Race against Extinction

The Plight of Indigenous Women and HRDs in Kenya's Embobut Forest

The National Coalition of Human Rights Defenders - Kenya

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Glossary

ACHPR	African Commission on Human and Peoples' Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CFAs	Community Forest Associations
EU	European Union
FGDs	Focus Group Discussions
FPIC	Free, Prior and Informed Consent
HRDs	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPPF	Indigenous Peoples Planning Framework
IDPs	Internally Displaced Persons
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
KFS	Kenya Forest Service
NCHRD-K	National Coalition of Human Rights Defenders – Kenya
NRMP	Natural Resource and Management Project (World Bank-funded)
NGOs	Non-Governmental Organizations
REDD+	Reducing Emissions from Deforestation and forest Degradation programme
SGBV	Sexual and Gender-Based Violence
UNEP	United Nations Environment Programme
Water Towers	Water Towers Protection and Climate Change Mitigation and Adaptation Programme (*EU-funded)
WRHDs	Women Human Rights Defenders

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Executive Summary

The Sengwer are a minority and marginalized hunter-gatherer indigenous community that occupies West Pokot, Trans-Nzoia, and Elgeyo Marakwet Counties. They consist of 21 clans each headed by an elder. According to the 2009 Kenya Population and Housing Census, there were 33,187 Sengwer living both inside and outside the Embobut forest which covers about 12,000 hectares and is part of the Cherangany Hills Forest (one of Kenya's five major water-catchment areas).

Over the years, the Kenyan government has attempted to forcefully evict the Sengwer from Embobut under the guise of forest conservation. These forceful evictions contribute to serious human rights violations in addition to the infringement of the Sengwer's sustainable utilization of forest resources. The evictions further deprive them of their livelihood, identity, cultural survival, and forest life.

The Kenya government through the Kenya Forest Service (KFS) and other security agencies intensified forceful evictions in Embobut forest in December 2017. The Sengwer homes were torched, crops and household items destroyed and their livestock disappeared. The Sengwer community, particularly women, cried for help that hardly came. They reached out to their

friends, government, Civil Society Organizations and international partners to intervene but the evictions continued unabated.

With time however, voices of solidarity started emerging. The National Coalition of Human Rights Defenders-Kenya (NCHRD-K), Amnesty International, Forest People Programme (FPP), Kenya National Commission on Human Rights (KNCHR) among others, publicly voiced their concerns regarding the escalating human rights violations. The killing of Robert Kiprotich in January 2018 by suspected KFS officials affirmed the extent of brutality against the community. Subsequently, the EU suspended its funding for the Water Towers Protection and Climate Change Mitigation and Adaptation project citing the ongoing human rights violations and called for immediate investigation and redress.

Concerned that women continually faced serious human rights violations that were not voiced, the NCHRD-K set out for Embobut Forest in May 2018 to assess the situation.

The fact-finding team conducted Focused Group Discussions (FGDs), one-on-one interviews, and carried out an in-depth analysis of extant literature on the subject matter.

Even though there was pre-existing awareness that the fact-finding team would encounter obstacles when conducting the research, the tension between the Sengwer and KFS was palpable. Their fear of facing the wrath of the KFS on suspicion of giving out insider information about the evictions initially inhibited the respondents from speaking out. However, after much reassurance, they gained confidence and began to narrate their stories to the fact-finding team. Worse still, survivors of sexual violence feared repeat attacks or stigma from the community and complained of inadequate mechanisms for conclusively following up on reported cases at the local level.

Race Against Extinction endeavors to tell the story of the Sengwer women and to appeal for attention and intervention. It is an assertion that the rights of women must be respected and protected. It is a call for collective effort and synergy to confront ongoing human rights violations, and for a partnership by relevant stakeholders to work with the local indigenous community to ensure justice for victims, and that perpetrators are held to account.

Kamau Ngugi
Executive Director
NCHRD-K

1. Introduction

In November 2017, the women of the Sengwer indigenous community appealed for an end to forceful evictions from their dwellings in the Embobut forest by the KFS. They averred that these evictions were worsened by funds acquired by KFS from the World Bank, European Union (EU) and other conservation partners. The community called for withholding of the funds until the Kenya government "listens to and addresses the concerns of the Sengwer community."[1]

Their appeal was only heeded after a community member, Robert Kiprotich, was reportedly shot and killed by KFS on January 16, 2018 and another community member injured. The EU condemned the killing and suspended its support for the Water Towers Protection and Climate Change Mitigation and Adaptation (Water Towers) Programme. The EU also stressed that both indigenous people's rights and Kenya's water towers needed protection.[2]

[1] Milka Chepkorir (2017, November 29). *Sengwer Women of Embobut Forest Call for Help*. Retrieved from https://www.forestpeoples.org/en/environmental-governance/news-article/2017/sengwer-women-embobut-forest-call-help

[2] European External Action Service (2018, January 17). *EU suspends its support for Water Towers in view of reported human rights abuses*. Retrieved from https://eeas.europa.eu/delegations/kenya/38343/eu-suspends-its-support-water-towers-view-reported-human-rights-abuses_en

The deteriorating human rights situation of the Sengwer that commenced with the KFS security operation on 24th December 2017; the escalation of violent displacements; and the killing and shooting that took place in January 2018, roused national and international interest leading to a 14th to 23rd March 2018 High Level Fact-finding Mission (The Mission) to Embobut forest.

The Mission, led by the statutory KNCHR, and which NCHRD-K participated in, spun off nascent interest in the situation of Sengwer women as a critical population. There was concern that Sengwer women faced heightened and continued violations of their rights.

The Mission therefore sought to assess the situation of Sengwer women and Women Human Rights Defenders (WHRDs) living in the Embobut forest, whose rights, as in all other areas, are protected under national, regional and international law. It further sought their perspectives on how to address the myriad challenges they face and ensuring their inclusion in local and national discourses.

2. Legislative Protection

Regional and international legal instruments call for the protection, promotion and preservation of human rights and obligate states to take measures to respect, protect and breathe life into those rights. These rights are enshrined in several international treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[3]

Article 2 of the African Charter on Human and Peoples' Rights ("African Charter" or "Charter") states that, "Every individual should be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind."[4] They should do so safely and without any form of discrimination.

2.1 Human Rights Defenders (HRDs)

HRDs are those individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms. HRDs seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights. HRDs also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.[5]

The UN-Special Rapporteur on the Situation of Human Rights Defenders defines Women Human Rights Defenders (WHRDs) as both female HRDs, and any other HRDs who work in the defense of women's rights or on gender issues.[6] WHRDs break norms and cultural taboos based on social inequalities when they take the risk to speak out and advocate for measures to ensure the respect of human rights and the environment.

Women HRDs are susceptible to myriad risks, just like any other HRD, but are more disadvantaged because they are women. They are prone to targeted gender-specific violence and threats. More often than not, their work is often seen as challenging traditional notions on family, and gender roles. This in turn puts them in the line of fire, by the patriarchs of the society. Hence, WHRDs are often stigmatized and ostracized by the communities they live in.

2.2 Environmental Protection and Human Rights

Subject to unfavourable and discriminating government policies that relate to the environment, a significant number of indigenous people all over the world have been compelled to leave their territories and land. Subsequent to these evictions, indigenous groups have pulled away from resources and traditions that

[3] African Commission on Human and Peoples' Rights (2015). *Report of the Study on the Situation of Women Human Rights Defenders in Africa*. Retrieved from http://www.achpr.org

[4] Ibid.

[5] European External Action Service. *The EU Guidelines on Human Rights Defenders*. Retrieved from https://eeas.europa.eu

[6] United Nations Human Rights. *Women Human Rights Defenders*. Retrieved from http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HRDefenders.aspx

are crucial to their well-being and survival. Denied the opportunity to enjoy their human rights, the evicted indigenous people are left to brace violence, disease, and poverty besides being vulnerable to armed conflict. This is despite existing legal frameworks for the protection of the rights of indigenous peoples and the environment including conventions, international treaties, multi-environmental agreements (MEAs), domestic laws and environmental law.

The United Nations (UN) Conference on Human Environment held in 1972, intimated the need to enhance environmental protection as well as address human rights violations. Principle 1 of the Stockholm Declaration on Human Environment anchored the linkage between environmental protection and human rights. The Principle prescribed that, "Man has a fundamental right to freedom, equality as well as adequate conditions of life." It further stipulated that this occurs in an environment that possess the quality that supports a life of dignity and well-being, and he has a mandate of protecting besides improving the environment for the current and future generations.[7]

The 1972 conference saw the establishment of the United Nations Environment Programme (UN Environment). Chapter 23 of the Declaration established that individuals, organisations and groups should be allowed access to information related to the environment and development, in custody of national agencies.[8] The information should revolve around activities that have or are likely to substantially impact on the environment, in addition to that of environmental protection concerns. Government legislators are called upon by Agenda 21 to formulate administrative and judicial procedures to remedy actions that affect the environment that might be unlawful or that serve to infringe on human rights established in law, and to offer access to organisations, groups, and individuals with recognised legal interest.[9]

2.3 The Indigenous Communities

Indigenous communities are people, communities/societies that practice unique traditions. They retain social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. According to the UN, the most fruitful approach is to identify, rather than define indigenous peoples. This is based on the fundamental criterion of self-identification as underlined in a number of human rights documents.

Indigenous communities or persons are identified based on their cultural practices, dependence and use of natural resources, common originality with rights to ancestral land, existence of a sense of belonging and a unique source of livelihood.[10] The International Labor Organization's (ILO) Convention relating to Indigenous and Tribal Peoples in Independent

7 Dinah Shelton (2009). *Other International Developments: Common Concern of Humanity*. Environmental Policy and Law. 39/2

8 Immaculate Otieno (2014). *The Dichotomy between Human Rights-Entitlement and Environmental Policy, Rights of Indigenous Persons. A Case Study: The Ogiek Community of Kenya*. Research Paper. Institute of Diplomacy and International Studies. University of Nairobi

9 Donald K. Ashton and Dinah Shelton (2011). *Environmental Protection and Human Rights* (p. 281). Cambridge University Press

10 Center for Minority Rights Development

Countries (No. 169) 1(b) states that these are "peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions."[11] The Constitution of Kenya 2010 on the other hand describes "marginalized community" as an "Indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy."[12]

Indigenous peoples are holders of unique languages, knowledge systems and beliefs, and possess invaluable knowledge of practices for the sustainable management of natural resources. They have a special relation to and use of their traditional land. Their ancestral land has a fundamental importance for their collective physical and cultural survival as peoples. Indigenous peoples hold their own diverse concepts of development, based on their traditional values, visions, needs and priorities.

[11] Indigenous and Tribal Peoples Convention, 1989

[12] Article 260, The Constitution of Kenya 2010

3. Forest Conservations and Evictions: A History

Following rapid population growth, the use of forest resources has been increasing steadily. The sustainability of ecosystems is compromised when the demand of resources exceeds the supply capacity of the ecosystems.[13] Subsequently, policies and practices have been formulated in a bid to govern the use of these resources with a view to guaranteeing their sustainability.[14] It is postulated that the restrictions needed to sustain an ecosystem's resource supply may at times pose negative effects on the users of the resources.[15] When people are driven out of their territories for purposes of establishing or expanding the protected areas, it results to loss of community access to their land. It also leads to negative socio-economic experiences, which may include impoverishment, insecure income, and food insecurity.[16] It therefore follows that, policy formulation needs to put into consideration, the socio-economic consequences that lead to conflict and poor compliance.[17] There is also

13 Jowit, J. (2008, October 29). World is facing a natural resources crisis worse than financial crunch. *The Guardian*. Retrieved from https://www.theguardian.com

14 Anshton and Sheldon, *Environmental Protection and Human Rights*, p. 545

15 Arun Agrawal and Clark, C. Gibson, *Enchantment and Disenchantment: The Role of Community in Natural Resources Consideration* (Elsevier Vol 27,1999) pg 629—649

16 Dan Brockington and Jim Igoe, Neo*liberal Conservation: A Brief Introduction* (Conservation and Society Vol 5, 2007) pg 432—449

17 Henry K. Kosgei, The *Socio-Economic Impact of Forest Eviction: A Case Study of the Sengwer Community of the Embobut Forest,*

need to appreciate the responses of resource-users to any intended policy change as a way of ensuring effective management of the ecosystem's resources.[18]

Larsen[19] reports that the natural resources of the world are being depleted and subsequently having devastating effects on the sustainability of the planet. Protection of natural resources such as forests has been prioritized on the global agenda as a way of preserving a healthy natural environment for posterity. Forests, big and small, around the world thus become global spaces for biodiversity protection as well a carbon sequestration. However, the forests can be considered to be local places where indigenous groups live.[20] Global agendas on preservation will therefore interact with social groups that are within the state and society in question.[21] While such encounters may be smooth, there are instances where friction is unavoidable between the global programmes' aim and uninterrupted continuation of local lifestyles. It is important to note that such conflicts may not be uniform across the globe but rather, subject to the local context.[22] An important consideration is the role played by forest dwellers in degrading the forest resources.[23]

Moreover, attention has continuously been drawn to the contribution of the states, international corporations, and local elites. Nonetheless, one should appreciate that in practice, the encounter results, more often than not, in a change in the livelihood of the local communities by altering their daily actions and practices.[24] Additionally, displacement of local people through forced evictions or hindered access to resources are evident occurrences.[25] Global agendas on conservation are highly instrumental in shaping the local realities since they are essential in producing a conceptualization of nature as void of human.

Kenya (Fahamu Pan Africa Fellowship Program, 2015) page 8

18 S. A. Mukul, A. Z. M. Manzoor-Rashid, S. A. Quazi, M. B. Muddil and J. Fox, *Local People Responses to Management Regime in Protected Areas: A Case Study from Satchari National Park, Bangladesh* (Trees and Livelihoods 21 No. 2012) page 16—19

19 Signe Larsen, Threaten Forests, Thre*atened Culture: A Case Study of Subjectivities, Nature and Resistance in Embobut forest* (Lund University, Center for Sustainability Studies, 2015) 1

20 Ibid

21 Ruth Hall, Marc Edelman, Satumino M. Borras Jr., Ian Scoones, Ben White and Wendy Wolford, Resistance, A*cquiescence or Incorporation? An Introduction to Land Grabbing and Political Reactions from below* (TheJournal of Peasants Studies Vol. 42, 2015) 468

22 Signe Larsen, *Threaten Forests, Threatened Culture: A Case Study of Subjectivities, nature and Resistance in Embobut Forest* (Lund University, Center for Sustainability Studies, 2015) 1

23 D. E. Rocheleau, L. Ross, J. Morrobel and E. Malaret, C*omplex Communities and Emergent Ecologies in the Regional Afro Forest of Zambrana-Chacuey* (Dominican Republic 48) 6—7

24 K. Bosak, *Nature Conflict and Biodiversity Conservation in Nanda Devi Biosphere Reserve* (ConservSoc. 6, 2014) 211—244

25 B. Buscer, S, Sullivan, K, Neves, J. Igoe . Brockington, *Towards a Synthesized Critique of Neoliberal Biodiversity Conservation* (Capital Nat Social, 2012) 4—30

4 Resident Communities of Embobut Forest

The Sengwer are a minority and marginalized hunter-gatherer indigenous community who were removed from their lands in the late 19th and early 20th century by the British colonizers.. The community occupies present-day West Pokot, Trans-Nzoia, and Elgeyo Marakwet Counties.[26] Over the years, the Kenyan government has made attempts to evict the indigenous group from their land in Embobut forest under the guise of forest conservation.[27] These forceful evictions are human rights violations of rights of the Sengwer as well as an infringement of their rights to the customary sustainable utilization of forest resources. In addition, the evictions deprive the community the means of subsistence integral to their identity, cultural survival, and forest life.[28] It is important to note that Article 63 of Kenya Constitution 2010 prescribes that an indigenous group cannot be evicted from their ancestral territory without their Free, Prior and Informed Consent (FPIC).[29]

The Cherangany-Sengwer community has claimed rights of access and ownership to the entire Cherangany Hills as the indigenous group from time immemorial. More particularly their claims have been to Kapolet and Embobut forests. Some Sengwer people have grazing permits in Embobut forest dating back to colonial times which are regarded as title deeds. However, this only allows the individuals to stay in the forest on a temporary basis while grazing their cattle. Others, nonetheless, have their claims subject to a long-term residency and deforestation agreement especially in an area referred to as "below the road" in Embobut forest, as well as the presence of government services. There are a number of public facilities and institutions within Embobut forest, which include market centers, churches, schools, health centers, cattle dips, government offices, and recreational facilities.

Larsen (2015) notes that the case of the Sengwer is an illustration of a tussle between the state and an indigenous group. Despite the asymmetric setup of the conflict,[30] the struggle is embedded in the larger Kenyan society, and within the colonial-regime created-state that has a culturally heterogeneous population.[31] She notes that the conflict is not purely between the government and the Sengwer, but rather it is placed in a complex web of relations, such as neighboring communities and tribes, and is fueled by internal movements in the area during both the colonial and post-colonial times. Before the major eviction that took place in 2014, other communities (mostly Pokot and Marakwet), the 2007 post elections migrants, and landslide victims were living among the Sengwer in the forest. After the 2014 eviction, only the Sengwer remained in the forest.

Covering about 12,000 hectares, Embobut is part of the Cherangany Hills forest and it rises to

[26] Henry, K. Kosgei, *The Socio-Economic Impact of Forest Eviction: A Case Study of the Sengwer Community of the Embobut Forest, Kenya.*

[27] B. Buscer, S. Sullivam J, Neves, J. Igoe, D. Brockington, *Towards a Synthesized Critique of Neoliberal Biodiversity Conservation*, 4—30

[28] Henry, K. Kosgei, *The Socio-Economic Impact of Forest Eviction: A Case Study of the Sengwer Community of the Embobut Forest, Kenya.*

[29] Constitution of Kenya, 2010

[30] O. Rambsbotham, T. Woodhouse, and H. Miall, *Introduction to Conflict Resolutions, Concepts and Definitions in Contemporary Conflict Resolution* (Polity Press, Cambridge, 2005) 3—34

[31] Signe Larsen, *Threatened Forests, Threatened Culture: A Case Study of Subjectivities, Nature and Resistance in Embobut Forest*, 6

over 3,500 metres. The forest is characterized by afro-alpine vegetation that is above 3,300 m and is home to De Brazza monkey. This area forms one of the country's five major water-catchment areas. The Sengwer were traditionally a hunter-gatherer community migrating between the Cherangany forest and the adjacent plains.[32] The plains were converted into agricultural fields as well as settlement areas during the colonial times, which pushed the Sengwer further into the Cherangany Hills forest. Lynch (2011)[33] reports that the Sengwer are currently living in or adjacent to the forests in dispersed groups. Since colonial times, the Sengwer continually face the danger of forced assimilation; surrender of their customs and identity, traditional lifestyles and economies. Today, the Sengwer are involved in livestock keeping as well as sedentary farming. Their recent history involves struggles with the state over access and rights to the forest resources. In the 1990s, there was a tussle over Kapolet forest, which remains unresolved to date, and more recently, the struggle over Embobut. According to the Sengwer community spokespersons, from the 1980s to date, the Sengwer have been forcibly evicted over 20 times.

There have been periodic evictions of indigenous people in Embobut forest. The Embobut Task Force (2010) reports of 20 such evictions starting from the 1980s. Reportedly, KFS took part in evicting the Cherangany-Sengwer from Embobut forest in 2007, 2008, 2009, 2011, 2013, and 2017, with more than 500 houses torched, and crops and household items destroyed. In a bid to resolve this, and bring about general development to the community, the Sengwer sought redress from the national law courts and international networks. At the national level, their voice has made it to the table of the Commission on Land Injustices,[34] where they claim that the loss of their identity and marginalization dates back to the colonial times. In advancing their quest for recognition, the Sengwer actively use historical developments. It is vital to note that the Forest Act 2005 did not recognize forest indigenous groups' right to live and own lands in protected areas.[35] In 2007, the World Bank's Natural Resource Management Project (NRMP) began. The Sengwer welcomed the project since the Indigenous Peoples Planning Framework (IPPF) promised to deal with their land tenure rights. However, with no consultation whatsoever, the IPPF was dissolved in 2011. The NRMP went ahead to reinforce the KFS position of evictimgindigenous people from the forestlands.[36]

Despite Article 63 of the Kenyan 2010 Constitution recognizing the rights of the indigenous people, and court injunctions since March 2013 that forbid KFS from carrying out evictions, the Embobut eviction worsened in January 2014. The Sengwer are labeled as Internally Displaced Persons (IDPs) or squatters by the state. While their disposition and external pressures have had an impact on all Sengwer lands and resources, the most damaging rights violations currently, are taking place in Embobut forest. According to a Sengwer community

[32] Ibid.

[33] G. Lynch, *Kenya's New Indigenes: Negotiating Local Identities in a Global Context* (natl 7, 2011) 48—167

[34] Signe Larsen, *Threatened Forests, Threatened Culture: A Case Study of Subjectivities, Nature and Resistance in Embobut Forest*, 6

[35] Chepkorir, M., *Sengwer Forest Indigenous Peoples of Kenya: Securing Our Rights to Live in, Goven, Manage and Own Our Ancestral Lands in Embobut to Protect Our Forests - Not Evictions*, 2016.

[36] Ibid.

spokesperson, about 2,500 Sengwer households live in the forest with an estimated population of 13,500.[37] The Embobut evictions are contrary to the African Charter[38] as well as many United Nation Conventions, which Kenya is a party to. Chepkorir (2016)[39] observes that the impacts of the evictions include loss of culture, traditions, and language, school dropouts, early marriages and child labor, cultural extinctions, ethnocide, abject poverty, and continued forest destruction.

Kuto (2016)[40] emphasizes that mass evictions often take place due to development projects, ethnic discrimination, urban development, gentrification, land alienation, armed conflict among others. The forced evictions have affected the Sengwer community's socio-economic, cultural, and political life. The Embobut evictions are carried out under the pretense of conservation. Such conservation programs, nonetheless, are implemented devoid of their full involvement; consideration of the land, cultural rights and their ancestral land. With regards to the NRMP, the World Bank Inspection Panel criticized the design of the project noting that it failed to consider the risk to communities. The Panel further found that the World Bank was non-compliant with its own safety policies. In its report, they noted that the project sustained grounds for further evictions by not sufficiently identifying, addressing and mitigating the fact that KFS was committed to the eviction prior, during and after the implementation of the NRMP.[41]

Case Study: The Bwata in Rwanda

With the aim of establishing a national park and military base, the Batwa indigenous people were evicted from Nyungwe Forest in 1998. Driving out this group violated their rights. The Batwa were driven out of the Volcanoes National Park when conservation projects were initiated to come up with a sanctuary for endangered mountain gorillas. These evictions impoverished the community and saddled them with major cultural and social burdens. The Bwata's eviction began as early as 1930 when they were driven out of Bwindi, Mgahinga and Ecuyaby forests in Uganda. In 1991, further forceful evictions took place to allow the authorities to establish Bwindi and Mgahinga National Parks. While some of the victims were compensated, most were not. Consequently, the Bwata possess little land and their forest-based economic activities have been destroyed.[42] In 1995, over 80 percent of the Bwata were landless with the rest owning land equivalent to 0.04 hectares per household.

[37] Interview with a community spokespersons in May 2018
[38] Ibid.
[39] Ibid.
[40] Milka Chepkorir Kuto, *Sengwer Women Experiences of Evictions and Their Involvement in the Struggle for Sengwer Land Rights* (Forest Peoples Programme, 2016) 12
[41] Ibid.
[42] Anshton and Sheldon, *Environmental Protection and Human Rights*, 281

5. Various Actors in Conservation and Eviction

The role of the government in any society is vital in ensuring the protection and promotion of the rights of its citizens. The primary actor in the Embobut evictions was the Kenya government through the KFS.[43] The KFS collaborating with administration officers carried out the burning of houses in the forest. Nonetheless, there was involvement of other indirect actors.[44]

The evictees have mentioned the World Bank numerously, as contributing indirectly towards a government project and thus, leading to further evictions of the communities inhabiting the forest.[45] Incitement from politicians reportedly fanned the fire too. The Kenya Human Rights Commission (KHRC) reports that some local leaders have taken advantage of the situation to advance their political interests besides compensating their political supporters.

Nonetheless, the KHRC notes the role played by some leaders in attempting to mitigate the eviction by participating in various consultative meetings. The government which is better placed to develop mechanisms and structures

[43] The KHRC, *Days in the Cold: 2014 Report into the Embobut Forest Evictions*, 2014:29

[44] Milka Chepkorir Kuto, *Sengwer Women Experiences of Evictions and Their Involvement in the Struggle for Sengwer Land Rights* (Forest Peoples Programme, 2016) 12

[45] The KHRC, *Days in the Cold: 2014 Report into the Embobut Forest Evictions*, 2014:29

that guarantee preservation of human rights prior, during and after evictions, has failed to handle in any meaningful and systematic way, the fundamental problems which contribute to the destruction of the Embobut forest and ecosystem.[46] Instead of dealing with the ongoing and serious concerns of corruption in forest management, the government has blatantly denied many ordinary people due process of law by canceling and disregarding their title deeds.

The KFS, established under the Forest Act 2005,[47] is the main agency mandated with conserving, developing and sustainably managing the forest resources. Ironically, KFS is the institution that has been accused of destruction of Embobut forest and harassing the Sengwer. The Embobut conflict took place in tandem with the World Bank's NRM project which was intended to enhance the "institutional capacity to manage water and forest resources."[48] This was to be achieved through support to KFS, in order to make a shift from government-led conservation to joint management.

Larsen (2015, 23)[49] reports that, during the implementation of the NRM project, the Sengwer community issues were re-classified. There was restructuring of the NRM in 2011 and the agenda to deal with historical land disputes removed altogether. This was through deliberate categorization of Cherangany Hills forest as a place for REDD+ technical preparation activities; and change of terminology from indigenous people to vulnerable and marginalized groups.[50] According to the Sengwer, the re-classification de-legitimized their claim, as indigenous forest community dwellers to that of a right to community land use.[51]

While the Forest Act encapsulate participatory mechanism for joint forest management through the Community Forest Associations (CFAs), which is the co-management between the people living adjacent to the forest and the KFS, the Sengwer have opted not to take part in the CFAs since they consider it as an erosion of their rights.[52] The Sengwer argue that if they take part in the CFAs, they will be regarded as living adjacent to the forest as opposed to living in the forest. Taking part in a CFA will thus take away their right and recognition as an indigenous community. Classifying the Sengwer as squatters, marginalized, vulnerable, and internally displaced can thus be construed as a mechanism to legitimize the evictions from Embobut forest. This type of re-classification is defined as dispossession by de-legitimization.[53] Considering the Sengwer as non-indigenous is seen as a justification of their removal from Embobut forest, which consequently robs them of their dignity and pride thus making their traditions and culture unworthy of preserving.

46 Ibid.

47 K. Boraba, *Exploring the Link between Forests, Traditional Custodianship and Community Livelihoods: The Case of Nyambene Forest in Kenya* (for Chron 90 2014) 586—591

48 World Bank, I.P. Committee Report and Recommendations, *Kenya: Natural Resource Management Project*, 2013

49 Signe Larsen, *Threatened Forests, Threatened Culture: A Case Study of Subjectivities, Nature and Resistance in Embobut Forest*, 2015, 23

50 Ibid.

51 World Bank, I.P. Committee Report and Recommendations, *Kenya: Natural Resource Management Project*, 2013

52 Signe Larsen, *Threatened Forests, Threatened Culture: A Case Study of Subjectivities, Nature and Resistance in Embobut Forest*, 2015, 24

53 D. EL Rocheleaur, L. Ross, J. Morrobel, and E, Malaret, *Complex Communities and Emergent Ecologies in the Regional Agro Forestry of Zambrana-Chaceuey*, 2011

6. Conservation versus Human Rights

While at times the Sengwer have been viewed as squatters in Embobut forest, the community insists that Embobut is their ancestral land from time immemorial. Consequently, the evictions were carried out without free, prior and informed consent.[54] The community holds that the government has invariably alleged to evict people in a bid to protect the ecosystem. A real concern was the torching of homes, which consequently forced the Sengwer to fetch building materials from the forest in re-building new homes. The level of deforestation has been on the rise due to the burning that has gone on for a long time now.[55] Kosgei (2015)[56] suggests that allowing the community in the forest to be its custodians under the supervision of the government, is the best way to conserve and protect the forest. It is noteworthy to state that, the community has had its own by-laws on forest conservation that promote biodiversity. In addition, farming was not the original way of life for the Sengwer. From time immemorial, they have been hunters and gatherers hence did not derive their livelihood from forest destruction. Their neighbours in Trans-Nzoia introduced farming to them in recent years after they were resettled in the highlands due to landslides in the lowlands.[57]

It is evident that gross human rights violations have been committed against the evictees by the state. The Sengwer have reported burning of homes and belongings in the course of evictions. Children's right to education, shelter as well as freedom from violence characterize their daily struggles. The evictions have affected the community's livelihood through the curtailing of their economic activities such as hunting and bee keeping.

54 Henry, K. Kosgei, *The Socio-Economic Impact of Forest Eviction: A Case Study of the Sengwer Community of the Embobut Forest, Kenya.*

55 Milka Chepkorir Kuto, *Sengwer Women Experiences of Evictions and their Involvement in the Struggle for Sengwer Land Rights* (Forest Peoples Programme, 2016)

56 Henry, K. Kosgei, *The Socio-Economic Impact of Forest Eviction: A Case Study of the Sengwer Community of the Embobut Forest, Kenya.*

57 Joel Kimutai Soi, *Politics and Conservation of the Mau Forest in Kenya* (University of Nairobi, 2015).

7. The KSh. 410,000 Compensation Package

Following recommendations of the Embobut Forest Task Force, some members of the Sengwer were profiled and offered a compensation package as inducement to vacate their forest dwellings.

The compensation process was allegedly highly discriminative as the only beneficiaries were men, ignoring widows and women-headed households. It also led to disgruntled and disintegrated families – men allegedly ran away from homes to the nearby towns of Eldoret and Kitale leaving the women behind to fend for themselves and their children. Some of these families have not been reunited to date. While there was a compensation of KSh. 410,000 per family by the state, the Sengwer would prefer living in and protecting their ancestral land.

8. Violations against HRDs

It is almost a norm that in situations marred with human rights violations, those who try to raise their voices against such violations often find themselves in conflict with the perpetrators. This is not unique to HRDs in the Embobut forest. Some have had to bear the wrath of KFS. A case in point is that of John* (not his real name), a leading Sengwer HRD, who was shot at and badly beaten by KFS officers on 2nd April 2017 while taking pictures and documenting the burning and forceful evictions of the Sengwer. He sustained serious body injuries, which hamper his day-to-day life.

On January 16, 2018, a Sengwer HRD, Robert Kiprotich, was shot dead and his friend injured, arrested and taken to Chesoi Police Station. According to Amnesty International report,[58] in January 2018, the KFS fired at another Sengwer HRD as he prepared to attend a joint meeting on forced evictions between the EU and the Ministry of Environment and Forestry. On 25th April 2018, a house belonging to a community leader was razed by armed KFS officers.

After the KNCHR-led fact-finding mission that included visits to the forest and local communities, aerial assessment and meetings with state and non-state actors, it was evident that HRDs operate in very difficult circumstances as they face unending threats and intimidation.

In a meeting with senior KFS officials, there was a persistent narrative that some community actors and NGOs were "problematic" to their mission. KFS labeled community leaders as criminals and inciters, and accused them of propagating their self-interest, and portraying the country negatively to the international community. Specific mention was made of HRDs who have vocalized the concerns of the Sengwer community. They were accused of incitement, of being armed with guns and were held responsible for the poor relations between the community and KFS that resulted in the destruction of the KFS Tangul Forest Station.

KFS officials described Amnesty International and Forest Peoples Programme as purveyors of "negative publicity and misinformation." Government accounts of an incident where an HRD was shot at, injured and his equipment confiscated by KFS was confirmed, but with the KFS assertion that he had gained "illegal" entry into the forest and taken photographs without KFS permission, in essence trying to justify the violations meted against him. Forests are not a protected area in Kenya.

HRDs and community leaders have further endured a long-drawn legal battle following trumped-up charges initiated by the KFS in the guise of executing the Forest Act, with no regard to the community's indigenous claim and their documented effort to preserve their ancestral land. The team documented several arrests and criminal charges that were preferred against Sengwer community members arrested in the forest despite an ongoing case in the High Court. The court made an order on 5th June 2015 that the status quo be maintained until final the hearing and determination of the matter. However, the KFS contravenes that order and carries out violent evictions resulting in serious human rights violations against the Sengwer Community.

[58] Amnesty International, *Families Torn Apart: Forced Evictions of Indigenous People in Embobut Forest, Kenya.*

8.1 Chronology of Embobut forest evictions since 1964

1964	Cherangany Hills forest (in Elgeyo-Marakwet County) gazetted by the Government of Kenya as a national forest reserve
1975—2005	The GoK enforces the Wildlife Policy 1975, Wildlife Act 1976 and the Forests Act 2005 which consequently outlawed the traditional way of life of the Sengwer and other indigenous communities.
2007	The World Bank initiates the Natural Resource Management Project
2007—2009	The Kenya Forest Service carries out massive forced eviction of the Sengwer community living inside Embobut forest which causes a huge humanitarian disaster.
2009	Minister for Forests and Wildlife announces the formation of Embobut Task Force after visiting the forest. The Embobut Task Force meets with the community
2010	Embobut Task Force publishes its report which recommended resettlement of the communities in other parts of the country
	Kenya adopts a new constitution which makes provisions for Land and environment and The Bill of Rights; minorities and marginalized groups.
2013 Jan	The Sengwer community presents complaints to the World Bank inspection panel, about violations on indigenous peoples and displacement which caused harm and suffering to Sengwer.
2013 March	The Sengwer community files a petition at the High Court in Eldoret on 26th March 2013.The High Court Grants the community interim injunction prohibiting the evictions of the Sengwer and destructions of their properties
2013 May	The Kenya Forest Service carry out forced evictions despite the court orders
2013 Nov	President Uhuru Kenyatta visits Embobut forest and announces cash compensation to the Sengwer community
2013/14 Dec	Disbursement of the KSh. 400,000 per family
2014 Jan—Feb	Kenyan Government continues with the forced evictions
2014 April	The National Land Commission issues a statement acknowledging the Sengwer community's ancestral claim to Embobut forest.
2014—2018	Several incidents of forced evictions, destruction of properties, assault and killing of Robert Kiprotich Kibor by the Kenya Forest Service

9. The Government's Obligation

The mandatory obligation of the state is to protect, promote and respect fundamental human rights by ensuring that there are mechanisms in place to guarantee peaceful evictions with prior negotiations.[59] With the evictions having taken place, it is the responsibility of the government to profile those making claims to lack of alternative places to board. In the event that eviction is considered as the final resort, having exhausted all other possible avenues, there is need to have deliberations with the affected community.[60] In the Embobut case, adequate consultations ought to have taken place prior to the eviction exercise. Furthermore, the rights of indigenous people to inhabit forests cannot be ignored.

Kenya has a long tradition of state-led forest management and conceptualization of individuals as degrading forests through daily use[61] resulting into a history of repressive management. The Kenyan forests are under pressure with degradation taking its toll. Majority of the forest blocks were gazetted in 1908 as forest under central control (KFS 2015) and such status were upheld after independence.

It is crucial to note that the state-led management, in both colonial and post colonial eras, does not regard the rights of forest-dwelling communities. They have limited forest policies that limit local custodians' access, use and control of the forest, and thereby resulting in conflict.[62]

Embobut is located within one of the country's five water towers which are special ecosystems of indigenous forests that are vital in the nation's water supply.

With the recent decline in water flow, the government has identified environmental degradation and encroachment brought about human acts as the key causes.[63] The campaign to restore the water towers has resulted in conflicts between government and communities living within the water towers. The conflict with the Ogiek in Mau Forest Complex is another example.[64] There are similar conflicts involving the Ogiek in Mt. Elgon and the Sengwer in Cherangany Hills forest.

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59 Human Rights for Parliamentarians available at https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf

60 Joel Kimutai Soi, *Politics and Conservation of the Mau Forest in Kenya* (University of Nairobi, 2015)

61 P.O. Ongugo, *Participatory Forest Management in Kenya: Is there Anything for the Poor?*, (The Precursor for PFM Forestry, 2007) 1—10

62 Signe Larsen, *Threatened Forests, Threatened Culture: A Case Study of Subjectivities, Nature and Resistance in Embobut Forest*, 2015, 25

63 World Bank, I.P. Committee Report and Recommendations, *Kenya: Natural Resource Management Project*, 2013)

64 C. Ayoo, *Community-based Natural Resources Management in Kenya* (Manage. Environ, 2013) 531—541

10. Resolving the Embobut Forest Dispute

The Embobut forest evictions were characterized by inconsistencies, poor planning, as well as disregard of the interests of the local people. Fundamental human rights have been compromised and there seems to have been little attempts to distinguish between the bona fide settlers from illegal ones. The main responsibility of effecting the evictions lies with government[65] and KFS who are the main stakeholders. The mandate of the KFS in this regard, has been to make encroachers aware of the repercussions of their illegal actions and allow them sufficient time to prepare to move voluntarily. It is paramount to note that overlapping roles of the various legislation and policies such as the Forest Act, Agriculture Act, and Adjudication Act, Lands Act, and Constitution of Kenya 2010 in the management and jurisdiction of forests, have not promoted full and proper conservation of forests.[66]
It is vital therefore, to harmonize all these policies and attendant legislation on forests, environment, and human rights. This will ensure that conflict is avoided and loopholes that can be exploited sealed.

The Sengwer's self-identification as indigenous is instrumental in enhancing their claim for the right to the forest. The struggle to advance the Sengwer recognition and rights would not be possible without the people still living in Embobut regardless of the ongoing

[65] C. Vangen, *Evicted in the Name of Nature: The Process of Evictions and Its Impact on Local Rural Livelihoods in Mount Elgon, Uganda* (Norwegian University of Life Sciences, 2009).

[66] Joel Kimutai Soi, *Politics and Conservation of the Mau Forest in Kenya* (University of Nairobi) 2015

harassment.[67] The actions and activities on the ground are essential in providing substance to the Sengwer's claim at both national and international levels. The Sengwer's daily activities are an embodiment of the communities' subjectivities employed to highlight their claim for recognition. The Sengwer's strategy is non-violent with their engagement with the government void of violence, but one that insists on justice and dignity.[68] Subsequently, the local response depends on their network, which ensures they tap into campaigns that already exist for the indigenous people's rights.[69] The Sengwer conflict is similar to other cases where global attention is drawn towards the conflict especially when the tussle is between the government and the local people.

Calls have been made to the KFS to stop evictions, harassment and arrests of the Sengwer in Embobut forest. In addition, the government has been asked to enact laws and policies that recognize, protect and respect the rights of forest-dwelling indigenous peoples in governing, managing and owning their ancestral lands in the forests.[70] The KFS has been urged to respect the rule of law by adhering to the conservatory injunctive court order that was given in March 2013 and consequently allow the Sengwer to reconstruct their lives, traditions, homes, economies and culture.[71]

There is need for the government of Kenya to facilitate the National Land Commission (NLC) to expedite its prescribed constitutional responsibility to recognize the indigenous people's right to land. The NLC should take up the mandate of addressing the plight of the Sengwer people and work together with the indigenous community to seek sustainable solution to the Embobut forest conflict while respecting human rights.[72] Soi (2015)[73] suggests that revising the Forests Act 2005 is crucial in ensuring that it offers clarity in the current constitutional dispensation on roles, use and sharing of forest resources. The author notes that this will help in creating a sense of responsibility and subsequently enhance inclusivity in conservation efforts.

67 Signe Larsen, *Threatened Forests, Threatened Culture: A Case Study of Subjectivities, Nature and Resistance in Embobut Forest*, 2015, 32

68 D.E. Rocheleau, L. Ross, J. Morrobel, and E. Malaret, *Complex Communities and Emergent Ecologies in the Regional Agro Forestry of Zambrana-Chacuey*, 2011

69 Signe Larsen, *Threatened Forests, Threatened Culture: A Case Study of Subjectivities, Nature and Resistance in Embobut Forest*, 2015, 34

70 Chepkorir M., *Sengwer Forest Indigenous Peoples of Kenya: Securing Our Rights to Live in, Govern, Manage and Own Our Ancestral Lands in Embobut to Protect Our Forests - Not Evictions*, 2016)

71 Ibid.

72 Henry, K. Kosgei, *The Socio-Economic Impact of Forest Eviction: A Case Study of the Sengwer Community of the Embobut Forest, Kenya.*

73 Joel Kimutai Soi, *Politics and Conservation of the Mau Forest in Kenya* (University of Nairobi) 2015

11. The Plight of Women in Embobut Forest

The women in this community have suffered disproportionately compared to their male counterparts owing to their gender and status in a largely patriarchal society. Their efforts to seek help from different forums have often exposed them and their families to personal attacks. This inadvertently affects their confidence in playing their role in the struggle for the realization of the community land rights. Other violations include sexual abuse, marriage breakdown, beatings and arrests by the KFS guards, loss of their household goods through burning, and loss of food for their families.

According to Roy (2004),[74] indigenous women are often described as the custodians of traditions and cultures. They bear the prime responsibility of ensuring the culture and traditions of their people are passed on to future generations. They are also the most noticeable expression of their peoples' distinct culture. For the Sengwer women, their culture is quickly eroding, denying them ample time to pass this knowledge and tradition to their children.[75] The community has lost most of its artifacts during the evictions and to arson. In an attempt to salvage their culture, the women have re-grouped to form traditional singing groups. They have also been gathering

[74] C.H. (2014), *Indigenous Women: A Gender Perspective*, Norway Resource Center for Rights of Indigenous Peoples

[75] *The Sengwer Women Experiences on Evictions,* page 8

the remaining artifacts and keeping them in a cultural center, which is under construction, and will serve as preservation center for future generations.

In a recent meeting organized by the community and NCHRD-K, the women told of their experiences and the violations of right to education that has extended to their children as well.[76] The loss of school uniforms and books through arson by KFS agents has compounded their realization of the right to education.

There was compensation by the government of Kenya in 2013—2014, following the recommendations of the Embobut Task Force. The compensation process as earlier stated in this report was allegedly marred with corruption. Majority of the women did not benefit. Women-headed households and widows were allegedly left out. Some of them were abandoned by their husbands thus putting them in very difficult economic situations.[77] Many women are now working as laborers at neighboring communities' potato farms to be able to take care of their families.[78]

> *"We now go for waged labor which does very little to feed our families. Ever since we were evicted from the forest, we have lived in small, cold structures (other people's potato stores) with the children. There has been no life for us since we were moved out of the forest," a Sengwer woman describes (Kuto. 2016 pg 7).*

Assault and arrest of women during evictions has been documented in Embobut forest.

A Sengwer woman narrated her ordeal in 2015, "When I came out to find out what was happening, a man caught me and warned me not to scream. He covered my mouth and threw me to the ground; I remember being slapped several times and asked if I could go inside to get my belongings."

In another incident (*Families Torn Apart* pg 54), a young Sengwer woman narrated her experience of sexual abuse by the son of her host who had given them a

[76] Amnesty International's Report, *Torn Apart*, page 42

[77] Ibid. page 52—53

[78] *Sengwer Women's Experiences*, page 6. See "Testimonies of a Sengwer woman who has been assaulted and arrested by KFS."

place to stay following the evictions.[79] The young woman is still following up on her case in court amid challenges of getting the police to record her statement and prosecute the suspect. She is among the very few who have come out and are ready to defend their rights and seek justice. She says, "I will follow it up to the bitter end. If I do not win, I will say at least I tried.".

The role of women to preserve the Sengwer culture was very significant.[80] This was through roles in naming children, performing rituals, administration of traditional medicine and attending to birth. Traditionally, women were not allowed to cut trees. Furthermore, they were only allowed to pick dry wood for firewood use, and specialized herbalists, *Chesakitin*, removed just parts of a tree needed for traditional medicine while leaving the tree to continue living for future use. This way, the women undertook their daily traditional roles, yet played significant role in conservation.

The vulnerability of women to cold, diseases and even death during the evictions is of great concern. Most of those who sought medical help or primary health care during the evictions were women and children.[81] There have been instances of deaths of children and the elderly and sometimes mothers as narrated below:

> *"Since KFS evicted us from our forest, we have encountered many problems. Of course, I wanted to go to school but we cannot manage it because my family was evicted from the forest to move to a place near the road. We were to move with our animals, but due to the changed environment, they died one after the other. This meant that we lost so much and had no money for my school fees. When KFS burned our house, we slept in the cold; we did not have anywhere else to go. Before the evictions, my sister was pregnant and gave birth to a child. After evictions, she developed pneumonia. She was hospitalized for some months then died. Now I look after her baby who was then nine months old," she painfully narrates.*[82]

Besides the pain of women of witnessing their houses being burnt, there are the psychological problems they face as a result of the condition their children live in. One woman told a newspaper (*The Star*, 2016, May 19), "When it rains, we really feel for our children." . Children have withstood the worst of these evictions thus negatively affecting their current and future well-being.

The life of a traditional Sengwer woman and general life before evictions and encroachment by other communities was that of feeding the family with stinging nettles, cooked with milk and sometimes drinking cows' blood.[83] Being in the forest helps them protect their culture, access clean drinking water that they are used to and connect to their ancestral land, which holds more spiritual benefits and norms. A woman says, "We are not going anywhere, because this is our ancestral land."

79 Amnesty International's Report, *Torn Apart,* page 53
80 Ibid.
81 See *Days in the Cold* (A KHRC Report into Embobut Forest Evictions), page 27
82 See *The Sengwer, Embobut Forest, Cherangany Hills, Kenya*, Available on https//:www.youtube.com/watch?v-VqSwPhxlO-w$t=184s(3mins-3.50sec)
83 *The Sengwer, Embobut Forest Cherangany Hills, Kenya*, (141:53sec-2:40sec)

12. Key Findings

The Embobut forest has a huge cultural connection with the Sengwer community. The community has lived in the forest all their lives and it is the only place that they call home. In the past, they used to rear livestock and practice bee farming which was their main source of food. They supplemented their diet through barter trade in honey and livestock for millet and maize.

"When Kenya got independence, President Jomo Kenyatta said, "shika jembe," this is when we started farming. During his tenure as President, there were no evictions taking place however they began when President Moi came into power. The government-sponsored evictions started in the 1980's because they accused us of deforestation and practicing potato farming in the forest and which caused water shortage. They would burn our houses together with our personal belongings from 8:00 in the morning. We were forced to sleep outside in the cold but we would go back to the forest and cut mianzi (Bamboo trees) and rebuild our homes and fences." A Sengwer community member.[84]

[84] Interviews, May 2018

12.1 Forced Evictions in Embobut forest

The 2017 evictions were conducted by KFS guards who went inside the forest on 25th December and forcefully evicted the Sengwer by use of live bullets. They also set their homes on fire destroying their properties and rendering many families homeless.[85] These events garnered massive public attention through the media although most of the respondents stated that the evictions in Embobut forest started in the 1980's.[86] Since the KFS started the forced evictions, the community members reported that their homes and personal belongings were burned; livestock lost and/or stolen or devoured by hyenas in the forest.

One of the women we talked to had this to say:

"I was born, bred and got married in the Embobut forest after undergoing female genital mutilation. My children were also born in Embobut forest and they got their education in a school in the forest. We had on and off evictions until the 1980's when KFS started massive evictions. During these evictions, people got psychologically disturbed including my husband. He suffered from depression, which led to a stroke. Despite this we continued to live in the forest: KFS would come and burn our houses but we would rebuild. We engaged the KFS in a hide and seek game for a while until we decided not to build more houses but live in caves or under a canopy of trees where we would put an extension. The children would be exposed to the harsh weather, cry helplessly during evictions and some suffered from pneumonia. Therefore, we decided that women with young children should go and live outside the forest due to the health risks but the women would occasionally go in and out of the forest to take care of the livestock because they have

[85] Amnesty International, *Families Torn Apart*, page 17
[86] Focused Group Discussions, May 2018

nowhere else to go. Unfortunately, my husband succumbed to the depression/stroke and I was left to take care of our children alone," -Jane (not her real name).*[87]

Most non-Sengwer women married into the community confessed that the Sengwer did not cultivate before but survived on honey, milk, stinging nettles and wild meat. The Marakwet community and the government introduced them to the growing of maize and potatoes. Sengwer women married within the community confirmed the same. For most of them, evictions have become part of their lives. They have grown up witnessing these violations and vowed not to leave their ancestral lands as they wished to take care of their ancestors.

Lucy* (not her real name), a mother, is one of the women interviewed in order to understand her experience as a wife and mother in Embobut forest. She narrated her experience as follows:

"I settled just around but not inside the forest. Initially, I did not know about the forest but after I got married, I was introduced to the culture and traditions of the Sengwer and their relationship with the forest. When the KFS started coming to the forest we would run away and hide in caves before they got to us. Since they did not find us, they burnt our houses and personal belongings and this cycle continued for a while. Personally, I have not lived peacefully ever since I got married. People from other communities despise us once they learn that you are either a Sengwer or have been married to a Sengwer man. Our daughters cannot get married to men from other communities because they are not as well educated as our sons. When we are evicted from the forest, our children's education is also affected in that they drop out of school, get married at a tender age and in most cases the marriages disintegrate and the girls come back home with their children. In my opinion, the life of a Sengwer is very hard. We have been and still are frustrated.[88]

Mary (not her real name) stated that, "We used to live with our children in the forest in peace but nowadays we are scared of KFS. In April 2018, the KFS asked me to demolish my house but I refused so they cut a tree that was near my home with the intention of destroying my home but fortunately or unfortunately, another tree blocked it. The KFS left in rage because their mission was not successful. Later on they came back and asked me to vacate my home. I begged them for more time to gather my personal belongings but they refused. When I had left the KFS went back and asked my children to demolish my kitchen."*[89]

12.2 Effects of the evictions

Apart from injuries and deaths, forced evictions from the forest have disrupted the Sengwer family unit . Families were displaced to remote areas outside the forest. Husbands abandoned their families once they received the KSh. 410,000 compensation from the government. The Sengwer scattered to different areas across the region making it difficult for them to engage in and practice their traditions. Their language and way of life are eroding slowly as expressed by the women:

Bridget was born, grew up and married in Embobut forest. "Women in this area are not as united like the women elsewhere because when we were evicted, people scattered in different areas. Most women*

87 Interview, May 2018

88 Focus Group Discussions, May 2018

89 Interview responses by Mary* not her real name. Conducted in May 2018

are not interested in coming to such forums because they do not understand the need and are also preoccupied with farming, fetching firewood, taking care of their homes and doing manual labor. The family unit is now destroyed. We used to spend a lot of time bonding with each other as a family; children would spend a lot of time playing together in the forest while also taking care of the trees." She warns of possible extinction of the community.[90]

*"If the KFS continues with the evictions and destruction of property, some of us will not be here, the language of the Sengwer people will become extinct because their children will be living with other people, family ties will be broken," Peter**[91] *who shares similar concerns following repeat evictions.*

Magdalene…"We do not have access to clean water for cooking and drinking which was available in the forest. Women are forced to walk long distances just to get clean water because the water in this area is not clean and sometimes it contributes to diseases. The children are denied of their childhood. They can no longer play around but if they do and happen to go into someone else's land, it creates bitterness. In addition to that, we are always fearful of our animals because they stay in the forest while we live outside the forest. Every morning when we wake up we wonder whether the animals are still there, if they were eaten by wild animals, or if they've been stolen. Furthermore, we are always worried about where we live because the owners of the land might evict us at any moment. The neighboring communities despise us because news and information about us was spread in the media and also because of the KSh. 410,000 compensation we got from the government. Another challenge that the women go through is denial of their conjugal rights. Some women have been abandoned by their husbands while others who reside outside the forest have to go back into the forest to be with their husbands but at great risk."*[92]

"The life of a Sengwer woman has limited time in a day. You wake up, go to the forest to milk the cows, come back home prepare lunch, go to someone's farm to look for work and then go to the market to look for food. We do not have peace of mind."[93]

"Our main challenge is the KFS. Back in the day, the KFS never used to shoot at people instead they would burn the houses but times have changed. They, KFS, have been shooting and injuring people, which resulted in the death of Robert Kiprotich Kibor. In addition to that, they evict us from our homes in the forests, take some of our livestock and those which are left are usually killed by wild animals."[94]

"Terry* was evicted from that area by the KFS and started living with her family in rented potato stores, owned by the Marakwet, and paying KSh. 1,000 per month as rent.

"Life in the potato stores is difficult. Most of the times they are overcrowded, flooded during the rainy season and they are not safe. Raising school fees is a challenge hence most of the children who sat for their Kenya Certificate of Primary Education do not proceed to high school. The KFS should stop the evictions and allow the Sengwer to go back and live in the glades. We will implement measures that are geared towards conserving the forest such as putting parts of the forest under

90 Interview with Bridget* (Not her real name) May 2018
91 Interview with Peter* (not his real name) May 2018
92 Interview with Magdalene * (not her real name) May 2018
93 Focus Group Discussions, May 2018
94 Focus Group Discussion, May 2018

the management of different clans and stop cultivation in the forest."[95]

"When the KFS carries out their forceful evictions and destruction of properties in the forest, we lose our homes and are always forced to sleep outside in the cold. Our children end up dropping out of school for lack of school uniforms and books, which are destroyed in the evictions. Some of them opt to get married at a tender age, sire children and in some cases when the marriages fail, they bring back their children to their mothers. Other children just disappear and never come back while some engage in criminal activities. We are fearful of our children's future. A majority of them have difficulties in raising the required school fees. Our main source of income was from our livestock and honey from the bees in the forest however we became financially challenged when we were evicted from the forest and consequently lost our livestock. What will we make of our lives? Where will we live tomorrow?"[96]

12.3 The situation of the old women

The health of the old women in the Sengwer community has been affected so much by lack of honey and milk on which they survived on before the evictions. The team met one old woman (Joyce*) who has been left to stay at her daughter's home after her sons moved far away after the evictions. For her, there is literally no future for the people of her generation since most of them now live in bad health conditions and at times do starve. When asked what she sees the community in five years, she says:

"I am very old now, I am just waiting to sleep, so come say hi when I'm still alive. I do not know

[95] Interview with Terry* (not her real name) May 2018

[96] Focus Group Discussions, May 2018

about my grandchildren, they will just survive. No Sengwer used to cultivate, we survived on honey, milk, stinging nettles and wild meat. We did not know about potatoes and maize. These things were introduced when my children and their generation were growing up; they had to prepare spaces in the forest for cultivation. Their fathers never practiced this."[97]

12.4 The aftermath of compensation

Mama Sarah*, is one of the victims of forceful evictions in Embobut forest. She was born, bred and got married in the Embobut forest. She gave birth to her children in the forest where they would go to school, get their honey and traditional vegetables laila i.e. stinging nettle. She said that the conflict and harassment of the Sengwer community living in the Embobut forest started in the 1980s.[98] The KFS would harass the people, burn their houses together with their belongings and chase them away from the forest at odd hours. As a result, the families would spend the night out in the cold (by the roadside). Life became very difficult for the Sengwer community and in particular the women and the children. The children and the elderly suffered from malaria and pneumonia because of staying out in the cold, and for lack of traditional medicine, which used to be available in the forest as well as milk from the livestock and honey. There was an increase in school drop out cases for lack of school fees. Some girls would be married off, sire children and after sometime, they would separate from their husbands and go back to their mothers with their children thereby increasing the burden. In addition to that, she complained that her husband had left her with their children after receiving KSh. 410, 000 from the government. He has never come back home

[97] Interview with Mama Sarah* (not her real name), May 2018

[98] Focus Group Discussions, May 2018

although he occasionally calls to inform her that he is in Kitale or in Eldoret. She came down to the Marakwet territory where they were given space to stay as squatters. She told us:

"I miss living in the forest. We would get honey and milk for our tea but nowadays we have to wait until 2:00 PM to get milk. The children do not have anything to eat unlike before where they would eat wild fruits in the forest. If anyone got sick, they never went to the hospital instead they would use the barks, roots and leaves of medicinal trees in the Embobut forest. Furthermore, women would give birth in the forest with the help of traditional midwives. What will I do with these grandchildren if the KFS continues with the evictions in the next five years? If things become tough, I will just pack, go, and stay somewhere where I will not see them go through struggles. Perhaps I will go and get married to another man (take care of a Luhya man) where I will live a good life rather than living this troubled one."

The KSh. 410,000 compensation from the government caused many problems because the men took the money and squandered it alone without taking care of their families. They came back to us when the money was finished. It was very difficult and expensive to acquire a piece of land because the owners hiked their prices soon after we were compensated from the government."[99]

12.5 Women and Leadership

From the discussions and interviews, it was discovered that the Sengwer do not have a woman in any political leadership positions. However, there is a female Assistant Chief in the region. Irene is the only female leader from the Sengwer community. She is an Assistant Chief in Embobut "forest/region".[100] Most of the women are not educated and some of them only have a primary school education. However, the situation is changing since they decided to take their children to school so that they do not go through the challenges that the older generation went through.

The Sengwer community organizes village "barazas" and women are allowed to attend and participate although they sit at the back. Some issues affecting the community can be addressed in these gatherings in the presence of the women but when it comes to matters concerning land, women are neither consulted, nor involved. This practice is entrenched in the skewed belief that when a woman is married, she does not possess land, thus, if she is allowed to participate in land issues, then this will create conflict with her husband's brothers. Likewise, women do not take part in burial committees. This is because they are believed to be extremely emotional and would hike the funeral costs. Some married women are often not consulted by their husbands in decision-making processes especially on the selling of livestock or paying of school fees. The men would just take the cow or sheep, go to the market and sell it. They would then pay the school fees and pocket the balance without informing their wives.[101]

"For lack of education, there are no women leaders here. The people want to be led by educated people and a majority of the women do not fit this criteria. Some of them opt to get married and start a family. However, the trend is changing with most young girls currently enrolled in school so cases of early marriages are minimal. The community members usually hold barazas where they address their issues and women are allowed to attend as well as participate. Some women are often consulted

[99] Focus Group Discussions, May 2018

[100] Focused Group Discussions, May 2018

[101] Ibid.

by their husbands when making decisions concerning the family."[102]

12.6 Women's Income

"We do not have a source of income so we have to take care of our animals to get money for school fees for our children. You know if the KFS want to help us as a community, they should give us the glades. My parents, grandparents and forefathers used to live in the forest and it was not destroyed. We used to feed on honey, traditional vegetables, milk and meat from our livestock. Later on, other communities came and started potato farming in some areas of the forest and consequently we also started planting potatoes. We acknowledge that this was wrong and we have stopped carrying jembes.

"We thank God we are out to bask in the sun and get vitamin D because it has not rained today. We do not have land where we can farm, they are all chemichemi ya maji/water sources. So we basically wake up, go to the forest to milk our livestock and rest because we have nothing to do: no jobs for us…. We were chased away from the forest to come and live below the road five to six years ago by the KFS who claimed the forest is their land. Luckily, our grandfather owned land below the road and that is where we settled. Those who own cows and livestock are the only ones who go into the forest but those who do not remain below the road. I was in school when the evictions were happening and went as far as class eight because my parents did not have money for secondary education. I conceived my first child one year after finishing class eight.

First, we need your help in fighting for our rights and a place where we can live. Secondly, we need help in order to start a vegetable business that will sustain us and be able to pay school fees for our children."[103]

12.7 WHRDs

Victoria* is a vocal HRD and is engaged in advocacy within the community with a particular focus on the areas where the conflicts and evictions took place.

"When the government was compensating the Sengwer, people from other communities took advantage of this opportunity and registered themselves as Sengwer. We were nicknamed "410" because of this compensation and sometimes members from other communities would ridicule us. The KFS should stop the evictions in the forest because when people are evicted and their houses burnt, they still go back to the forest, cut other trees and rebuild their homes. In order to stop this vicious cycle, the government should give the Sengwer access to the glades and develop a partnership towards the conservation of the forest. You know sometimes the KFS cut down the trees and blame the Sengwer.[104]

[102] Focus Group Discussions, May 2018

[103] Focus Group Discussions, May 2018

[104] Interview, Victoria* (not her real name), May 2018

12.8 Cases of Sexual Harassment

Victoria… "There is that lady who was raped but she did not want the information to be made public because if her family found out, then her marriage would break apart. This means that most of the women, who are sexually assaulted, cannot come out and seek justice."*[105]

Anne* got married to a Sengwer man around the same time as Mama Sarah* and lived in Embobut forest until the time a District Commissioner called Aggrey Mutinyo was deployed in the forest.

"This is the time when our problems started and we had just had our given birth. The harassment with Aggrey Mutinyo continued for five years until the creation of KFS. When the evictions by KFS started, our husbands left us in the glades with our children. My husband abandoned me with our five children for two years and came back while I was constructing a makeshift house in the rain. He got me pregnant again with our sixth child and left after being given the KSh. 410,000 since then, he has never come back. The evictions continued after my husband left and as a result, my children are scattered all over only for them to come back and leave their children with me so that I can take care of them. When the evictions happened in the forest, my house was burnt so I took my grandchildren and ran away with them, I came back later and rebuilt my house only for the KFS to burn it again. This cycle continued until recently when the evictions got so intense that I had to come out and borrow someone's land outside the forest. On 6th of April 2018, I went to gather my animals in the forest at around 6:00 PM and when I was coming back at around 7:00 PM, I met someone in the river at some bush going up … and until now we still have the problems with the KFS."[106]

Anne's* does not know where her sons are but she has daughters who are at home with her while one is in Eldoret. Her family used to feed on wild fruits.

"We, the Sengwer, used to depend on honey, milk and stinging nettle. We were introduced to farming by other people."[107]

105

106 Interview with Anne* (not her real name), May 2018

107 Interview with Anne* (not her real name), May 2018

13 The Research Validation Meeting

On 6th August 2018, The NCHRD-K organized a meeting at Kerio View Hotel, Iten with the Sengwer women, duty bearers as well as other stakeholders with the aim of kick-starting solution-oriented conversations as well as well as share the findings of the report.

Views were sought as to whether the findings in the report represented the reality on the ground. The Sengwer community had additional recommendations to make and sought clarity on the following:

13.1 Government (National and County)

a) The Government should ensure that the two-thirds gender rule is applied in leadership positions and in employment.

b) Women should be consulted and included in decision-making processes. A case of exclusion was cited - that of the KSh. 410,000 compensation.

c) Sexual and gender-based violence is still going on against fellow Sengwer women and members of other communities. The government should provide security for the community and ensure that the perpetrators are brought to book.

d) The government should strive to create a positive narrative about the Sengwer community and spread it across the community and outside of it through mass media.

e) The Sengwer community as well as other forest dwellers should be involved in community dialogue and form partnerships with government to develop conservation strategies.

f) Forced evictions should be stopped forthwith since those they affect negatively are women and children. They are exposed to sexual violence; are abandoned by their husbands hence taking care of their families alone; and have low self-esteem since their men prefer marrying educated women from other communities.

g) The leadership should find lasting solutions to forest conservation that will respect the rights of the Sengwer community.

h) Supportive legislation should be enacted that recognizes the Sengwer as an indigenous community.

13.2 Women Representative

Hon. Jane Kiptoo Chebaibai, the Elgeyo Marakwet Women Representative, was invited to the meeting but did not attend. However, the Sengwer women shared their experiences and challenges and pleaded with her to deliver on her obligations.

a) A child from the community has been missing. The community fears that the ancestors' spirits are behind the disappearance blaming it solely on the ongoing forced evictions and the impacts thereof on their culture and traditions. Another child was allegedly

'arrested' by the KFS for six hours; he was traumatized by this experience. The community wants the authorities and leaders to help them trace the missing child.

b) Women have not been spared during the forced evictions. Some have been victims of beatings by the KFS officers when found within Embobut forest.

c) The evictions adversely affected persons living with disabilities and they are often arrested by the KFS officers. In addition, they face a myriad of challenges in accessing venues where communal issues are discussed, thus, denying them an opportunity to have their voices heard. It has also alleged that they were not consulted by the Embobut Forest Task Force during the compensation process.

d) Four children from Tangul Primary School were reportedly beaten up by the KFS officers while herding animals.

e) There is need to organize cultural events to celebrate the Sengwer culture, preserve their traditional way of life and create income-generating activities through selling of beaded jewelry.

f) Build early childhood centers in Maron in order to increase access to education for children

g) The elected Women Representative should ensure that the community is sensitized on their rights; is aware and has access to bursaries, scholarships and the affirmative fund. This will increase opportunities for women and children to access education and subsequently ensure preservation of their culture and traditions.

13.3 Deputy County Commissioner, Marakwet East

a) Mr. Stephen Sangolo appreciated the invitation to be part of the conversation on the forced evictions of the Sengwer by the KFS officers. He thanked the community, political leadership and stakeholders for being present. Mr. Sangolo noted that globally, there have been ongoing depletions of forests and a lot needs to be done to conserve the natural forests and plant more trees to avert the effects of global warming.

b) He noted that the focus on the indigenous/ marginalized communities has gained traction. However, he noted that they have a challenge in identifying who is a Sengwer and who is not. There have been cases of illegal squatters, criminals and cattle rustlers who hide in the Embobut forest and pretend to be from the Sengwer community. Mr. Sangolo indicated that there has been clarity in identifying certain groups that require affirmative action in order to support them better.

13.4 Kenya Forest Service

Mr. Rono, an Officer from the KFS gave a brief history of the Embobut Forest noting the following:

a) It was gazetted through a Proclamation Order in 1954. Embobut forest covers 21,933.5 hectares. It forms part of the Cherangany water tower and feeds several streams namely Nzoia, Maron, Kaplet, Siga and Waiwei draining in either Lake Turkana or Victoria.

b) Mr. Rono noted that the role of women in the society cannot be underestimated. He acknowledged the challenges facing women in the society as well as at the hands of law enforcers. He proposed that there is need to revisit the role of women in traditional society and the discrimination against women in leadership positions.

c) The Marakwet community has lived in Embobut forest since 1883 when they were issued with permits by the colonial government to graze their livestock during the dry season. This resulted in semi-permanent settlement within the forest. In 2009, a meeting was held by the Embobut Forest Task Force where a unanimous decision was made for all the people living in the forest to go back to the seven glades. The community members were grouped into three categories that were considered for allocation of settlement land/ compensation:

- Permit holders/Associates (Kessom, Koropkwen, Kaptiribai, Sinen, Kewabus, Kamologon, Kapkok)
- Landslide victims
- Forest Dwellers (Sengwer were the largest, Kimalas, Ogieks)

d) 75% of the Sengwer community members received compensation

e) Forest conservation should be done in a humane way that involves all stakeholders. This will resolve the animosity that exists within them and in turn change the narrative about the Sengwer community that is in the public domain. The KFS officials were also encouraged to be professional when carrying out their duties and to consider locals during the recruitment process.

f) The MCA Embobut Embolot ward, Mr. Paul Kipyatich, pledged to:

- Sponsor two Sengwer students (male and female) to a polytechnic to acquire vocations skills;
- Build and equip a medical clinic in Embobut Ward;
- Build sports centers that will nurture the young talents;
- Improve water access within Embobut ward; and
- Undertake a fund-drive and allocate resources in the county budget in order to realize the proposed development projects.

g) The community, KFS, and leaders need to have a conversation in order to address the forced evictions, human rights violations, promote co-existence with other communities and conserve the forest.

h) The duty bearers present at the meeting proposed that civil society organizations and other researchers who are interested in conducting research on the Embobut forest should engage leaders in their fact-finding mission.

i) Forced evictions in Embobut forest have been ongoing but no solution has been found and the forest is still being depleted. Therefore, the community proposed that localized solutions be sought and incorporated to address this challenge.

j) The Sengwer community should be allowed to graze their animals in the glades. They will in turn ride on the existing community leadership structures to protect and conserve the forest. Kapkok glade was cited as an example of an area within Embobut forest where forest conservation is at its best.

13.5 Office of the Senator

The Elgeyo Marakwet Senator, Hon. Kipchumba Murkomen, through his personal assistant Mr. Kipyatich stated that, he is in talks with donor partners to initiate women empowerment projects in Elgeyo Marakwet County. The community urged the Senator to be actively involved in the fight against human rights violations among the Sengwer community living in Embobut forest with the same passion he has displayed fighting the Mau Forest issue.

They appealed to the government to improve the roads in order to facilitate transportation of farm produce to the market.

Community members proposed that the National Gender and Equality Commission should be invited to listen to the issues affecting the women in the Sengwer Community and have a conversation with them on the way forward.

13.6 Conclusion

The Deputy County Commissioner Marakwet East, Mr. Stephen Sangolo, termed the meeting "very fruitful and engaging." He reported that the meeting had come up with practical homegrown solutions that were mutually beneficial. He added that the validation meeting highlighted the need to discuss partnership, occupation or regulated access to the forest with the sole purpose of conservation while respecting human rights.

In conclusion, he noted that women have an important role in the family unit as well as the society. They need to be respected and listened to since they are at the forefront of conflict resolution. He urged the women to inform relevant authorities in the event that their rights are violated. In addition, he advised the women to seek bursaries that will ensure that their children enjoy the right to education. Lastly, he called on Civil Society Organizations advocating for the rights of the Sengwer to change tactics to allow for disclosure and to seek for local solutions to the Embobut forest issue.

14 The Law and Forced Evictions

Forced evictions of indigenous communities are undeniably illegal and amount to gross violations of rights inherent to individuals and communities by virtue of them being human. No development or projects can override the rights of people to housing, education, livelihood, health and cultural practice and heritage. Below is a summary of national laws as well as regional and international instruments signed by Kenya.

14.1 The Constitution of Kenya, 2010

The Constitution of Kenya provides a very progressive framework geared towards the protection and promotion of the rights of marginalized communities. While the constitution does not necessarily make direct reference to indigenous communities, the letter and the spirit therein can be interpreted as protective of minority groups.

Article 10 of the Constitution outlines "participation, accountability, non-discrimination, social justice, inclusiveness, protection of the marginalised, sustainable development" as the requisite principles that underpin effective service delivery to Kenyan citizens.

Article 21 requires State organs to "address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, and youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities"[108]

Article 27 of the Constitution of Kenya guarantees all persons the right to equality and prohibits discrimination on grounds of ethnic or social origin, belief and culture.

Article 43 stipulates that, " Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care; accessible and adequate housing, and to reasonable standards of sanitation; be free from hunger, and to have adequate food of acceptable quality; clean and safe water in adequate quantities; social security; and education."[109]

Article 44 protects the right of every person including "indigenous people to use the language and participate in the cultural life of the person's choice. The article further states that a person belonging to a cultural or linguistic community, has the right, with other members of that community to enjoy the person's culture and use the person's language."[110]

Article 56 obligates the state to "put in place affirmative action programmes designed to ensure that minorities and marginalised groups -

a. Participate and are represented in governance and other spheres of life;

b. Are provided special opportunities in educational and economic fields;

c. Are provided special opportunities for access to employment;

[108] The Constitution of Kenya, 2010

[109] The Constitution of Kenya, 2010

[110] The Constitution of Kenya, 2010

d. Develop their cultural values, languages and practices; and

e. Have reasonable access to water, health services and infrastructure.''

14.2 The UN Declaration on the Rights of Indigenous Peoples

Article 8(2) "States shall provide effective mechanisms for prevention of, and redress for:

a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

d) Any form of forced assimilation or integration

Article 15(2) pronounces that States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of the society"[111]

14.3 The International Labor Organization (ILO) Convention 169

Article 3 stipulates that:

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned.

Article 2(1) stipulates that "Government action shall include measures for: Promoting the full realization of the social, economic and cultural rights, with respect for their cultural identity, their customs and traditions and their institutions.

Article 6(1), the Government shall consult the people concerned, through appropriate procedures and in particular through their representative institutions, legislative or administrative measures which may affect them directly.

14.4 The International Covenant on Civil and Political Rights (ICCPR)

Article 27 stipulates that… " shall not be denied the right, in community with the other members to enjoy their culture to profess and practise their own religion, or use their own language".

[111] *Indigenous & Tribal Peoples' Rights in Practice: A Guide to ILO Convention no 169*. Programme to Promote ILO Convention No. 169 (PRO 169) International Labour Standards Department, 2009 page 31.

In its General Comment No. 23 (1994) on Article 27, the Human Rights Committee stated: "State Party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation, required not only against acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party"[112]

14.5 The African Charter on Human and Peoples' Rights (ACHPR)

The Charter guarantees the right to property. The African Court judgement in the Ogiek case interprets this provision as guaranteeing the right of Indigenous Peoples to their ancestral lands. In doing so it draws on the UN Declaration on the Rights of Indigenous Peoples, which states that, "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."[113]

[112] Ibid.

[113] Amnesty International, *Families Torn Apart: Forced Eviction of Indigenous People in Embobut Forest, Kenya*, 2018

15. Needs and Aspirations

In consultation with the community, and from the research findings, the following needs and aspirations were arrived at expressing the wishes of the Sengwer as they struggle daily to navigate the difficult terrain that is forced evictions:

15.1 Change the narrative

A very negative narrative has been spun by KFS on individual WHRDs and organizations that labels HRDs as "bandits", "militants" and 'inciters", anti-development or misinforming the public and financiers of projects. The government, CSOs, conservationists, KNCHR must endeavor to propagate the position that HRDs and CSOs are advocating for rights-based approaches in conservation.

15.2 Operating space for HRDs

The WHRDs and the women continue to operate in a very difficult terrain marked by hostility on the part of KFS towards the community, arrest, assault and prosecution of women despite a court-ordered directive to stop evictions and harassment forthwith. In addition, criminal and administrative actions, harassment and negative profiling have characterized the operating space of WHRDs and CSOs in Kenya. The state must commit to respect the law, including implementation of the PBO Act and the National Human Rights Policy as well its international commitment with regard to the protection of HRDs.

Most of our children have challenges in furthering their education due to lack of school fees. So we would like the children to be awarded bursaries so that they can get education. The Sengwer are awarded a small percentage of the bursaries because they are scattered in different areas such as Maroon (Central) and Kimarech. So when the chief is awarding bursaries, he grants them to people from all communities without focusing on the Sengwer. We want the Sengwer to join hands with the government in the fight against deforestation.

Victoria (not her real name)

15.3 Remedy for WHRDs

WHRDs and community leaders who have highlighted human rights concerns among the Sengwer community have experienced persecution on account of their work through physical attacks occasioning injuries, confiscation of work tools and equipment, trumped-up charges and death. The government must institute investigations with a view to vindicate WHRDs, hold perpetrators to account, undertake reparations and ensure access to justice for victims.

15.4 Community dialogues and public participation

There is urgent need for sustained dialogue that includes various actors like the community, WHRDs, CSOs, KFS, and KNCHR. The funding partners need to be engaged to address the prevailing hostility. The key role of KFS and the community in forest conservation and the promotion and protection of human rights, respectively, cannot be separated and all actors must work within the confines of the law. The role of WHRDs and community leaders in promoting the rights of the community and respect for human rights in policy formulation and implementation of projects must be considered as complimentary to the development agenda.

If we are to be given land in another part of the country to cultivate we will not go. Our life, history and cultural practices are centered in Embobut. We have a cultural centre where we do collect and store traditional items, make jewelry from beads and sing our cultural songs. We would like you to help us find solutions to the challenges that we are facing. Maybe you could link us up with developed women groups for exchange purposes, help build polytechnics that will facilitate the learning of new skills.

Veronica (not her real name)

15.5 Women Empowerment programs

Women-empowerment programs for WHRDs are necessary in promoting their well-being beyond human rights work. It would also go a long way in motivating women especially those who have been ostracized to the point of divorce and maligning.

15.6 Litigation for SGBV cases

Litigation should be instituted for the gender-based violence meted on the Sengwer women and those at the forefront of fighting for community land rights.

15.7 Community/government partnerships

The State and its agencies should work with the community leadership and HRDs in promoting forest conservation. They should see them as enablers and not as enemies of development. The forest management and conservation agenda has to be undertaken and enforced within the confines of the rule of law.

15.8 Enact supportive laws

The government should enact laws and policies that recognize, protect and respect the rights of forest-dwelling people in governing, managing and owning their ancestral lands within the forests.

If someone gives me land to farm I will gladly get into the farm and till the land so that my children can have something to eat but we cannot farm in the forest. The forest is a source of water, honey and traditional medicine for our people while our livestock graze in the glades during the rainy season. We cannot allow people from outside to come and cut trees from our forests in addition to that, we use traditional ways to conserve the forest. There is a traditional regulation about when to take livestock to bamboo vegetation. For example during the rainy season, when the bamboo trees are growing, no one takes their livestock there since they will eat the bamboo trees hence they will not grow.

Sarah (not her real name)