on strategies for ensuring peace and stability return in Mt. Elgon District.

During the mission, the Committee met and received submissions from the following individuals and groups:

1. The Provincial Administration and Security team led by Mr. Abdul Mwasserah, Provincial Commissioner, Western Province
2. The District Security team led by Mt. Elgon, District Commissioner, Mr. Kutswa Olaka. The meeting was also attended by the District lands officer, Mr. Nyang'au
3. Delegation of Elders and representatives of the warring parties, the Mosop and the Soy clans (the meetings were conducted separately).
4. Delegation of representatives from Cheptais division who are affected by the influx of displaced people as well as the ongoing police operation.
5. Representatives of religious organisations and civil society operating in the affected areas.
6. Area leaders including the area MP, former MPs, councillors as well as parliamentary aspirants.

The Committee noted that while the land problem and lack of agreement over the procedure for allocation have been the driving factors in the conflict, other issues like political incitement and interests; marginalization and poverty;

excessive use of force by security apparatus; tribal animosity and clan differences have taken advantage of the situation and exacerbated the conflict. These additional factors, have aggravated the structural causes of the conflict and greatly complicated mitigation mechanisms.

## **2.0 Background on Mt. Elgon District**

Mt. Elgon District, one of the 14 Districts in Western Province, was created in 1993 where it was carved from the former Bungoma District. The District is set on the mountainous terrain that rises to 800 meters above sea level in the south and 4310m above sea level to the North.

The District covers 936.75 Km square, out of which the forest covers 645 Km square. It borders Uganda to the west and north, Trans Nzoia to the east and Bungoma to the south. Mt. Elgon is a one-district constituency, with four divisions namely, Cheptais, Kapsokwony, Kaptama and Kopsiro. Kapsokwony is the district headquarters. According to the 1999 census, the total population is 154,698. It is inhabited by several ethnic groups namely the Luhya, Sabaots (Soy and the Ndorobo/Mosop) as well as other tribes, though with less population. The District enjoys favourable rainfall and good soil, making agriculture the economic mainstay. Those who live in the uplands are referred to as the Mosop while those living in the lowlands are referred to as the Soi.

## **3.0 The Land Issue in Mt. Elgon**

### **3.1 Historical developments**

The present Mt. Elgon, parts of Bungoma, Teso and Transzoia districts were originally inhabited by the Sabaot community (Ndorobo/Mosop and the Soy). When Kenya became a British colony in the early 1920's, they were evicted and pushed out of their ancestral land by the colonialists. They run to various regions. Some went towards West Pokot and southern Sudan. Others went to

Narok where they later split with some groups moving onwards to Tanzania. Other groups crossed over to Uganda. A larger population went to Mt. Elgon forest.

In 1926, the colonialists again evicted some members of the community (the Mosop) from Kasogom and Cheptoror (currently Chepyuk) and placed them in Chepkitale Forest where they practised pastoralism. In 1956, the Chepkitale people wanted to be settled in an arable piece of land since the moor land of Chepkitale Forest in Mt. Elgon was cold and less productive. This was not immediately implemented until after independence when President Jomo Kenyatta accepted a request by the then area Member of Parliament, the late Hon. David Moss, that the Mosop be removed from Chepkitale forest and settled in Chepyuk.

These was to bring them closer to better developed areas and allow easy provision of social amenities as well as enable them augment their livestock keeping occupation with farming activities. Thus, in 1971, the Government excised forestland in the Chebyuk area of Mt. Elgon and allocated the Mosop and a few members of the Soy. The terms of settlement were that each family be allocated 20 acres of land.

### **3.2 1971-1984 Settlement process: Some key challenges**

The delegation was informed that the initial phase of the settlement process faced some challenges that eventually led to some families missing out on the allocation process. Some of these challenges included:

- Due to population increase, the number of families rose beyond the initial projection of 609. This eventually resulted in shortage of land for resettlement, a problem that the Government failed to immediately address to avert future crisis.



- No official survey work or demarcation was done to formalize the process. The allocation was done on local arrangement. In the process, the actual size allocated varied, from 20 – 50 acres per household.
- The Government did not issue any title deeds to those who had been settled
- The process was marred with corruption and favouritism. There was no proper identification of the real allottees/ deserving cases.
- Most of the Mosop families seemed to have had little knowledge of agricultural farming. The place had thick forests and difficult terrain that made animal keeping a difficult task. They thus kept their animals in the moorland of Chepkitale. They slowly sold their farms to their brothers (the Soy) in return for cattle and in some cases *changáa* and eventually reverted to the forest. The Committee was informed that the process of sale was based on trust and mutual understanding. No records of sale agreements were kept while at the same time the process attracted many people from the Soy clan.

Despite these challenges, the communities lived in harmony thereafter and intra-clan conflicts were barely minimal.

### **3.3 The phases I and II settlement process**

The Committee was informed that between 1985 and 1988, the Government issued a nationwide directive that all communities living in the forest should leave the Forest. The Mosop were once again affected by this directive. They appealed to the government for resettlement. They argued that they had lost their land due to ignorance. The government considered their plea and ordered that

anybody who had bought land from the Mosop to vacate since due process was not followed in the sale.

Through the Provincial Administration, the government further argued that the Mosop had not been given title deeds to officially own the pieces of land and thus did not have legal authority to dispose them to anyone in any form, particularly when most of such transactions were not without any formal agreement.

From 1989-1992, based on the above analysis, the Government forcefully evicted the Soy and any other group that had bought land from the Mosop. The government then went ahead to settle the Mosop on what came to be known as phases I and II of the settlement process. The government then launched reforestation programme on areas that had been occupied but had not been reallocated.

In the process of phases I and II land allocation some Soys also managed to get land based on their qualification as genuine and deserving cases or relations of marital to the Mosops. It is also important to note that there were those who did vacate as had been directed by the government.

### **3.4 Challenges in Phase I and II Settlement processes**

- The process was marred by nepotism and corruption from both the political leaders and provincial administration. Due to lack of transparency and common agreement on actual beneficiaries there were cases of cancellation of allocation and in several instances, abandonment of the whole exercise.
- It was conducted without proper consultation with the actual beneficiaries. This led to some parcels being allocated to influential people

outside the district. Some beneficiaries included civil servants who were not genuine squatters.

- The ballot system of land allocation reduced the fairness of the process. The qualification for a ballot depended on a number of factors which included ability to influence the officials. This led to serious unfairness on the size of land as some people had more than one ballot papers.
- The government did not consider seriously the plight of those evicted. This deepened the animosity between the Mosop and the Soy.

The Committee was informed that despite these challenges, and the fact that the process took long, sometimes being abandoned, it was completed peacefully. The allottees were satisfied with portions they received and there were no major conflicts between the Mosop and the Soy as well as any other allottee.

#### **4.0 The phase III Settlement process: The Origin of the current conflict**

The Committee was informed that between 1992 and 1993, a section of the Soy who had been displaced in order to settle the Mosop as well as others who did not secure ballots for a parcel of land in phases I and II appealed to the Head of State for reconsideration of their plight. They argued that they bought the land on the basis of willing buyer willing seller and that it was the government, which had taken long to formalise the process. They added that they had nowhere to go after evictions. Their plea was considered and allowed to re-occupy the remaining land, which was then under plantation of trees, as they awaited survey and formalisation of the settlement. This was the phase three of the process.

Once again several attempts were made to resettle the people but in vain due to the same challenges that characterised phases I and II. The problem was made more complicated by the fact that people were allowed to settle without

formalisation of the process. They moved into the land, built houses and started farming, awaiting formalisation.

In 1998, in an attempt to formalise the process, the government carried out surveys and sub-divided the land into 5 acre pieces each. However, the people rejected the ballot system of allocation on the basis that some of them who had settled on an almost permanent basis would be relocated. They also feared that they might not qualify through the ballots as had happened before due to lack of transparency. The process was nullified.

In 2006, The Government moved in to formalise the process after a series of consultation that date back to 2004. Two vetting committees were formed, from both the Soi and the Mosop clans to oversee the actual implementation of phase III of the process by identifying real beneficiaries on a 50/50 basis. Conditions for eligibility were drawn and beneficiaries identified. Some of the conditions were the following:

- Must be residents of the scheme
- Had national Identification card
- Had no land anywhere
- Must attend vetting sessions

While from the initial list there were a total of 7239 applicants, there were only 1732 beneficiaries. The Committee was informed that even after coming up with this list and agreeing that each beneficiary should get 2.5 acres, about 355 beneficiaries could not be settled. The process of surveying and allocation was done between January and September, 2006.

Those who did not benefit were given seven days to vacate. There were no mechanisms for their resettlement and thus were rendered homeless. The Committee was informed that various sections of people expressed their dissatisfaction with the process.

There were claims that:

- The process of identification of actual beneficiaries was not fair and that many deserving cases were not considered.
- Some families boycotted the process because they were not comfortable with the fact that the sizes of their land would be reduced.
- Some families were not convinced that the process would take off as the previous processes had gone through the same fate.
- There were those who had bought land but did not have official documentation on such transaction and therefore could not qualify
- There were those who had allotment letters, which were not valid, having received them through illegal means.

The Committee was informed that the evictees, totalling about 30,000 were thus displaced all over the region. Some went to Uganda, others to Bungoma and Trans Nzoia districts. There were those who camped at Cheptais, Kaptama and Kapsokwony divisions.

## **5.0 Factors that have exacerbated the conflict**

### **5.1 The Sabaot Land Defence Force**

The Committee was informed that most of the youths of the displaced families felt that their families were being treated unfairly in the allocation process. The issue was made more complicated by the fact that there was no alternative mechanisms to resettle the over 5,500 applicants who were not successful. The youth, with support from influential people who were also affected, went to the forest, under the umbrella of Sabaot Land Defence Force (**SLDF**), to fight for their land.

### **5.2 The influence of political actors**

The issue of resettlement of the landless has been one of the political tools used in securing parliamentary tickets. Both past and the current holders of the parliamentary seat have used the land issue as a campaign strategy. The

Committee was informed that most of the difficulties that faced the past allocation procedures were partly caused by interest of the sitting Member of Parliament.

Politicising the land issue has created deep divisions in the one constituency district and increased inter-clan conflicts. The Committee heard that in many cases, the land issue has been used to reward supporters of the sitting MP and at the same time victimising those opposing him. The Committee was informed that in 2002, the current Member of Parliament promised to resettle the people in phase III- "*Nyumba kwa Nyumba*", meaning that each person would be resettled where they are staying. However, this could not happen as settling of people has not always been done fairly.

### **5.3 Clashes, violence, police harassment and general state of insecurity**

Since the eviction of people from Chebyuk settlement scheme began, the region has witnessed violence and clashes. High level of gun ownership among the civilian, especially the Sabaot Land Defence Force, has made matters even worse as the group is said to be killing specific people they identify to be against their cause.

The presence of large contingent of police in the area has not made the situation any better. The Committee was further informed that some of the killings and rape in the area are actually committed by the police. Some of the groups that testified before the Committee, particularly from Cheptais, were able to mention names of specific police officers whom they accused of a series of rape and harassment.

The police were also accused of mounting operations in Cheptais, ostensibly to hunt down members of the SLDF, while the real area of conflict is Chebyuk in Kopsiro division. Members of the public from Cheptais Division said that while they have been recipients of most evictees, they are not harbouring any criminals and therefore should not be victimised. They also said that the operation has

assumed a tribal angle, with members of the Saboot being the chief targets by the police as opposed to other tribes.

## **6.0 Effects of the Conflict**

The conflict that began late last year has taken a great toll in the area. Some of the effects of the conflict include:

1. Massive displacement of the population. The most affected area is Kopsiro division. Most of the displaced persons are scattered in various regions including Uganda.
2. Over 150 people have lost their lives. Some killings have been perpetrated by the police, the SLDF or diseases directly linked to the displacement of people. The Delegation was informed that some of those killed by the police are never accounted for and in most cases, their relatives are denied burial permits.
3. Hundreds of houses have been torched since the operation began. Again accusations were levelled against the police and members of the SLDF.
4. Most schools have been closed

## **7.0 Recommendations**

Based on the observations and discussions, the Committee hereby makes the following recommendations on the way forward to the current situation in Mt. Elgon.

- 1. The ongoing land allocation in phase III be halted and nullified. The people who were chased out of their farms to pave way for new entrants be allowed back into the farms as consultations proceed.**
- 2. The Saboot Land Defence Force and any person being pursued by the police be approached, through the intervention of the elders, to surrender and be accorded amnesty.**

3. Elders and spiritual leaders in the region be given a chance to engage in dialogue and pass their binding resolutions to the Government.
4. The Electoral Commission to consider creating another constituency in Mt. Elgon District to reduce political rivalry based on the clan or tribal factor.
5. All political leaders to stop using the land issue as a tool to political offices. No promise should be made by any politician as regards the Chepyuk land problem. They should, however, be involved in discussions on the way forward.
6. Security operation be maintained on an impartial basis. This should be geared towards ensuring resettlement of those who had been evicted as well as providing an environment for restoration of all social amenities.
7. People arrested in connection with the violence be either arraigned in court or released immediately to avoid revenge missions.
8. Investigations be launched on allegations of corruption by government officers during land allocation processes in Chepyuk. Such investigations be extended to security officers in the District who have been accused of human rights violations. Those found guilty be held accountable.
9. The Government to set aside alternative land to resettle those who will not be successful in the new allocation.
10. The Government to appoint an independent task force to investigate the land problem in Mt. Elgon and develop a formula for new allocations in consultations with the council of elders.

-----END-----