

OHCHR / EWC meeting report Nakuru, Kenya 25-26 July 2016

I. Introduction

In 1973 around 400 Endorois families were evicted from Lake Bogoria and its surroundings to make way for the establishment of a wildlife sanctuary (the Lake Bogoria Game Reserve) and associated tourist facilities. Since 2011 Lake Bogoria is enlisted as a UNESCO World Heritage Site. Today, the Lake Bogoria Game Reserve is one of Kenya's most important tourist attractions and a significant source of income for the Government. Following unsuccessful efforts to resolve the situation at the national level, in 2003, the Endorois (represented by the Endorois Welfare Council) brought their case before the African Commission on Human and Peoples' Rights (the African Commission). In a decision adopted by the African Union in February 2010, the African Commission concluded that the expulsion of Endorois from their ancestral lands was illegal and that the Government had not recognised and protected the Endorois' rights to land nor provided sufficient compensation or alternative grazing land following the eviction.¹

The Commission made a series of wide-reaching recommendations to the Kenyan government, including to: recognise rights of ownership to the Endorois and restitute Endorois ancestral land; ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle; payment of adequate compensation for all the loss suffered; pay royalties to Endorois from existing economic activities and ensure that they benefit from employment possibilities within the reserve; and engage in dialogue with the Endorois Welfare Council for effective implementation of the African Commission's recommendations.

Despite the Government's initial acceptance of the decision at the time of its adoption by the African Union in February 2010, progress to implement the recommendations has been limited, with only one of six recommendations having been met. To this end, in March 2016, the UN Committee on Economic, Social and Cultural Rights expressed concern that the implementation of the decision of the African Commission's decision in the Endorois case has been long delayed. While noting the establishment of a Task Force on the implementation of the decision of the African Commission in September 2014, the Committee regretted that the Endorois are not represented on the Task Force and have not been sufficiently consulted on its work.² The Committee recommended that the State party implement, without further delay,

¹ African Commission on Human and Peoples' Rights decision 276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya

² E/C.12/KEN/CO/2-5 (2016), paragraph 15

the Endorois decision and ensure that the Endorois are adequately represented and consulted at all stages of the implementation process. It also recommended that the State party set up a mechanism that will facilitate and monitor the implementation, with active participation of the Endorois.³

II. Meeting objectives

An interesting opportunity in relation to the African Commission's recommendations is the current initiative to develop a management plan for Lake Bogoria – a process coordinated by Baringo County Government and Kenya Wildlife Service with the participation of the Endorois community. To date, this process has included a series of consultations with the Endorois on how to best ensure the long-term sustainable management of Lake Bogoria.

New paradigms of community participation in the management of resources have demonstrated significant gains, including better rights and resource security for local communities and fairer platforms for land-based development transformations. Importantly, Kenya's progressive legislation, notably the Wildlife Conservation and Management Act 2013, envisions co-management schemes of wildlife conservation and management, and partnerships with local communities are increasingly being explored at the national level.

To further the ongoing discussions around a management plan for Lake Bogoria Game Reserve, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Endorois Welfare Council (EWC) hosted a two-day meeting in Nakuru on 25 and 26 July 2016. This meeting involved participants ranging from governmental officials, Endorois community representatives, staff from the Kenya National Human Rights Commission, non-governmental organizations, including the International Union for the Conservation of Nature and East Africa Wildlife Society, and the United Nations Environmental Programme. In addition to revisiting the decision of the African Commission and the progress to date on implementing the decision, the meeting considered how the African Commission's recommendations and the proposed management plan could work in unison.

III. Summary of meeting

A. Day 1

In his opening remarks, Mr. Wilson Kipkazi, Executive Director of the Endorois Welfare Council, welcomed the participants and gave a brief history of the Endorois struggle to regain their ancestral lands and protect their community rights, with a view to securing education and development. He further acknowledged the support of OHCHR to facilitate this stakeholders meeting, with the aim that a solution for the

³ E/C.12/KEN/CO/2-5 (2016), paragraph 16

implementation of the Endorois decision will be achieved in the near future.

In her opening remarks, Ms. Marcella Favretto, Senior Human Rights Advisor in Kenya for OHCHR highlighted the Endorois' struggle as a model and source of inspiration for other communities and noted that both OHCHR and the UN more broadly places great significance on indigenous rights, including in Kenya. In the specific case of the Endorois, Ms. Favretto highlighted that the UN mechanisms have called for this decision to be respected on several occasions, most recently in the concluding observations issued to Kenya by the Committee on Economic, Social and Cultural Rights in March 2016. OHCHR looks forward to the guidance and leadership of Kenya in implementing this recommendation, including at the county level. She noted that the Endorois decision was historical and highlighted the interest of Kenya to advance the rights of indigenous issues at the national level, including by appointing an expert member of the UN Permanent Forum on Indigenous Issues. Ms. Favretto stressed that Kenya has the opportunity to make history by leading by example and implementing the decision. The UN stands ready to support and partner with the Government of Kenya and the Endorois to provide advice, expertise and share lessons from other country experiences.

Mr. Martin Marowe, Department of Justice (Office of the Attorney General), gave a brief overview of the 2014 Task Force and its mandate, which is to consider the African Commission's decision and to advise on the implications and implementation of the decision. While Mr. Marowe noted that the State Law Office has been supportive and cooperative, including by drafting a work plan and allocating resources needed to fulfil its mandate, he also noted that no budget was allocated to the Task Force, which meant that it could not meaningfully carry out its work. Only a few meetings were held, and these were not considered satisfactory. Earlier this year, the Department of Justice sent a letter to the Office of the President seeking a renewal of the mandate of the Task Force and it is now waiting for a response from the President's Office. The Department of Justice remains hopeful that the mandate will be renewed.

An update on the implementation of the Endorois decision, including the 2014 Presidential Task Force, was also provided by Ms. Patricia Nyandi, Secretary/CEO of the Kenya National Commission for Human Rights (KNCHR). Ms Nyandi noted that the issue of resolving the Endorois case has been a priority for KNCHR. It welcomed the Task Force in 2014 and was fully engaged with it, including through representatives of KNCHR who sat on the Task Force itself. Ms Nyandi regretted that the Task Force was not in a position to conclude its assignment. A central question, she suggested, was to consider the Government's commitment to its international and regional human rights obligations. The commitment can reasonably be put to the test by considering the resources and time given to the Task Force and the implementation of the Endorois decision. In the current State budget, there have been

no resources allocated to the renewal of the Task Force. She noted that if the County Government of Baringo and KWS take the lead in supporting the community to realize their rights, this could be the cue that the national government might then follow.

Ms. Stella Kereto, Secretary of Baringo County Government, highlighted the commitment from Baringo County Government to work together with the UN and KNHRC. She expressed hope that the national government will not delay any further in ensuring that the Task Force can be renewed and complete its mandate. Devolution, through the role of the County Government, also has a role to play to address these issues.

Mr. Paul Kanyinke Sena, consultant at Minority Rights Group International (MRG), noted that the African Commission, at its most recent session in May 2016, responded to EWC's and MRG's request to refer the Endorois decision to other African Union bodies for non-implementation. The Commission gave the Government 180 days to implement the decision and asked that the Task Force be renewed, and that the Endorois be included on it. This decision has been communicated to the Government and the Commission is waiting for the Government's response. The next step forward, depending on the Government's response, will be made at the session of the ACHPR in November 2016.

Mr. Wesley Keitany, Minister of Tourism at Baringo County Government stressed the need for Baringo County Government officials to be sensitized about the decision of the African Commission. Mr. Keitany noted that the County Government of Baringo has so far been focusing on a management plan for Lake Bogoria which should seek to address the Endorois' concerns, including those shared at the African Commission.

The plenary discussions that followed focused on issues ranging from benefit-sharing to employment opportunities for the Endorois within the Game Reserve. The chief warden of Lake Bogoria noted that most of the employees at the Game Reserve are Endorois, although these are casual employees who are not necessarily involved in any decision-making processes. Mr. Wesley Keitany, Minister of Tourism (Baringo County Government) noted the need to separate the responsibilities and powers of the national and the county governments. He suggested that the County Government provide unrestricted access to the lake for grazing and ensure employment and benefit-sharing for the Endorois community. Mr. Odenda Lumuba of the Kenya Land Alliance suggested that implementing the Endorois decision could be a pilot project to also explore new avenues, including the Community Land Bill.

Mr. Kavaka Mukonyi and Mr. Kenneth Ole Nashu of Kenya Wildlife Service presented Experiences with Partnerships in Conservation, including ongoing KWS initiatives and experiences with community partnerships around conservation. They noted that the new Constitution (2010) provides for an important framework to

implement key aspects of the Endorois' decision, including benefit-sharing.

Mr. Wesley Keitany, Minister of Tourism at Baringo County Government, presented an overview and update of the Lake Bogoria Management Plan process. In this regard he suggested that milestones include the establishment of a Baringo County Government Community Wildlife Fund and the process to negotiate a community management plan in 2015/2016. KWS, together with Baringo County Government, also worked closely to realize the payment of part of a 2.2 million KES royalty from Novozyme Company to the Endorois community. The key objectives of the proposed management plan is to strengthen communication and collaboration with the Endorois community, to reduce incidences of human-wildlife conflict, to ensure a community benefit-sharing mechanism and to conserve land use practices. Mr. Keitany also referred to a new plan in the Baringo County Development Plan for 2013-2017. The first meeting was held in March 2016 at Lake Bogoria, which was attended by the Governor of Baringo County who opened the meeting. Importantly, KWS is supporting the process to develop a management plan with 1 million KES and EWC has committed to contribute 1 million KES.

Mr. Paul Chepsoi of the EWC noted that the need for a community co-management plan finds support in both the decision of the African Commission and in emerging domestic legislations, including the Community Land Bill and the Mining Act. The agreement needs to be signed by both the Endorois (EWC) and the County Governor to ensure that there is genuine ownership. To this end, a validation process will need to take place, with the community first validating the plan with KWS involvement.

During the plenary discussions on the Lake Bogoria Management Plan, the meeting participants emphasised that in the context of the decision of the African Commission, Endorois families who were evicted from Lake Bogoria in 1973 must be included in the management plan process. Meeting participants also emphasized that the Endorois should be recognized as a tribe with its own distinct identity and not as a sub-group. The County Government agreed that this would happen once they receive a formal request in writing from the EWC. Meeting participants also noted the need for Baringo County Government to financially support the process to develop a management plan for Lake Bogoria, and acknowledged that both KWS and EWC have committed funding to this.

B. Day 2

Dr. Clement Lenashuru, Commissioner of the Kenya National Land Commission, provided an overview of the Community Land Bill and the Omnibus Bill. He noted that there are currently two versions of the Community Land Bill: one done through consultative stakeholder process, and a more recent version, prepared by members of the senate. Dr Lenashuru emphasized that the constitutional requirement for the

Community Land Bill aims to give communities an opportunity to manage their land in cooperation with other agencies, including county governments.

Mr. Jackson Bambo of the East Africa Wildlife Society (EAWS) gave a brief overview of EAWS engagement with the Endorois community. In particular, he highlighted EAWS' work with the Endorois community to establish a community forest conservation association in line with the Forest Act of 2005. Mr. Bambo noted that following the finalization of a co-management plan for Lake Bogoria, an investment plan is needed to ensure that the community receives the benefits.

Mr. Paul Kanyinke Sena, Consultant at Minority Rights Group International, reviewed the African Commission's decision in relation to the proposed management plan for Lake Bogoria Game Reserve as follows:

- i. Recognition of ownership
 - At the national level, secure recognition of Endorois ownership can be done through the Kenya National Land Commission when the Community Land Bill is passed, providing it establishes a domestic legal framework for recognition of community ownership. At the level of the County Government, the question at hand is: how can the co-management plan reflect issues of ownership? The Wildlife Act of 2013 recognizes that national reserves, like Lake Bogoria, are part of community land. So the question is: what community owns the area? Can we, in the co-management plan, recognize that under the Wildlife Act the land belongs to the Endorois (for conservation purposes)? Other questions to consider include: are other communities claiming portions of this land? What Endorois land is covered in the co-management plan?
- ii. Ensure unrestricted access
 - The responsibility of ensuring unrestricted access lies with the County Government. With regard to access to the lake, the Endorois now have unrestricted access. The remaining question is how to ensure that the ad-hoc agreement that is now in place is formalized. The issue of unrestricted access should also be further discussed in the context of the co-management plan. Unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle need to be clearly spelled out in the co-management plan.
- iii. Pay adequate compensation to the community for losses suffered.
 - The issue of compensation will not necessarily be included in the management plan and should be discussed separately. This is a matter to be addressed by the

national government. The issue in relation to compensation is the terms of reference for the Presidential Task Force and its composition.

- iv. Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the reserve.
 - Benefit-sharing should be addressed at two levels: a) between the national government, Baringo County Government and the Endorois; and b) within the Endorois community itself. Royalties should be paid from various sources, including entrance fees to the Game reserve and extraction of resources from the lake. This could be addressed in the co-management plan. In this regard, Mr. Sena noted the need to identify all economic activities and sources of royalties, as well as to finalize the Endorois community bi-cultural protocol. In this regard, the management plan should: list all economic activities for the purposes of royalties; clarify benefit-sharing arrangements including within the Endorois community⁴ ; and formalize an agreement on employment arrangements for the Endorois in the Game Reserve.
- v. Register Endorois Welfare Council
 - This is a matter which has already been addressed by the national government through the registration of the EWC.
- vi. Engage in effective dialogue with the Endorois on the implementation of recommendations.
 - Mr. Sena insisted on the need to work together with the County Government to maximise the visibility of the Endorois case. In this regard, the Minister of Tourism of Baringo County Government noted that there are opportunities for the Endorois to seek funding from the County Government, including through the funds allocated to the County assembly representatives. For instance, funding could be sought for the Endorois cultural centre and for the general improvement of the Lake Bogoria game reserve. In terms of employment, the Endorois should consider the bigger picture. They should not restrict themselves to higher representation within the management of the Game Reserve, but also seek other positions in the County Government where they remain underrepresented.

Mr. Benard Obara of the EWC presented the work done by EWC on an Endorois bi-cultural protocol and membership code. The membership code, which is still a work in progress, will seek to establish a community membership database. This database

⁴ In this regards, Mr. Sena noted that the Endorois community should develop a protocol and structure to ensure transparency and fair distribution within the benefit-sharing system.

will enhance self-recognition and governance within the community in relation to the management of natural resources and traditional knowledge. Upon completion, the membership code will have to be validated by the community.

Ms. Janet Kipruto, of the Endorois Women’s Committee and Ms. Christine Kandie, of the EWC, highlighted the pressing need to ensure equal participation and empowerment of Endorois women and how this can resonate with the co-management plan for Lake Bogoria. Both referred to the rights of indigenous women as provided in the Maputo protocol and other international instruments such as the Convention on the Elimination of All Forms of Discrimination against Women. Christine provided examples of how the participation of women in management plans can take place. This participation exists irrespective of the fact that indigenous women continue to suffer from cultural laws and customs that consider women as a familial asset, as well as other issues such as illiteracy, early marriages and inter-generational poverty due to displacement by the government from their ancestral lands.

IV. Way forward: proposed actions and timeline

What	Who	When	Other comments, including domestic legal frameworks
Meeting report	EWC and OHCHR (first draft OHCHR Geneva)	August 15, 2016	Should reflect gender issues, including the expectation that 1/3 of members of decision-making bodies need to be women (constitutional requirement), employment within the reserve and the need for capacity-building specifically designed to support Endorois women, according to their own wishes and priorities.
Payment of royalties	County Government/National Government		Pending approval of applicable national legislation.

Employment opportunities	National partners/ BCG / EWC / NGOs/ partners	Continuous	
Restitution of Endorois lands	National Land Commission		Once the Community Land Bill has been approved approach Kenya National Land Commission.
Develop benefit-sharing guidelines to function as an annex to the co-management plan	BCG / KWS / EWC / Development partners	3 months	
Analyse county and national legislative and policy frameworks that is supportive/needed for proposed actions	EWC/BCG /partners (national and international)	Feb. 1 2017	Could be a task for MRG (Kanyinke and fellow Milka?).
Co-opting IUCN into supporting development of co-management plan	EWC / BCG / KWS		IUCN: The conservation objective will have a bearing on the entire plan and if the objective is not clearly stated, the rest of the management plan will not make sense. Let's define clearly a) what the objectives are and then b) what the priorities. Then you can allocate resources accordingly (e.g. 5 million goes to tourism, 5 million KES to grazing). You also need to have a monitoring

			<p>mechanism. Also what are the protocols that allow for changing/adapting management according to needs? The plan needs to be developed with the community, KWS and BCC and other stakeholders and this should be made a public document. You need to define what is allowed and not allowed on the land. This will determine what kind of economic activities can be conducted and, consequently, the sources of the benefit-sharing.</p>
Funding for development of co-management plan	BCG / OHCHR (?)		<p>Baringo County Government is saying that they are willing to commit 1 million KES to co-management of development to match the 1 million committed by EWC (TBC) and 1 million committed by KWS (TBC). OHCHR IPMS commits to supporting the co-management plan process, although this support will be focused to a large degree on indigenous women and how to ensure their representation.</p>

Fast-track implementation of the African Commission's decision by writing letter to AG office	EWC		EWC needs to write a formal letter to the AG requesting that OHCHR and other partners come together to discuss the decision.
Endorois women: capacity-building, 1/3 representation, women empowering; employment of women at the Game reserve	EWC / OHCHR / BCG and other partners / national government		See positive models from Hell's gate park where the two wardens are women.
Raise awareness of Endorois women's – meeting 10.13-8, venue: Nakuru	BCG will send two representatives (including Stella Kereto and the minister for gender affairs)		
Enhancing entrepreneurial skills among Endorois, in particular with respect to the conservation skills	IUCN (TBC) together with EWC		

Annex I: Meeting agenda

Day 1: Monday 25 July		
9:00–9:15	Introduction of participants	Meeting participants
9:15–9:30	Opening remarks	Mr. Wilson Kipkazi, Endorois Welfare Council (EWC)
9:30–9:45	Introduction of agenda of the meeting	Ms. Marcella Favretto, Senior Human Rights Adviser of the Office of the United Nations High Commissioner for Human Rights
9:45–10:30	Preliminary remarks	Mr. Martin Marowe, Department of Justice (Office of the Attorney General)
10:30-10:45	Tea break	
11:15-12:00	Update on the implementation of the Endorois decision, including the 2014 Presidential Task-force and update from ACHPR	Ms. Patricia Nyaundi, Secretary / CEO Kenya National Commission for Human Rights, Stella Kereto (County Secretary Baringo County Government) and Mr. Paul Kanyinke Sena, Consultant for Minority Rights Group International
12:00-12:45	Plenary Discussions	Meeting participants
12:45–14.00	Lunch break	Hotel Bontana
14:00-15:00	Experiences with Partnerships in Conservation <i>(Presentation of ongoing KWS initiatives and experiences with community part-</i>	Mr. Kavaka Mukonyi and Mr. Ole Nashu, Kenya Wildlife Service

	<i>nerships around conservation)</i>	
15:00-17:00	Overview of Lake Bogoria Management Plan process <i>(Update on the process and expected outcome)</i>	Mr. Wesley Keitany, CEO Tourism at Baringo County Government and Mr. James Kimaru, Warden at Lake Bogoria Game Reserve,
17:00-17:15	Tea break	
17:15-18:00	Plenary Discussions (<i>Lake Bogoria Management Plan in relation to the decision of the African Commission</i>)	Meeting participants
Day 2: Tuesday 26 July		
9:00-09:15	Recap of Day 1	EWC
09:15-09:45	Progress on the Community Land Bill and the Omnibus Bill	Dr. Clement Lenashuru, Commissioner, Kenya National Land Commission
09:45-10:00	Overview of EAWS engagement with the Endorois community	Mr. Jackson Bambo, East Africa Wildlife Society (EAWS)
10:00–10.45	Review of African Commission’s decision	Mr. Paul Kanyinke Sena, Consultant, Minority Rights Group International
10:45–11.00	Tea break	
11:00-12:00	Plenary Discussion	Meeting participants

12:00-12:30	Briefing on the Endorois community protocol process and governance model	Mr. Benard Obara, EWC
12:30-13:15	Plenary discussions	Meeting participants
13:15-14:00	Lunch	Hotel Bontana
14:30-15:00	Empowering Endorois women through the co-management plan <i>(Ways to ensure equal participation in decision-making for Endorois women, including through co-management plan)</i>	Ms. Janet Kiptanui, Chair of the Endorois Women's Committee and Ms. Christine Kandie, EWC
15:00-17:00	Way forward <i>(Recommendations from meeting)</i>	Mr. Wilson Kipkazi, ED, EWC

Annex II: Meeting participants

No.	Name	Organization/community	Title	Gender
1	Job Kobetbet	Endorois Compensation committee	Chairperson	Male
2	Peter Cherutich	Endorois Compensation committee	Member	Male
3	Jackson Kiplangat	Endorois Boundary Committee	Chairperson	Male
4	Linah Karatu	Endorois Boundary Committee	Vice-Chair	Female
5	Kipruto Chemuchuk	Endorois Management Committee	Chairperson	Male
6	Pauline Korir	Endorois Management Committee	Member	Female
7	Janet Kipruto	Endorois Women's Committee	Chairperson	Female
8	Fancy Cherotich	Endorois Women's Committee	Secretary	Female
9	Richard Yegon	EWC Board	Member	Male
10	Maria Kiptui	EWC Board	Member	Female
11	Wesley Keitany	Baringo County Government	CEO Tourism	Male

12	Stella Kereto	Baringo County Government	County Secretary	Female
13	James Kimaru	Lake Bogoria Game Reserve	Warden	Male
14	Kenneth Ole Nashu	KWS	KWS Baringo	Male
15	Kavaka Mutonyi	KWS	KWS HQ Nairobi	Male
16	Jackson Bambo	EAWS	EAWS Nairobi	
17	Laetitia Zobel	UNEP	Meeting participant	Female
18	Patricia Nyaundi	KNCHR	Secretary / CEO	Female
19	Wilson Kipkazi	EWC	ED	Male
20	Paul Chepsoi	EWC	Vice Chair/Project officer	Male
21	Benard Obara	EWC	Programmes officer	Male
22	Christine Kandie	EW	Finance officer	Female
23	Christine Chebii	EWC	Administrative assistant	Female
24	Marcella Favretto	OHCHR	Senior Human Rights Advisor, Kenya	Female
25	Selina Nyambok	OHCHR Kenya	OHCHR Kenya	Female

26	Samia Slimane	Human Rights Officer	OHCHR Geneva	Female
27	Tove Holmström	Associate Expert in Human Rights	OHCHR Geneva	Female
28	Odenda Lumumba	CEO	Kenya Land Alliance	Male
29	Shadrack Omodi		RECONCILE	Male
30	Dr Clement Lenashuru	Commissioner	Kenya National Land Commission	Male
31	Jimmy Karato	Treasurer	EWC	Male
32	Paul Kanyinke Sena	Consultant	MRG	Male
33	Martin Mwarowe	Legal Counsel	Department of Justice	Male