
REPUBLIC OF KENYA



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by Chair, Lands
& Natural Resources
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TENTH PARLIAMENT –FOURTH SESSION

REPORT OF THE
DEPARTMENTAL COMMITTEE ON LANDS & NATURAL RESOURCES
ON THE
PETITION

BY KIKAKO WELFARE ASSOCIATION ON THE IRREGULAR
ALLOCATION OF COMPULSORILY ACQUIRED LAND TO
PRIVATE DEVELOPERS BY KISUMU MUNICIPAL COUNCIL

CLERK'S CHAMBERS
NATIONAL ASSEMBLY
NAIROBI

AUGUST 2012

PREFACE

1. On the Thursday May 19, 2011, a petition was tabled before the House pursuant to Standing Orders by the Hon. Olago Aluoch M.P, Member for Kisumu Town West Constituency on Behalf of Members of Kikako Welfare Association who number 100 being citizens in Kisumu District of the Republic of Kenya;
2. Pursuant to House rules, the petition was referred to the Parliamentary Committee on Lands and Natural Resources for consideration and preparation of a report;
3. The Committee considered the petition pursuant to provision of Standing Order 201, 202, 203, 204, 205, 206, 207, 208, 209, 210 and 211. And further Third Schedule. And concluded that its meets the provision of the Standing Orders hence admissible.

MANDATE OF THE COMMITTEE

4. The Departmental Committee No. J on Lands and Natural Resources is established pursuant to provisions of Standing Order No. 198 (2) and (3) with the following terms of reference: -
 - 4.1 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;
 - 4.2 to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - 4.3 to study and review all legislation referred to it;
 - 4.4 to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - 4.5 to 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 or a Minister; and
 - 4.6 to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.
5. The Committee is mandated to consider the following **subjects**:-
 - 5.1 Lands and settlement;
 - 5.2 Forestry, water resource management and development;

- 5.3 irrigation;
- 5.4 environment and wildlife; and
- 5.5 Mining and natural resources.

6. OVERSIGHT

The Committee oversees the following Government Ministries; namely:

- 6.1 Ministry of Water and Irrigation;
- 6.2 Ministry of Environment and Minerals Resources;
- 6.3 Ministry of Lands; and
- 6.4 Ministry of Forestry and Wildlife.

7. COMMITTEE COMPOSITION

The Parliamentary Committee on Lands and Natural Resources was constituted on June 17th 2009 and its membership is as follows:-

- 7.1 Hon. Mutava Musyimi, M.P. – **Chairperson;**
- 7.2 Hon. Peris Chepchumba Simam, M.P. - **Vice Chairperson**
- 7.3 Hon. Benjamin Jomo Washiali, M.P.
- 7.4 Hon. Silas Ruteere Muriuki, M.P.
- 7.5 Hon. Benedict Fondo Gunda, M.P.
- 7.6 Hon. Justus M. Kizito, M.P.
- 7.7 Hon. Njuguna Peter Gitau, M.P.
- 7.8 Hon. Mohammed Abdi Affey, M.P.
- 7.9 Hon. Omar Mbwana Zonga, M.P.
- 7.10 Hon. Kiema Julius Kilonzo, M.P.
- 7.11 Hon. Dr. Erastus Kihara Mureithi, MBS, HSC, MP

8. REPORT METHODOLOGY

The Committee proceeded with the consideration of the petition as follows:

- 8.1 Held sittings for:-
 - (a) Setting up the Terms of Reference – consideration of the prayers;
 - (b) Meeting with the Minister for Lands;
 - (c) Meeting with the Clerk and Mayor, Kisumu Municipal Council;
- 8.2 Conducted a visit on the disputed land;
- 8.3 Held public hearing with the members of Kikako Welfare Association;

THE PETITION

9. On Thursday, May 19, 2011, the Hon. Olago Aluoch, MP for Kisumu Town West Constituency tabled a petition on behalf of the Members of Kikako Welfare Association pursuant to the provision of the House rules of procedure.
10. In their petition, the petitioners **draw the attention of the House to the following**, that:-
- a) Kikako is a registered society under the Societies Act;
 - b) Membership of the Association is drawn from three major locations in Kisumu Town East and West Constituencies – Kisumu East, Kajulu West and Kolwa Central;
 - c) The Association was formed with the sole objective of ensuring the welfare of its members and that it is non-political and non-partisan;
 - d) By Legal Notice No.3400 of November 19, 1976, the Government of Kenya compulsorily acquired the ancestral land of KIKAKO members under the Trust Land Act and Compulsorily Acquisition of Land Act for purposes of expansion of Kisumu Municipal Council for industrial and commercial development with the understanding that the members would be direct beneficiaries of such developments in terms of employment creation and improved facilities;
 - e) Some members received monetary compensation for the acquisition but, the same was minimal and inadequate and were not offered alternative settlement therefore many opted to vacate ancestral land and live outside the acquired areas;
 - f) Subsequent to the acquisition, the Ministry of Lands handed over the acquired land to Kisumu Municipal Council for purposes for which the land was acquired for and on terms of the relevant Kenya Gazette notice, no. 3400/November 19, 1976;
 - g) Contrary to the objectives of the acquisition of the land as set out in the Kenya Gazette Notice, the Municipal Council of Kisumu has continued to allocate the acquired land for development of private residences thereby causing great unrest and sense of an equal treatment of citizens;
 - h) The members of KIKAKO have made several attempts to get the matter settled amicably by the government but the pleas have

fallen on deaf ears while the Council continues to allocate private developers their land as late as March 20112.

11. Therefore, **humbly pray, that:-**

- a) A thorough public inquiry into the manner in which the acquisition was conducted, objectives as per the relevant gazette notices, the purposes and criteria for allocation of the acquired land and the welfare of the KIKAKO members who were evicted from their ancestral land be established;
- b) Revokes the compulsory acquisition together with all subsequent allocations for private residences;
- c) Initiates the process of adjudication under the Land adjudication Act and proceed to issue titles under the Registered Land Act to the original owners of the ancestral land.

12. FINDINGS, OBSERVATIONS AND COMMENTS

- 1 Plan to extend the boundaries of Kisumu Municipal Council were started in the 1960's with the government establishing a commission;
- 2 The government appointed the Ogutu Commission to look into the possibility of extending the Kisumu Municipality boundary. The aim was to make the municipality get more revenue, to be able to manage and offer health, security and other social services to the residents properly, develop its future land for development.
- 3 the Commission recommended that boundaries of Kisumu Municipality be extended to include the following areas – the whole of **Kajulu Locations**(Kadero, Konya and Wathorego), **Kolua Location**(Kasule, Nyalunya, Nyalenda, Manyatta, Bwoye and Chiga) and **sub locations of Kisumu**(Dago, Kanyakwar, Kogony, Korando, Ojola and Kanyawegisi);
- 4 There were wide consultations and meetings held and or conducted which included the leaders, interested parties and the local people of Kisumu with a view of resolving and agreeing to the need to extend the boundaries of Kisumu Municipal Council;
- 5 By Legal Notice No.3400 of November 19, 1976, the Government of

Kenya compulsorily acquired the ancestral land of KIKAKO members under the Trust Land Act and Compulsorily Acquisition of Government Land Act for purposes of expansion of Kisumu Municipal Council for industrial and commercial development.

- 6 The area that were acquired for expansion, were:-
 - a) **Kisumu East location** – where Kogony/Kanyakwar clan lived along the rail from Kudho Primary School area to ASK showground. Except Mr. Orowe, the rest of the occupants then received payments as compensation and vacated the area;
 - b) **Kajulu west** – Kadero and Konya clans lived. All vacated the land on compensation in 1972.
 - c) **Migosi site** – where the Kanyakwar Clan lived. All were compensated and left the land; and
 - d) **Along Kibos Road** – both sides – where the Kasule, Kasagam and Kadidi. It is only Mr. Odemba who refused to accept payment and remained in the area but the rest of the former occupants received their payments as compensation and left the land.
- 7 Occupants of the land acquired by the government then which included the ancestral land of KIKAKO Members, received monetary compensation for the acquisition as provided for under the Trust Land Act, Cap 288, Laws of Kenya, the then District Commissioner identified all the people who had interest on the land with the help of the local chiefs for purposes of compensation.
- 8 Between 1977 – 1979, the Ministry of Land and Settlement then established adjudication sections in the areas recommended to be covered by the expansion. Therefore there is no need to Initiates a process of adjudication under the Land adjudication Act and proceed to issue titles under the Registered Land Act to the original owners of the ancestral land.
- 9 Complaints for underpayment and omissions were received mainly related to buildings and other improved structures.
- 10 Under the Public Authority Limitation Act, Cap 39, the occupiers

were permitted to file any objections, complaints and or petitions in respect of the acquisitions but there exist no record of such objections or petitions. Specific complaints were referred to the Provincial Agricultural Board for arbitration and were sorted out.

- 11 Disputed land which were acquired originally by the Government of Kenya on Behalf of Kisumu Municipal Council was done in accordance with law and the proper procedure were followed;
- 12 KIKAKO members want to reverse compensation and ownership of land of which compensation was done to their parents. For Kanyakwar Clan which consist of Kokal, Kamenya, Kogola and Kogony Kanyimo sub clans were all in Kanyakwar Sub Location and when compensation were carried out, the only person who remained uncompensated was Mzee Orowe;

13. RECOMMENDATIONS

- 1 From the evidence adduced, the Committee recommends that the National Land Commission should investigate the issues canvassed in this petition and bring the matter to conclusion.

ACKNOWLEDGMENT

14. The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.
15. The Chairperson takes this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period.
16. The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.
17. Finally, it is now my pleasant duty, on behalf of the Departmental

Committee on Lands and Natural Resources, to present and recommend this report to the House pursuant to the provisions of Standing Orders of the National Assembly.

18. On behalf of the Committee, I request the house to adopt the report.

SIGNED:..........

HON. MUTAVA MUSYIMI, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON LANDS AND NATURAL RESOURCES

DATE:.....AUGUST 14, 2012.....

BACKGROUND INFORMATION

19. The Petition by Kikako Welfare Association was presented to the House by Member for Kisumu Town West, Hon. John Olago Aluoch, on May 19, 2011. The petition was signed by 100 residents on behalf of the Kikako Welfare Association.
20. Kikako Welfare Association is a registered society under the Societies Act and its membership drawn from 3 major locations in Kisumu Town East and West Constituencies namely Kajulu West (Konya and Kadero sub locations) and Kolwa Central (Nyalunya and Kisule Sub locations) and Kanyakwar.
21. In their petition, the petitioners **draw the attention of the House to the following**, that:-
- a) KIKAKO is a registered society under the Societies Act;
 - b) Membership of the Association is drawn from three major locations in Kisumu Town East and West Constituencies – Kisumu East, Kajulu West and Kolwa Central;
 - c) The Association was formed with the sole objective of ensuring the welfare of its members and that it is non-political and non-partisan;
 - d) By Legal Notice No.3400 of November 19, 1976, the Government of Kenya compulsorily acquired the ancestral land of KIKAKO members under the Trust Land Act and Compulsorily Acquisition of Land Act for purposes of expansion of Kisumu Municipal Council for industrial and commercial development with the understanding that KIKAKO members would be direct beneficiaries of such developments in terms of employment creation and improved facilities;
 - e) Some members received monetary compensation for the acquisition but, the same was minimal and inadequate and were not offered alternative settlement. therefore many opted to vacate ancestral land and live outside the acquired areas;
 - f) Subsequent to acquisition, the Ministry of Lands handed over the acquired land to Kisumu Municipal Council for purposes for which the land was acquired for and on terms of the relevant Kenya Gazette notice, no. 3400/November 19, 1976;
 - g) Contrary to the objectives of the acquisition of the land as set out in the Kenya Gazette Notice, the Municipal Council of Kisumu has

continued to allocate the acquired land for development of private residences thereby causing great unrest and sense of an equal treatment of citizens;

h) The members of KIKAKO have made several attempts to get the matter settled amicably by the government but the pleas have fallen on deaf ears while the Council continues to allocate for private developers their land as late as March 2011/2.

22. Therefore, humbly pray, that:-

a) A thorough public inquiry into the manner in which the acquisition was conducted, objectives as per the relevant gazette notices, the purposes and criteria for allocation of the acquired land and the welfare of the KIKAKO members who were evicted from their ancestral land be established;

b) Revokes the compulsory acquisition together with all subsequent allocations for private residences;

c) Initiates the process of adjudication under the Land adjudication Act and proceed to issue titles under the Registered Land Act to the original owners of the ancestral land.

INVESTIGATIONS – BACKGROUND INFORMATION

23. Kisumu Municipality was subject to reduction in area firstly in 1923 and secondly in 1932 with the result that it was much smaller than other towns of comparable size. The then area of Eldoret is approximately three times while that of Nakuru is twice Kisumu area. Kisumu Municipality was never considered during the 1962/3 boundaries commission of which Mombasa and Nairobi took a great advantage.

24. The intention of extending Kisumu Municipality boundary was discussed for a long time, the discussions and consultations meetings started way back in the mid-1960s, however due to the opposing views held by the members of the Kisumu County and Municipal councils, local politics and other misunderstandings it led to the failure in the attempts to extend the boundary of Kisumu at the initial discussions of 1962/3.

25. Various consultative meetings were held to try to agree and resolve

the matter, where meetings and consultations were held including with the leaders from Kisumu, Kisumu County and Kisumu Municipal Council, Provincial Administrations among others.

26. Meetings were held with a view of getting the local people including interested parties to agree that the boundaries of Kisumu be extended. The meetings were, one on August 21, 1970, where a public meeting was held with interested parties, several people gave oral and submitted evidence and the people of Kisumu accepted the need to extend the boundary;
27. Secondly, a final meeting was held on December 2, 1970 in which people unanimously agreed that there is need to extend the boundary and that in case any land is require for development, compensation should done in a proper manner.
28. Therefore, in 1970, the government appointed the Ogotu Commission to look into the possibility of extending the Kisumu Municipality boundary. The aim was to make the municipality get more revenue, to be able to manage and offer health, security and other social services to the residents properly, develop its future land for development. The Commission commenced its work in 1969 but visited Kisumu for the first time in June 1970.
29. In its findings and recommendation, the Commission recommended that boundaries of Kisumu Municipality be extended to include the following areas – the whole of **Kajulu Locations**(Kadero, Konya and Wathorego), **Kolua Location**(Kasule, Nyalunya, Nyalenda, Manyatta, Bwoye and Chiga) and **sub locations of Kisumu**(Dago, Kanyakwar, Kogony, Korando, Ojola and Kanyawegisi);
30. The Commission noted that the land should not be taken over until adjudicated for security reasons of the occupiers i.e. the land must be adjudicated before the people are removed;
31. During 1977 – 1979, the Ministry of Land and Settlement then

established adjudication sections in the areas as recommended by the Ogutu Commission.

32. By Legal Notice No.3400 of 19th of November, 1976 the Government of Kenya acquired land in Kanyakwar, South and West Kajulu, Manyatta and Nyalenda Pandpieri through the Land Acquisition Act, Cap 265 within the meaning and under Trust Land Act, Cap 288, Compulsorily Acquire Land for purposes of expansion of Kisumu Municipal Council for industrial and commercial purposes;

33. The area that were acquired for expansion, were:-

- a) **Kisumu East location** – where Kogony/Kanyakwar clan lived along the rail from Kudho Primary School area to ASK showground. Except Mr. Orowe, the rest of the occupants then received payments as compensation and vacated the area;
- b) **Kajulu west** – Kadero and Konya clans lived. All vacated the land on compensation in 1972.
- c) **Migosi site** – where the Kanyakwar Clan lived. All were compensated and left the land; and
- d) **Along Kibos Road** – both sides – where the Kasule, Kasagam and Kadidi. It is only Mr. Odemba who refused to accept payment and remained in the area but the rest of the former occupants received their payments as compensation and left the land.

34. Compensation exercise commenced in 1972, coordinated by the Provincial Administration and ended in 1976 following the gazettelement and repossession of all land acquired and reserved for industrial, commercial and residential developments;

MINISTER FOR LAND ON THE PETITION - The Minister informed the Committee, that:-

35. The land that is subject of the petition covers the extended areas of Kisumu Municipality – Manyatta, Nyalenda Pandpieri and was initially held by the Kisumu County Council.

36. In November 1976, the Government of Kenya undertook the setting apart the land vide Legal Notice No 3400 on behalf of Kisumu County Council for purposes of housing and industrial developments.

37. As provided in the Trust Land Act (cap 288) the District Commissioner identified all the people who had interest on the land with the help of the local chiefs for purposes of compensation. Compensation was thereafter paid as follows:-

38. Compensation for structures and other improvements

NO	SUB-LOCATION	NO. OF CLAIMANTS	AMOUNTS IN KSH.
1	KANYAKWAR	996	455,470.00
2	KONGONY	142	341,512.85
3	WATHOREGO	145	495,850.50
4	KONYA	216	648,565.50
5	NYALUNYA	67	393,885.10
6	MANYATTA	83	277,041.00
	TOTAL	2206	2,976,098

39. Compensation for unimproved land value

NO	SUB-LOCATION	NO.OF CLAIMANTS	AMOUNTS IN KSH.
1	KANYAKWAR	1133	2,537,400.00
2	KOGONY	140	235,530.00
3	WATHOREGO	273	509,700.00
4	KONYA	38	62,840.00
5	NYALUNYA	314	390,640.00
6	MANYATTA	263	326,240.00
7	KASELO	105	271,340.00
	TOTAL	2266	4,333,690.00

40. Complaints for underpayment and omissions were received mainly related to buildings and other improved structures. However the complaints were dismissed as the compensation was found substantial and complainants were satisfied;

MEMORANDUM FROM WEST KOLWA NEIGHBOURHOOD (WATCH GROUP) -

They informed the Committee, that:-

- 41.** Disputed land which were acquired originally by Kisumu County Council and subsequently by Municipal Council of Kisumu was done in accordance with law and the proper procedure were followed;
- 42.** Confirmed that the land acquisition in the area was properly acquired, allotments and compensations done with accordance with the law.

MUNICIPAL COUNCIL OF KISUMU

- 43.** Government of Kenya acquired land on behalf of the Council - Kanyakwar, South and West Kajulu, Manyatta and Nyalenda Pandpieri through Land Acquisition Act, Cap 295 vide Kenya Gazette legal notice No. 3400 of 19th November 1976;
- 44.** The notice was given for and on behalf Municipal Council of Kisumu that the acquired land is required to be set apart for housing and industrial development within the meaning of the Trust Land Act, Cap 288, laws of Kenya;
- 45.** Compensation exercise commenced in 1972, coordinated by the Provincial Administration and ended in 1976 following the gazettelement and repossession of all land acquired and reserved for industrial, commercial and residential developments;
- 46.** Under the Public Authority Limitation Act, Cap 39, the occupiers were permitted to file any objections, complaints and or petitions in respect of the acquisitions but there exist no record of such objections or petitions;
- 47.** KIKAKO wants to reverse compensation and ownership of land of which compensation was done to their parents. For Kanyakwar Clan which consist of Kokal, Kamenya, Kogola and Kogony Kanyimo sub clans were all in Kanyakwar Sub Location and when compensation

were carried out, the only person who remained uncompensated was Mzee Orowe;

- 48.** Compensation were done through the District Commissioners office then led by Mr. Oleng Charo in conjunction with the chiefs and assistant Chiefs. Specific complaints were referred to the Provincial Agricultural Board for arbitration and were sorted out,
- 49.** The Government in liaison with the Kisumu Municipal Council ensured that the land was planned for the intended purpose;
- 50.** All residents left their land as they were satisfied with the 1972 – 1976 compensation;
- 51.** The Kadidi sub clan is composed of Kokumo, Kongombe and Kayugi sub clans and the emergence of the Kadidi sub clan, of the greater Kolwa clan to claim parcels of land in which their parents or great-grandparents undertook to sell it to government is ill-advised;
- 52.** Allegations that the monetary compensation for acquisition was nominal and inadequate and further that the acquired land was not utilized for the gazetted purposes are not valid and therefore the petition has no merit.
- 53.** The land has been a subject of many civil suits such as suit no.65 of 2008 in the High Court of Kisumu which named Kisumu Municipal Council and Commissioner of Lands as the 1st and 2nd defendants respectively.
- 54.** Following the complaint by the Kikako Welfare Association to the Land Acquisition Compensation Tribunal in July 2005, on land acquisition dispute on land lying along Kisumu Kibos Railway line-Kisumu, the tribunal observed that the purported acquisition was not undertaken under the provisions of Land Acquisition Act, Cap 265, Laws of Kenya as alleged by the Association but the land was acquired through the process of setting apart of Trust Land under Trust

Lands Act Cap 288. Acquisition of land under Trust Lands Act Cap 288 falls outside the tribunal's mandate and accordingly the right of appeal in terms of sections of the Act lies with the Provincial Agricultural Board.

55. Kikako Welfare Association has severally taken up the illegal alienation and allocation of their land with the Kenya Anti-corruption Commission forwarded to the Commission of Inquiry into the Land Law Systems of Kenya and finally to the Office of the President back in 2000 received no relief to their plea.

56. Memorandum by Kikako Welfare Association under signed by 30 members of lands and security committee to the Commission of Inquiry into the Land Law Systems of Kenya on demands to return their grabbed lands observed, that:-

a) Their problem started back in 1966 when known land grabbers colluded with Kisumu Municipal Council to take the land for expansion;

b) The grabbers were unsatisfied and resurfaced in 1972 dabbed as Ogutu Commission to extend the municipality boundaries ,through manipulation and protracted lobbying Kikako elders were duped to accepting the proposal on the following conditions;

i. No one's' properties would be interfered with;

ii. The inhabitants would continue living uninterrupted from their usual activities;

iii. Bury their dead as usual;

iv. Tend and farm their land normally;

v. In event of future developments the indigenous inhabitants would be the beneficiaries; and

vi. The land shall be adjudicated, registered in their names and title deeds given to them.

57. In 1978, the local administration in collaboration with the Local

authority agents evicted the original owners without room for negotiations/agreements/alternative settlement;

58. The government of Kenya in the 1978 compulsorily acquired the same land without providing for an alternative settlement and compensation to the owners. These lands in question include - Kisumu East (Kanyakwar, Kogony (Kanyamony)), Kajulu West (Wathorego, Konya) and Kolwa Central (Nyalunya, Kasule);

59. Memorandum from KWA to the former president Daniel Toroitich Arap Moi informs as follows:-

a) Membership was drawn from 3 locations namely Kisumu (4 sub locations), Kajulu (2 sub locations) and Kolwa (2 sub locations). The above mentioned locations contributed land on which Kisumu town stands.

b) Petitioners had petitioned his Excellency back in 1997/8 on the eviction matter and acted immediately by appointing the Commission of Inquiry into Land Law Systems in Kenya; furnished the commission with all fact about their lost land.

c) Wanted the president's word on the commission findings. In 1978 people were evicted from the 4 sub locations of Kanyakwar of Kisumu East, Wathorego/Konya of Kajulu West and Kasule/Nyalunya of Kolwa central.

d) The evictees were sent away without alternative settlement;

e) No government department identifies itself with the acquisition claim want fair and equal treatment like the rest of the Kenyans in Nairobi, Mombasa who have been developed.

MEMORANDUM KOLWA DEVELOPMENT ASSOCIATION - Background

60. Kolwa development Association is a registered body under section 256(2) of the Societies Act. Membership drawn from the Kokumo and Kasule found in Nyalunya and Kasule sub-locations in Kolwa central,

Kisumu East District.

61. Mandated to working together with the government agencies on behalf of Kolwa community on setting aside, preservation and maintenance of public utility land and other infrastructures.
62. It's concerned with the activities of the Municipal Council of Kisumu which have affected a section of its membership and therefore forms the basis of their memorandum and submissions;-

Prayers

63. The people of Kokumo and Kasule are found in Nyalunya and Kasule sub-locations in Kolwa central ,Kisumu East District
64. The petitioner want the Committee to use their able offices and urge the govt to:-
 - a) Give a fare hearing for justice to be done without undue delay;
 - b) Be allowed back to their land pending the determination of the matter;
 - c) Be compensated for their land, losses and damages they have so far suffered; and
 - d) Alternatively be given land title deeds like other Kenyans.

Investigation - they inform the committee of the following:-

65. Earlier they lived to the right and left of the present day Kodele-Kibos road up to Kibos railway station before they were evicted in 1976-1978.
66. Arbitrary and forcefully evicted by the then Chief the late Mr. James Onunga through a government order they were to be compensated.
67. 102 families evicted translating to 500people affected remain IDPs in the land to date.
68. Land adjudication process had not reached these places at the time of eviction hence did not acquire title deeds for their parcels, till later in 1977.
69. The chief actions were guided by the Gazette Legal Notice No.3400 of 19th November 1976 and the set areas as per the notice shouldn't

have affected the Central Kolwa location.

70. Evictees have used several avenues to address the matter but no success

- a) Kokumo people realized that the land was still idle and so they resettled in 1981;
- b) In 2011 Kisumu Municipal Council with help of Administration Police and Council Askaris evicted them;
- c) Crops were destroyed and people were arrested pending prosecution;
- d) people of Kokumo have approached the matter soberly and want their rights; and
- e) Other govt institutions have communicated with Kisumu Municipal Council warning all the 175 Council in this country and members of public against sale of council properties.

71. Established facts are:-

- a) Nyalunya and Kasule people were illegally evicted
- b) The late chief Mr. James Onunga and the then DC Kisumu District acted beyond the boundaries as specified in the Kenya gazette
- c) At the time of eviction the area under Nyalunya and Kasule sub-location had not been adjudicated
- d) This exposed their land to potential land grabbers
- e) Atrocities committed to the kokumu people include
- f) Illegal and forceful eviction denied economic and human rights
- g) Denied justice and air hearing, constitutional rights and subject to abject poverty
- h) Denied ancestral rights, identification and status.

72. FINDINGS, OBSERVATIONS AND COMMENTS

- 13 Plan to extend the boundaries of Kisumu Municipal Council were started in the 1960's with the government establishing a commission;
- 14 The government appointed the Ogutu Commission to look into the possibility of extending the Kisumu Municipality boundary. The aim was to make the municipality get more revenue, to be able to manage and offer health, security and other social services to the residents properly, develop its future land for development.
- 15 the Commission recommended that boundaries of Kisumu Municipality be extended to include the following areas – the whole of **Kajulu Locations**(Kadero, Konya and Wathorego), **Kolua Location**(Kasule, Nyalunya, Nyalenda, Manyatta, Bwoye and Chiga) and **sub locations of Kisumu**(Dago, Kanyakwar, Kogony, Korando, Ojola and Kanyawegisi);
- 16 There were wide consultations and meetings held and or conducted which included the leaders, interested parties and the local people of Kisumu with a view of resolving and agreeing to the need to extend the boundaries of Kisumu Municipal Council;
- 17 By Legal Notice No.3400 of November 19, 1976, the Government of Kenya compulsorily acquired the ancestral land of KIKAKO members under the Trust Land Act and Compulsorily Acquisition of Government Land Act for purposes of expansion of Kisumu Municipal Council for industrial and commercial development.
- 18 The area that were acquired for expansion, were:-
 - e) **Kisumu East location** – where Kogony/Kanyakwar clan lived along the rail from Kudho Primary School area to ASK showground. Except Mr. Orowe, the rest of the occupants then received payments as compensation and vacated the area;
 - f) **Kajulu west** – Kadero and Konya clans lived. All vacated the land on compensation in 1972.

- g) **Migosi site** – where the Kanyakwar Clan lived. All were compensated and left the land; and
- h) **Along Kibos Road** – both sides – where the Kasule, Kasagam and Kadidi. It is only Mr. Odemba who refused to accept payment and remained in the area but the rest of the former occupants received their payments as compensation and left the land.
- 19 Occupants of the land acquired by the government then which included the ancestral land of KIKAKO Members, received monetary compensation for the acquisition as provided for under the Trust Land Act, Cap 288, Laws of Kenya, the then District Commissioner identified all the people who had interest on the land with the help of the local chiefs for purposes of compensation.
- 20 Between 1977 – 1979, the Ministry of Land and Settlement then established adjudication sections in the areas recommended to be covered by the expansion. Therefore there is no need to initiate a process of adjudication under the Land adjudication Act and proceed to issue titles under the Registered Land Act to the original owners of the ancestral land.
- 21 Complaints for underpayment and omissions were received mainly related to buildings and other improved structures.
- 22 Under the Public Authority Limitation Act, Cap 39, the occupiers were permitted to file any objections, complaints and or petitions in respect of the acquisitions but there exist no record of such objections or petitions. Specific complaints were referred to the Provincial Agricultural Board for arbitration and were sorted out.
- 23 Disputed land which were acquired originally by the Government of Kenya on Behalf of Kisumu Municipal Council was done in accordance with law and the proper procedure were followed;
- 24 KIKAKO members want to reverse compensation and ownership of land of which compensation was done to their parents. For Kanyakwar Clan which consist of Kokal, Kamenya, Kogola and Kogony Kanyimo sub clans were all in Kanyakwar Sub Location and when compensation were carried out, the only person who remained uncompensated was Mzee Orowe;

73. RECOMMENDATIONS - From the evidence adduced, the Committee recommends that the National Land Commission should investigate the issues canvassed in this petition and bring the matter to conclusion.