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**COUNTY ASSEMBLY OF BUNGOMA  
OFFICE OF THE CLERK**

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THIRD ASSEMBLY

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**REPORT OF THE COMMITTEE ON JUSTICE, COHESION AND  
LEGAL AFFAIRS ON THE PETITION BY INTEGRATED AND  
CHEBUI CAVE DWELLER COMMUNITY BASED  
ORGANIZATION ON THE NEED TO ASSIST THE IDPS AND  
EVACUATE THE 11 FAMILIES FROM CHEBUI CAVE**

**Clerks Chambers  
County Assembly Buildings  
P.O BOX 1886 - 50200**

**FEBRUARY, 2024**

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## **CHAPTER ONE**

### **1.1. BACKGROUND**

**Mr. Speaker Sir,**

On behalf of the members of the Committee on Justice, Cohesion & Legal Affairs, I hereby present to this House; the Committee's report on the petition by Integrated and Chebui cave dweller Community Based Organization on the need to assist the IDPs and evacuate the 11 families from Chebui cave which was tabled on 7<sup>th</sup> December 2023 and committed to Committee on Justice, Cohesion & Legal Affairs for processing and reporting back to the house.

### **1.2. COMMITTEE MEMBERSHIP**

**Mr. Speaker Sir,** the Committee on Justice, Cohesion & Legal Affairs as currently constituted comprises the following Members;

1. Hon. Jacob Psero	Chairperson
2. Hon. Everlyne Anyango	Vice chair person
3. Hon. George Makari	Member
4. Hon. Francis Chemion	Member
5. Hon. Everlyne Mutiambu	Member
6. Hon. Jeremiah Kuloba	Member
7. Hon. Timothy Chikati	Member
8. Hon. Edwin Opwora	Member
9. Hon. Sheila Sifuma	Member
10. Hon. Idd Owongo	Member
11. Hon. Linda Kharakha	Member

### **1.3. THE MANDATE OF THE COMMITTEE**

**Mr. Speaker Sir,** the mandate of the Committee is outlined in Standing Order 213& 225(1)(2) as follows:

- a) Carry out matters of Constitutional affairs, administration of Law and Justice, including ethics, integrity, elections and human rights; and all petitions save for Petitions under Standing Order 78(5);

- b) Monitor and promote measures relating to policy and program initiatives in pursuit of Peace and County cohesion.
- c) Investigate, inquire into and report on all matters relating to inter-community cohesion in the County.
- d) Monitor and promote measures designed to enhance the equalization of opportunities and improvement in the quality of life and status of all persons, including persons who are marginalized on the basis of gender, age, disability, health status, ethnic, racial, cultural or religious background or affiliation or any other such ground.
- e) Investigate, inquire into and report on all matters relating to discrimination or marginalization of persons referred to under sub-paragraph(d);
- f) Make proposals to County Assembly including Legislative proposals for the protection, equalization of opportunities and promotion of the welfare of the groups referred to under sub paragraph (d) and
- g) Examine the activities and administration of all County Departments and statutory bodies in so far as they relate to the rights and welfare of the persons referred to under subparagraph (d)

### **Standing Order 225**

(1) Every Petition presented or reported pursuant to this part, shall stand committed to Justice, Cohesion and Legal Affairs Committee

(2) Whenever a Petition is committed to Justice, Cohesion and Legal Affairs Committee, it shall in not more than sixty Calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the House and no debate on or in relation to the report shall be allowed, but the speaker may, in exceptional circumstances, allow comments or observations in relation to the petitions for not more than twenty minutes.

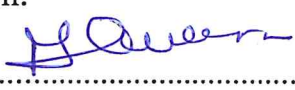
**Mr. Speaker Sir**, Pursuant to the provisions of Standing Order No. 225, the Committee on and Justice, Cohesion & Legal Affairs Committee discussed and examined the petition and hereby present the report with recommendations to this House for deliberation and approval.

**1.4 ACKNOWLEDGEMENT**

**Mr. Speaker Sir**, may I take this opportunity to thank the offices of the Speaker and Clerk of the County Assembly for their logistical support that made this exercise a success.

I also appreciate the Honourable Members and secretariat of the Committee for their commitment and dedication to process the petition by Integrated and Chebui cave dweller Community Based Organization. Further, I thank the petitioners and the respondents invited by the committee for providing crucial information that enriched this report.

**Mr. Speaker Sir**, it is therefore my privilege, on behalf of the Committee on Justice, Cohesion & Legal Affairs to present the report to the County Assembly for debate and adoption.

Signed..........Date..........

**HON.JACOB PSERO MARUGAA, MCA CHESIKAKI**

CHAIRPERSON JUSTICE , COHESION AND LEGAL AFFAIRS

## **CHAPTER TWO**

### **2.0 LEGAL BASIS FOR PETITIONS TO COUNTY ASSEMBLY**

**Mr Speaker Sir,**

The following are legal basis of Petitions to County Assembly

#### **i. The Constitution of Kenya 2010**

Article 37 outlines that every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

#### **ii. The County Government Act No. 17 of 2012**

Right to Petition to County Assembly

Section 15(1) states that a person has a right to petition a County Assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.

Section 15(2) further states that each County Assembly shall prescribe a procedure for exercising the right under subsection (1).

#### **iii. Petition to County Assemblies (Procedure) Act No. 15 of 2020**

##### **Consideration of a petition**

Section 5(1) states that the Clerk shall, if satisfied that the petition meets the requirements specified under this Act, forward the petition to the Speaker for reporting in the County Assembly.

Section 5(2) further states that a petition that is reported in a County Assembly under this Act shall be considered in accordance with the Standing Orders of the County Assembly.

#### **iv. The Bungoma County Assembly Standing Orders**

Section 223(1) states that a Petition to the County Assembly shall be

- (a) Submitted to the Clerk by the Petitioner and reported to the House by the Speaker or
- (b) Presented by a member on behalf of the Petitioner, with consent of the Speaker.

Section 225 (1) continues by stating that every Petition presented or reported pursuant to this part, shall stand committed to Justice, Cohesion and Legal Affairs Committee.

### **SUBMITTED PETITION**

**DRAW** the attention of the County Assembly of Bungoma to the following;-

**AWARE THAT**, Article 185(1) of the Constitution of Kenya 2010 stipulates that, the Legislative authority of a County is vested in, and exercised by, its County Assembly and that, the County Assembly may make any laws and exercise oversight over the County Executive Committee and any other County Executive organs.

**THAT**, there are Kenyan citizens comprising 11 families who have lived in Chebui cave for the last three years since June 2020 surviving under deplorable conditions and now, their life has been in danger since then but worse during this as Elnino begins it disastrous effects.

**THAT**, Chebui cave is located in Emmia location within Kopsiro Sub County of Mt. Elgon

**AWARE THAT**, the life of members of the said 11 cave families is and has been in danger ever since 2020 but shall be more enhanced during this ELNINO rains unless urgent evacuation measures are taken. The members of Bungoma integrated IDPS are at risk too during the feared Elnino period.

**THAT**, the families are part of a larger group which was nicknamed "Soy Panko" because they occupied about 50 acres of land around Chesakwo and Chebui Caves but they lost their parcels of land in 2004 to new comers during the regularization of Land ownership in Chepyuk phase III.

**AWARE THAT**, the displacement was so massive and considered unfair to those who were already in occupation of land, it attracted the anger of evictees who in response ,young people formed the Sabaot Land Force(SLDF) albeit to defend their land.

**AWARE THAT, the SLDF land clashes committed crimes against Humanity and in response to the crimes, the Government of Kenya moved in to flush out the illegal SLDF.**

**AWARE THAT,** The 2007/8 post –election violence too occasioned massive displacement which together with the flashed SLDF member saw more than 6,000 persons including the said 11 families being Homeless.

**THAT,** in 2010 the Government through the Kenya Forest Service admitted more than 5,000 Chepyuk evictees including the 11 families into Cheptais Forest Station under **the shamba system(Chesakwo Shamba System Program)**

**THAT,** in June 2020, all the more than 5,000 people including the **Soy Panko** who had been admitted into forest under the Shamba System were evicted by the Kenya Forest Service.

**THAT,** some of the ‘Soy Panko’ who lacked where to go went back to their original home area(The area around Chesakwa and Chebui Caves) and persuaded the new land owners to offer temporary shelter, Many were lucky that, they were offered shelter in exchange of manual labour, but the older people who were not able to offer manual labour approached the new owner of the parcel of land on which Chebui cave sits requesting that, they be allowed to shelter in the cave temporarily.**(They were allowed and that how the 11 families found themselves in the caves).**

**THAT,** the 11 families formed a Community Based Organisation-CBO to pursue their welfare needs They have all along survived on donations from well –wishers. Most of the members were born there and owned land which was allocated out to other people for simple reason of the secret ballot.

**AWARE THAT,** the land on which the Chebui cave sits was originally occupied by Naibei Chemengu who is Soy Panko but during the secret balloting Chemengu lost the land to the new owner Lea Chepsoi.

**AWARE THAT,** the new Cave (Land)-Lea Chepsoi has been considerate enough in allowing the 11 cave families to shelter in the cave, she is afraid of the consequences should people die from the dreaded elnino effects and as such, she has given a **notice to the Families to vacate her Land with immediate effect.**



**AWARE THAT**, the 2007/8 post-election violence forcefully displaced people throughout the Country the larger Bungoma has more than 20,000 internally Displaced Persons (IDPS) Homeless.

**THAT**, currently, more than 3,500 are integrated in local communities but at least more than 400 who have formed a Community Based Organization namely Bungoma Integrated CBO through which they address their welfare needs. About 87 of them have built makeshift houses if and then Elnino strikes, the makeshift houses shall be demolished.(Two houses have already been demolished.)

**AWARE THAT**, The Plight of these families was aired by Citizen TV and NTV, YouTube Channel ' The sad story of Mt. Elgon cave dwellers'.it was also reported in the print media the (Daily Nation of 13<sup>th</sup> and 28<sup>th</sup> December 2022 and Taifa Leo.

**AWARE THAT**, the Kenya National Commission on Human Rights(KNCHR) visited the CAVE and filed a report on 27<sup>th</sup> February 2023 requesting the County Government of Bungoma to find a permanent solution for the cave families.

**WHEREAS Article 21(3)** of the Constitution of Kenya provides that, all state organs and all **public officers have the duty to address the needs of vulnerable groups within their society**

**AWARE THAT**, His Excellency the Governor of Bungoma is fully informed of the unfortunate state of the 11 families as in late February 2023 , he mandated the Director of special programs to find a lasting solution to evacuate the families from the cave, but more than 7 months down the line, the Director has not even consulted with the victims for the purpose of making them aware of the plans if any to evacuate them out of the cave.

**AWARE THAT**, the disastrous Elnino related rainfall has begun and has already caused havoc. On 4<sup>th</sup> October 2023 at Cheseker village in Chesikaki Chemondi sublocation, one Peter Chenge was displaced from his farm house by the heavy floods, In the same area at chemalia cave, a boulder rolled down the Hill demolishing a house belonging to one Lily Chematia who escaped death by a whisker. The two are in the cold and thus, this petition is aimed at urging the County Assembly to intervene.

**WHEREAS, Section 7 of the IDPS ACTS NO. 56 OF 2012** states that; “Subject to the Constitution, the Government shall put in place measures and structures to prepare for emergency disaster and mitigate its consequences”.

**WHEREAS, Section 8(3) of the IDPs ACTS NO. 56 OF 2012** provides that, in formulating programs for assistance and protection, the government shall ensure that, consultation is made with the Internally Displaced Persons.

**AWARE THAT,** there is established a Disaster Management Board within the County Government of Bungoma yet there has been NO and indication that, the said Board id seized of the plight of the 11 families and others who already have been affected by heavy rains and are on the verge of losing their life under the **ELNINO** threat.

**WHEREAS Article 42** of the Constitution provides that every person has the right to a clean and healthy environment which, the cave dwellers are also entitled to despite their status in society.

**WHEREAS Article 43(1)** provides for the ECONOMIC & SOCIAL RIGHTS thus states, every person has the right:

To the highest attainable standard of health, which includes the right to health care services, including reproductive health care;

To accessible and adequate housing and to reasonable standards of sanitation

To be free from hunger, and to have adequate food of acceptable quality

To clean and safe water in adequate quantities;(e ) to social security; and ( f ) to education, the said families herein are enjoying none of the listed rights

**THAT,** a permanent solution to the plight of said families is through the provision of a parcel of land for them and the subsequent evacuation

**AWARE THAT,** the County Government is capable of allocating a parcel of public land on which to settle the families as article 62(2) of the Constitution of Kenya 2010 provides that, Public land shall vest in and be held by a County Government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission

**THAT**, Section 12(1) (b) of the land Act no 6 of 2012 provides that, whenever the County Government is satisfied that it may be necessary to allocate the whole or part of a specific public land, to a targeted group, the county executive committee member responsible for matters relating to land shall submit a request to the National Lands Commission for the necessary action **TO AMELIORATE DISADVANTAGED POSITION** of persons or the group.

**AWARE THAT**, there exist a total of 31 public utilities in Chepyuk phase II and another 38 in Chepyuk phase III all earmarked for various institutions including market centres.

**AWARE THAT**, Chepyuk Phase II alone has a total of 5 utility plots earmarked for market centres with a total of more than 60 acres of land whereas Chepyuk III has 8 public utilities earmarked for market centres with total acreage of over 95. Most of the markets have not been established leaving the land either lying fallow or being used by those who have opportunity.

**AWARE THAT**, despite Petitions to the County Government to either temporarily or as a permanent solution, allocate a parcel of land out of the public utilities, there has been no satisfactory response.

**WHEREAS THAT principle 3(2) provides, Internally Displaced Persons IDPs have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.**

**THAT**, principle 6(2)(d) requires that, when the safety and health of the people is at risk, they be evacuated.

**WHEREAS the County Assembly shall be performing a Godly function it shall go down in the History of Kenya it shall be applauded by the international Community as result of its intervention to save the life of the 11 families and restore their Human dignity as contemplated in the Constitution of Kenya 2010 as the circumstances surrounding their eviction through the SLDF and the 2007/8 violence attracted the attention of the international Community.**

THAT. All matters in respect of which the petition is raised is not pending before any court of law or constitutional body.

### **PRAYERS BY THE PETITIONERS**

- a) The County assembly through its relevant committee does visit the 11 cave families to assess the situation on the ground in order to arrive at an informed decision
- b) The County assembly does summon the Bungoma County disaster Management Board to appear before it for purposes of ascertaining its preparedness to manage and subsequently mitigate the effects of Elnino rains which already has caused havoc in hotspot areas. The move will help reassure Bungoma residents of their safety during the heavy rains.
- c) The County assembly makes or causes the County Government to make urgent plans to evacuate the 11 families out of the cave by allocating them at least 22 acres out the numerous hectares reserve for public utilities in Chepyuk I, II and III 96 meant for public utilities within Bungoma County which the County Government shall deem fit.
- d) In the event the County Assembly successfully causes the said allocation of land as prayed, the County Government through the Department of special programs do allocate money to construct temporary structures to shelter the families on the allocated land.
- e) In the event the allocation of land is unsuccessful as prayed, the Assembly does cause the County government through the department of special programs to urgently allocate Ksh 4.5 million to purchase 7 acres of land which the Petitioners herein have already identified. In the alternative, a **Rescue centre for the said IDPs** is established urgently.
- f) In the event ELNINO RAINS fail to be realized, the County Assembly does cause or makes the County Government to use funds meant for Elnino in resettling the Cave families.
- g) In the event the families living in the caves are successfully evacuated, the County Commissioner does order the closure of Chebui cave to avoid opportunists getting back to the cave to attract sympathy.

- h) The County Assembly causes the formation of a multi sectoral committee in order to vet profile and come up with a county data base of the victims of Elnino effects if and when it happens to avoid the influx of fake IDPs upon the first humanitarian support is done.
- i) **THAT** any other action which the County Assembly of Bungoma may consider necessary in protecting and enhancing the Rights of IDPs in this County.

### **FACT FINDING TO CHEBUI CAVES**

The Committee went for fact finding on Monday 22<sup>nd</sup> January 2024 and discovered that the terrain to the cave is bad. It took the Committee approximately one hour to go uphill where the cave is located.

There are 11 families living in the caves as stated in the petition, they claimed to have own land near the Chebui cave phase III before subdivision. In 2011-2019 they lived in the forest during shamba system and constructed manyattas which were later burnt by the Kenya Forest Service in 2020, then they moved to Chebui cave within Chesokwo forest land.

The families eventually ended up in Chebui cave which is in private land owned by Mrs Leah Chemengu who has the allotment letter. The living conditions in the caves are deplorable as the families lack basic human needs.

They stated that they missed land allocation because they did not have money. One of the elders showed us a ballot paper allocated by a surveyor during resettlement. The families said that they are ready to be resettled anywhere in Kenya by the government and do not have any restrictions whatsoever.

### **SUBMISSIONS BY CHEBUI PETITIONERS**

The Committee received 17 petitioners from Chebui cave and Integrated , however only 7 Petitioners were interrogated on 18<sup>th</sup> January 2024 at the County Assembly

chambers .They had a civil activist and human rights defender who provided leading questions as follows:

***First Petitioner (Steven Cheptot)***

Why were you called at Kopsiro?

Families were called to Kopsiro for vetting by the government so that they are resettled , the petitioner states that he had twenty acres of land which was subdivided.

What shows you owned the land?

The ballot number S0025/025 CHEMTA

After loosing land where did you go?

We moved to the forest where shamba system was allowed back then by the government. However, in 2020 we were evicted from the forest by the government where property was destroyed. Having no place to call home ,we ended up in the cave owned by Mrs Leah chepsoi given land by the government as she has the allotment letter.

***Second Petitioner (Robin )***

The first petitioner is the biological father

He was going to school and still did not understand what was going on, they missed land during vetting as the parents did not have money for bribery, that most of those given land were not locals, out of 7000 only 1732 were given land because they had money, 352 were resettled in Tranzoia , 56 at Saria the remainder formed a group to beg for shamba system.

Vetting, secret ballot and post-election violence made them to lose their land to foreigners. SLDF was formed to fight for the rights of those who lost their land.

On 22<sup>nd</sup> June 2020 they were removed from the shamba system by the chief and nyumba kumi officials who are government officers and their properties including manyatta and crops set on fire which were never compensated.

They met with their current human rights activist who filed a petition at Environmental Court in Bungoma petition no. 03/2020 seeking orders to stop forest

service from evicting the people. The orders were granted by the court but they were not complied with.

When asked for the evidence of bribery during vetting, he answered that the mother is the witness.

On why they chose to live in the cave of all the places the petitioner answered that that is their ancestral property and they did not want to move further.

***Third Petitioner (Jacob Kimutai, Chair Chebui cave)***

Life in the cave is unbearable, they had received help from donors in Nairobi who brought them clothes and food at Kimama which is the nearest centre to the cave in 2021. In 2022 they wrote a letter to the H.E. Governor of Bungoma who sent the director special programs with food donations, 20 litres of oil for each of the families, 22 bags of maize, 22 bags of beans.

The director special programs promised to resettle the dwellers from the caves and bursaries for school going children, she named a newborn baby found in the cave Karen after her own name and provided basic needs to the mother.

Several media houses have visited the cave to show the plight of the people living there, the number has declined from 2020 as some went to live with friends and in towns to look for employments.

***Fourth Petitioner (Rose Yego)***

Mother to four boys who have their families living in the caves

Ladies may meet with their parents in law which is a taboo, that the same water they use for cooking is also for washing posing a health hazard. The cave dwellers have to bath at night for privacy purposes as during day time they can be seen.

Life is difficult for married couples as the cave has no door and they have to get conjugal rights in the bush where it is risky, wild animals can easily access the cave as it is never locked their only door is darkness, while receiving aid from different donors, neighbours threatened to burn them in the caves.

### **Submissions by Bungoma Integrated Internally Displaced Person's Community Based Organization (CBO)**

Are Internally Displaced Persons (IDPS) who live within Bungoma County with over 2,600 members. The group wrote to the H. E the governor Bungoma County on 16<sup>th</sup> January 2023 requesting for Humanitarian assistance, empowerment of the IDPs who have never been compensated or resettled since 2007 post-election violence. They also wrote a letter to the H.E Women representative of Bungoma on 23<sup>rd</sup> January 2023 for empowerment and allocation of bursaries to their children. The leader requested for Kshs 400,000 from the County Government of Bungoma to assist the CBO.

### **SUBMISSIONS BY RESPONDENTS**

#### **LETTER FROM CHIEF EMIA LOCATION**

That there are 11 families living in a cave called Kupcheby in Korngotuny Sub location, Kubchebuk village, this people entered these caves in the year 2011 as they were not captured in resettlement process, later they entered in shamba system in Chesokwo forest to cultivate. In 2020 they were evacuated from the forest as they had gained access without permission from the forest department, the 11 families went back to the cave.

The 11 families formed a C.B.O called Chebui cave to attract donors and well-wishers to support them due to vulnerability, other 99 people who were landless joined the C.B.O after forming the C.B.O the County Government saw their interest and started assisting them by providing them with food, clothing and other family basic needs, also donors have been assisting students and pupils in paying school fees, uniform and other basic needs through their patron Mr Richard.

The chief confirms that the exercise of resettlement of the year 2011, 7000 people were registered and captured went through vetting but the land was not sufficient, 1732 were allocated to phase III, 352 were taken to Tranzoia to a farm bought by the government called Perur/Patakwa farm, 53 were resettled in phase 3 called Saria



### **SUBMISSION BY DIRECTOR SPECIAL PROGRAMMES**

The leadership of the cave dwellers paid a visit to H .E the Governor on the 16<sup>th</sup> February 2023 and were thereafter referred to the directorate of special programmes for support of foodstuffs. We delivered the food stuff to the families on 18<sup>th</sup> February 2023.

The Disaster and Emergency Fund Committee approved the Elnino Contingency plan which was prepared by a multi-sectoral team. A request of KES 30 million was made in the 1<sup>st</sup> supplementary budget towards the contingency plan but this was not approved by the County Assembly.

Budgetary allocation for procurement of land is done in the department of Lands. Special programmes can only intervene on livelihood where necessary.

### **SUBMISSIONS BY CEC LANDS**

The County Executive Committee Member Department of Lands, Urban and Physical Planning was invited by the Committee via a letter dated 18<sup>th</sup> January 2024, by the time the Committee was retreating for report writing no communication was provided to the Committee

## CHAPTER THREE

### PRAYERS BY THE PETITIONERS

- a) The County assembly through its relevant committee does visit the 11 cave families to assess the situation on the ground in order to arrive at an informed decision. **Prayer sustained**
- b) The County assembly does summon the Bungoma County disaster Management Board to appear before it for purposes of ascertaining its preparedness to manage and subsequently mitigate the effects of Elnino rains which already has caused havoc in hotspot areas. The move will help reassure Bungoma residents of their safety during the heavy rains. **Prayer sustained**
- c) The County assembly makes or causes the County Government to make urgent plans to evacuate the 11 families out of the cave by allocating them at least 22 acres out the numerous hectares reserve for public utilities in Chepyuk I, II and III 96 meant for public utilities within Bungoma County which the County Government shall deem fit. **Prayer sustained.**
- d) In the event the County Assembly successfully causes the said allocation of land as prayed, the County Government through the Department of special programs do allocate money to construct temporary structures to shelter the families on the allocated land. **Prayer sustained**
- e) In the event the allocation of land is unsuccessful as prayed, the Assembly does cause the County government through the department of special programs to urgently allocate Ksh 4.5 million to purchase 7 acres of land which the Petitioners herein have already identified. **Prayer sustained**
- f) In the event ELNINO RAINS fail to be realized, the County Assembly does cause or makes the County Government to use funds meant for Elnino in resettling the Cave families. **Prayer sustained**
- g) In the event the families living in the caves are successfully evacuated, the County Commissioner does order the closure of Chebui cave to avoid opportunists getting back to the cave to attract sympathy. **Prayer sustained**
- h) The County Assembly causes the formation of a multisectoral committee in order to vet profile and come up with a county data base of the victims of Elnino effects if and when it happens to avoid the influx of fake IDPs upon the first humanitarian support is done. **Prayer not sustained**

- i) **THAT** any other action which the County Assembly of Bungoma may consider necessary in protecting and enhancing the Rights of IDPs in this County. **Prayer sustained**

## **CHAPTER FOUR**

### **OBSERVATIONS AND RECOMMENDATIONS**

#### **COMMITTEE OBSERVATIONS**

1. That there are 11 families living in Chebui cave totalling to 69 members.
2. The living conditions in the cave are pathetic and deplorable as the families are crowded and they do not have basic requirements for human survival that is food, shelter and clothing.
3. That the Director Special Programmes visited the families after receiving instructions from H.E the Governor of Bungoma County, they donated food to the families and provided medical checkup.
4. The families have already identified land among the public utilities whereby they are ready to be resettled so that they can move away from the caves if possible.
5. That the owner of the land Mrs Leah Chepsoi has given a notice to the cave dwellers to vacate her property, this will leave them landless with no place to stay
6. The Petitioners herein have already identified 7 acres of land at Ksh 7.5 million which they request the Directorate of Special Programmes to help them acquire.
7. The County Government to use funds meant for Elnino in resettling the Cave families in the event Elnino rains fail to be realized.

#### **COMMITTEE RECOMMENDATIONS**

1. **THAT** the Director Special Programmes to conduct vetting of the genuine cave dwellers before any action of compensation is taken
2. **THAT** after the vetting process is done, the Director Special Programmes to forward to the cabinet the plight of the families living in the caves with a view of providing land for resettlement of the families

3. **THAT** the directorate of special programs and the Directorate of Emergency Fund to urgently pool together and allocate Ksh 7.5 million to purchase 7 acres of land which is readily available within the locality.
4. **THAT the** directorate of Special programs to provide bursaries as earlier promised to school going children of the Chebui cave dwellers.

**ADOPTION OF AGENDA**

**MINUTES**

**APPENDICES**

## ADOPTION SCHEDULE

We the undersigned members Justice, Cohesion and Legal Affairs do append our signatures adopting this report with the contents therein.

NO.	NAME	DESIGNATION	SIGNATURE
	Hon. Jacob Psero	Chairperson	
	Hon. Everlyne Anyango	Vice Chairperson	
	Hon. George Makari	Member	
	Hon. Francis Chemion	Member	
	Hon. Everlyne Mutiembu	Member	
	Hon. Jeremiah Kuloba	Member	
	Hon. Edwin Opwora	Member	
	Hon. Idd Chamawi	Member	
	Hon. Timothy Chikati	Member	
	Hon. Sheila Sifuma	Member	
	Hon. Linda Kharakha	Member	

**MINUTES OF JUSTICE, COHESION AND LEGAL AFFAIRS COMMITTEE  
HELD ON WEDNESDAY 7<sup>TH</sup> FEBRUARY, 2024 AT VICTORIA COMFORT  
HOTEL KISUMU AT 9:00A.M**

**MEMBERS PRESENT**

1) HON. JACOB PSERO	CHAIRPERSON
2) HON. EVERLYNE ANYANGO	VICE CHAIR PERSON
3) HON. JEREMIAH KULOBA	MEMBER
4) HON. EVERLYNE MUTIEMBU	MEMBER
5) HON. GEORGE MAKARI	MEMBER
6) HON. FRANCIS CHEMION	CHAIRING
7) HON. EDWIN OPWORA	MEMBER
8) HON. SHEILA SIFUMA	MEMBER
9) HON. IDD OWONGO	MEMBER
10) HON. TIMOTHY CHIKATI	MEMBER
11) HON. LINDA KHARAKHA	MEMBER

**SECRETARIAT**

1) SALLY SOITA	COMMITTEE CLERK
2) CYRUS MARAKALU	SAA
3) BEATRICE AKOTH	HANSARD OFFICER
4) EDWARD MUSUMBA	LEGAL COUNSEL
5) SOSPETER MALABA	RESEARCHER
6) JAMES SUNDUKWA	CLERK ASSISTANT

**AGENDA**

1. Preliminaries
  - i. Prayers
  - ii. Adoption of Agenda
2. Communication from the Chair
3. Reading and Confirmation of Previous minutes
4. Matters Arising

5. Report Writing on the Petition by Integrated & Chebui Cave dwellers and Petition concerning Poor Management of the New Chesikaki Farmers Cooperative Society and Illegality of the Current office bearers

**MIN/JCLA/1/7/02/2024: PRELIMINARIES**

- **Prayer**

The meeting was called to order at 10:00 a.m with prayer from the presiding Chairperson Hon. Francis Chemion

- **Adoption of Agenda**

Agenda was proposed by Hon. Everlyne Mutiembu and Seconded by Hon. Jeremiah Kuloba

**MIN/JCLA/2/7/02/2024: COMMUNICATION FROM THE CHAIR**

The Chairperson welcomed members to the meeting and thanked them for arriving early for the report writing exercise.

**MIN/JCLA/3/7/02/2024: ADOPTION OF PETITION REPORT**

The Committee having considered the observations and recommendations, the report was unanimously adopted with the contents therein.

**MIN/JCLA/4/8/02/2024: ADJOURNMENT**

There being no other business, the meeting was adjourned at 3:00 pm, next meeting will be by notice.

**CONFIRMED BY:**

CHAIRPERSON

NAME: Hon. Jacob Psero

SIGN: [Signature] DATE: 7<sup>th</sup> February 2024

COMMITTEE CLERK

NAME: Sally Soits

SIGN: [Signature] DATE: 7<sup>th</sup> February 2024



[PUBLIC PETITION PURSUANT TO STANDING ORDER 223] BY THE BUNGOMA INTEGRATED IDPs AND CHEBUI CAVE COMMUNITY BASED ORGANISATIONS (CBOs) ON THE NEED TO ASSIST THE IDPs AND EVACUATE THE 11 FAMILIES FROM CHEBUI CAVE.

11

THE BUNGOMA INTEGRATED AND CHEBUI CAVE DWELLER COMMUNITY BASED ORGANIZATIONS

24<sup>TH</sup> OCT. 2023  
THE CLERK,  
BUNGOMA COUNTY ASSEMBLY

RECEIVED  
24 OCT 2023  
COUNTY ASSEMBLY OF BUNGOMA (LPCS)  
07 DEC 2023  
TABLED  
By: Hon. S. Speaker

20/10/23  
Committed to  
LPS  
for  
me.  
Chow

(PUBLIC PETITION PURSUANT TO STANDING ORDER 223) BY THE BUNGOMA INTEGRATED IDPs AND CHEBUI CAVE COMMUNITY BASED ORGANISATIONS (CBOs) ON THE NEED TO ASSIST THE IDPs AND EVACUATE THE 11 FAMILIES FROM CHEBUI CAVE

WE THE UNDERSIGNED Citizens of Kenya who are the officials and Members of the Bungoma Integrated IDPs and the Chebui Cave Community Based Organizations

DRAW the attention of the County Assembly of Bungoma to the following: -

AWARE THAT, Article 185(1) of the Constitution of Kenya 2010 stipulates that, the Legislative authority of a County is vested in, and exercised by, its County Assembly and that, the County Assembly may make any laws and exercise oversight over the County Executive Committee and any other County Executive organs.

THAT, there are Kenyan Citizens Comprising of 11 Families who have lived in Chebui Cave for the last three years since June 2020 surviving under deplorable conditions and now, their life has been in danger since then but could be worse during this *as Elnino* begins it disastrous effects.

THAT, Chebui Cave is located in Emmia Location within Kopsiro Sub-County of Mt Elgon.

AWARE THAT, the life of members *of the said 11 Cave families* is and has been in danger ever since 2020 but shall be more enhanced during this **ELNINO** rains unless urgent evacuation measures are taken. The Some Members of Bungoma integrated IDPs are at risk too during the feared *Elnino* period.

THAT, the 11 families are part of a larger group which was nicknamed "*Soy Panko*" because they occupied about 50 acres of land around *Chesakwo and Chebui Caves* but they lost their parcels of land in 2004 to new comers during the regularization of Land ownership in Chepyuk Phase III.

COUNTY ASSEMBLY OF BUNGOMA (LPCS)  
07 DEC 2023  
TABLED  
By: Hon. S. Speaker

Contact Person:  
Richard Mwangi

0772523079

**AWARE THAT**, the displacement was so massive and was considered unfair to those who were already in occupation of land, it attracted the anger of evictees who in response, young people formed the ***Sabaot Land Defense Force (SLDF)*** albeit to defend their land.

**AWARE THAT**, the *SLDF land clashes committed crimes against Humanity and in response to the crimes, the Government of Kenya moved in to flush out the illegal SLDF*

**AWARE THAT**, *The 2007/8 post-election violence* too occasioned massive displacement which together with the flashed SLDF member saw more than 6,000 persons including the said 11 families being Homeless.

**THAT**, in 2010, the Government through the Kenya Forest Service admitted more than 5,000 Chepyuk evictees including the 11 families into Cheptais Forest Station under ***the Shamba System (Chesakwo Shamba System Program)***.

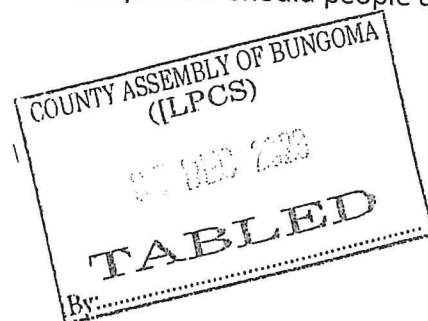
**THAT**, in June 2020, all the more than 5,000 people including the **Soy Panko** who had been admitted into the forest under the Shamba System were evicted by the Kenya Forest Service.

**THAT**, some of the "**Soy Panko**" who lacked where to go went back to their original home area ***(The area around Chesakwa and Chebui Caves)*** and persuaded the new land owners to offer temporary shelter. Many were lucky that, they were offered shelter in exchange of manual labour. But the older people who were not able to offer manual labour approached the new owner of the parcel of land on which Chebui Cave sits requesting that, they be allowed to shelter in the Cave temporarily. *(They were allowed and that how the 11 families found themselves in the Caves)*.

**THAT**, the 11 families formed a **Community Based Organization -CBO** to pursue their welfare needs. They have all along survived on donations from well-wishers. Most of the members were born there and owned land which was allocated out to other people for simple reason of the Secret Ballot.

**AWARE THAT**, the land on which the Chebui cave sits was originally occupied by Naibei Chemengu who is a Soy Panko but during the secret balloting Chemengu lost the land to the new Owner Lea Chepsoi.

**AWARE THAT**, the new Cave (Land ) – Lea Chepsoi has been Considerate enough in allowing the 11 cave Families to shelter in the Cave, she is afraid of the consequences should people die



from while land out of the dreaded Elnino effects and as such, She has given a Notice to the Families to vacate her Land with immediate effect.

**AWARE THAT**, the 2007/8 post-election violence forcefully displaced people throughout the Country, the larger Bungoma has more than 20,000 Internally Displaced Persons (IDPs) Homeless.

**THAT**, currently, more than 3,500 are they integrated in local Communities but at least more than 400 who have formed a Community Based Organization namely Bungoma Integrated CBO through which they address their wellfair needs. About 87 of them have built makeshift houses if and when Elnino strikes, the makeshift houses shall be demolished. **(Two houses have already been demolished)**

**AWARE THAT**, The Plight of these families was aired by Citizen TV and NTV, YouTube Channel 'The sad story of Mt. Elgon cave dwellers'. It was also reported in the Print Media the (Daily Nation of 13<sup>th</sup> and 28<sup>th</sup> December 2022 and Taifa Leo.

**AWARE THAT**, *the Kenya National Commission on Human Rights (KNCHR)* visited the CAVE and filed a Report on 27<sup>th</sup> February 2023 requesting the County Government of Bungoma to find a permanent solution for the Cave Families.

**WHEREAS** Article 21(3) of the Constitution of Kenya provides that, *all State Organs* and all public Officers have the duty to address the needs of vulnerable groups within their society

**AWARE THAT** His Excellency the Governor of Bungoma is fully informed of the unfortunate state of the 11 families- as in late February 2023, he mandated the Director of Special Programs to find a lasting solution to evacuate the families from the Cave, but more than 7 months down the line, the Director has not even consulted with the victims for the purpose of making them aware of the plans **if any** to evacuate them out of the Cave.

**AWARE THAT**, the disastrous El Niño-related rainfall has begun and has already caused havoc. On 4<sup>th</sup> October 2023 at Cheseker Village in Chesikaki Chemondi Sub-Location, one **Peter Chenge** was displaced from his farm house by the heavy floods. In the same area at Chemalia Cave, a boulder rolled down the Hill demolishing a house belonging to **one Lily Chematia** who escaped death by a whisker. The two are have in the cold and thus, this Petition is aimed at urging the County Assembly to intervene.

WHEREAS, Section 7 of the IDPs ACTS NO. 56 OF 2012 states that; "Subject to the Constitution, the Government shall put in place measures and structures to prepare *for emergency disaster and mitigate its consequences*".

WHEREAS SECTION 8(3) of the IDPs ACTS NO. 56 OF 2012 Provides that, in formulating programs for assistance and protection, the Government shall ensure that, **consultation is made with the Internally Displaced Persons.**

AWARE THAT there is established a Disaster Management Board within the County Government of Bungoma yet there has been **NO any indication** that, the said Board is seized of the plight of the 11 families and others who already have been affected by heavy rains and are on the verge of losing their life under the **ELNINO** threat.

WHEREAS Article 42 of the Constitution provides that every person has the right to a clean and healthy environment which right, the Cave dwellers are also entitled to despite their status in Society.

WHEREAS Article 43(1) provides for the **ECONOMIC & SOCIAL RIGHTS** thus states, every person has the right;-

- (i) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
- (ii) to accessible and adequate housing, and to reasonable standards of sanitation;
- (iii) to be free from hunger, and to have adequate food of acceptable quality;
- (iv) to clean and safe water in adequate quantities; (e) to social security; and (f) to education, the said families herein are enjoying none of the listed rights.

THAT, a Permanent solution to the plight of said families is through the provision of a *parcel of land* for them and the subsequent evacuation.

AWARE THAT, the County Government is capable of **allocating** a parcel of public land **on which to settle the families** as Article 62(2) of the constitution of Kenya 2010 provides that, Public land shall **vest in and be held by a County Government in trust for the people** resident in the county, and shall be administered on their behalf by the National Land Commission

THAT, Section 12(1) (b) of the land Act no. 6 of 2012 provides that, **whenever the County Government is satisfied that it may be necessary to allocate the whole or part of a specific public land, to a targeted group, the county executive committee member responsible for**

*matters relating to land shall submit a request to the National Lands Commission for the necessary action TO AMELIORATE DISADVANTAGED POSITION of persons or the group.*

AWARE THAT, there exist a total of 31 Public utilities in Chepyuk Phase II and another 38 in Chepyuk Phase III all earmarked for various institutions including Market Centers.

AWARE THAT, Chepyuk Phase II alone has a total of 5 Public Utility plots earmarked for Market Centers with a total of more than 60 acres of land whereas Chepyuk III has 8 Public Utilities earmarked for Market Centers with total acreage of over 95. Most of the markets have not been established leaving the land either lying fallow or being used by those who have opportunity.

AWARE THAT despite Petitions to the County Government to either temporarily or as a Permanent solution, allocate a parcel of land out of the Public Utilities, there has been no satisfactory response.

WHEREAS THAT, Principle 3(2) provides, internally displaced persons (IDPs) have the right to request and to receive protection and humanitarian assistance from these Authorities. They shall not be persecuted or punished for making such a request.

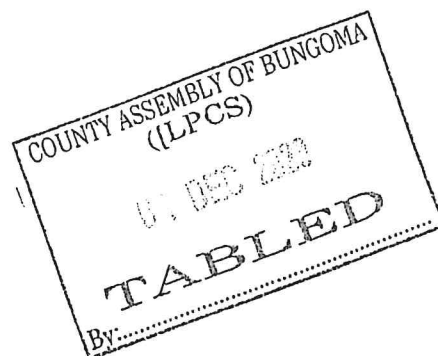
THAT, Principle 6(2) (d) requires that, when the safety and health of the people is at risk, they be evacuated.

WHEREAS this County Assembly shall be performing a Godly function, it shall go down in the History of Kenya it shall be applauded by the International Community as a result of its intervention to Save the life of the 11 families and Restore their Human dignity as contemplated in the Constitution of Kenya 2010 as the circumstances surrounding their eviction through the SLDF and the 2007/8 violence attracted the attention of the International Community.

THAT, all the matters in respect of which the petition is raised is not pending before any court of law or constitutional body.

NOW THEREFORE, your humble Petitioners;

PRAY that the Bungoma County Assembly;-



- a) The County Assembly through its relevant committee does visit the 11 Cave families to assess the situation on the ground in order to arrive at an informed decision.
- b) The County Assembly does summon the Bungoma County Disaster Management Board to appear before it for purposes of ascertaining its preparedness to manage and subsequently mitigate the effects of Elnino rains which already has caused havoc in hotspot areas. The move will help reassure Bungoma residents of their safety during the heavy rains.
- c) The County Assembly makes or causes the County Government to make urgent plans to evacuate the 11 families out of the Cave by allocating them at least 22 acres out the numerous Hectares reserved for Public Utilities in Chepyuk I, II and III 96 meant for public utilities within Bungoma County which the County Government shall deem fit.
- d) In the event the County Assembly successfully causes the said allocation of land as prayed, the County Government through the Department of Special Programs do allocate money to construct temporary structures to shelter the families on the allocated land.
- e) In the event the allocation of land is unsuccessful as prayed, the Assembly does cause the County Government through the Department of Special Programs to urgently allocate Ksh. 4.5 million to purchase a 7 Acres parcel of land which the Petitioners herein have already identified. In the alternative, a **Rescue Centre for the said IDPs** is established urgently.
- f) In the event ELNINO RAINS fail to be realized, the County Assembly does cause or makes the County Government to use the funds meant for Elnino in re-settling the Cave Families.
- g) In the event the families living in the Caves are successfully evacuated, the County Commissioner does order the closure of Chebui cave to avoid opportunists getting back into the Cave to attract sympathy.
- h) The County Assembly causes the formation of a mult -sectorial committee in order to Vet, profile and come up with A County Data Base of the victims <sup>OF ELNINO</sup> Elmina effects if and when it happens to avoid the influx of fake IDPs upon the first humanitarian support is done.

1/10/11

i) THAT, any other action which the County Assembly of Bungoma may consider necessary in protecting and enhancing the Rights of IDPs in this County.

And your Petitioners will forever pray.

S/NO	NAME	ORGANIZATION	DESIGNATION	ID NO.	PHONE NO.	SIGN
1.	RICHARD MASINDE	BICBO/CHEBUI	PATRON	7589492	0722523009	[Signature]
2.	HENRY S. KHAMARA	"	CHAIRMAN	9489479	0708773801	[Signature]
3.	EDS W. SIKUKU	"	SECRETARY	2085572	0723140039	[Signature]
4.	LOICE A. KUTETE	"	TREASURER	2703222	0713133841	[Signature]
5.	TERESA JUNIA	"	MEMBER	8406369	0719141246	[Signature]
6.	JAMILA MUTHONJA	"	"	"	"	"
7.	RICHARD INAINGO	"	"	5735005	0716779236	[Signature]
8.	GEORGE JUNIA	"	"	2190007	0740748308	[Signature]
9.	BUXTON ONDZI	"	"	7908666	0703889023	[Signature]
10.	EMILY MAKOKHA	"	"	2445223	0712886069	[Signature]
11.	MIRLET BARASA	"	"	37066846	0718214532	[Signature]
12.	RONALD WAFUKA	"	"	4399719	0714318500	[Signature]
13.	TEKLA NANYAMA	"	"	7602503	0742302558	[Signature]
14.	MARGARET KIGARUZI	"	"	20882961	0795179667	[Signature]
15.	JESSY WANGUTUS	"	"	5124023	07	[Signature]
16.	MARTIN KHAMBA	"	"	9102035	0717590771	[Signature]
17.	PHILIS MURAKA	"	"	1178782	0726390809	[Signature]
18.	PETER BIKETI	"	"	20540345	0723122462	[Signature]
19.	GREGORY WAMUKOTA	"	"	20523048	070078722	[Signature]
20.	MWANGI WACHARA	"	"	5551554	0723132779	[Signature]
21.	NARITA KHASA	"	"	23318513	0757426143	[Signature]
22.	SAMMY WIKERA	"	"	21100533	0711831623	[Signature]
23.	ZAINAB KAPCHANGA	"	"	6078750	0702909024	[Signature]
24.	LILLIAN SAKWA	"	"	5982909	0795748945	[Signature]
25.	RUSPA KHWAKA	"	"	4366332	0719386749	[Signature]
26.	MARK WIKERA	"	"	38629755	0748847968	[Signature]
27.	EMILY CHEROP	"	"	20416021	073848043	[Signature]
28.	JACINTA CHEROP	"	"	7903416	079371433	[Signature]
29.	SABRUS NAMUKONGOD	"	"	2676674	078409877	[Signature]
30.	JOSEPH MASINDE	"	"	13718196	0795200460	[Signature]

[PUBLIC PETITION PURSUANT TO STANDING ORDER 223] BY THE BUNGOMA INTEGRATED IDPs AND CHEBUI CAVE COMMUNITY BASED ORGANISATIONS (CBOs) ON THE NEED TO ASSIST THE IDPs AND EVACUATE THE 11 FAMILIES FROM CHEBUI CAVE.

31.	RABBIT KIPTEGO	CHEBUI	SEC	2505662	0712805679	POC
32.	HELLEN CHEBET	CHEBUI	TR	20202174	0790745232	HLI
33.	STEVEN CHEPTOT	"	Member	933038	071511740	
34.	ROSE TEGO	"	"	7991110	0702118291	
35.	RISPA C. MARRAU	"	"	51257336	0751740942	
36.	SOLOMON CHESEJO	KOCSIRO	M.	5530851	0719192938	JOSEPH

DATED THIS 24<sup>th</sup> DAY OF Oct YEAR 2023

COUNTY ASSEMBLY OF BUNGOMA  
(LPCS)  
T. DE 223  
Tabled  
By.....