

DAYS IN THE COLD

**2014 Report into the
Embobut Forest Evictions**

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The report unravels the surroundings leading to forceful evictions witnessed in Embobut with the aim of identifying the forces and causes of the eviction, find out the state, nature and extent of human rights violations as well as to determine the humanitarian assistance situation on the ground.

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DAYS IN THE COLD: KHRC's Report into the Embobut Forest Evictions



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Acronyms

ACHPR - African Charter on Human and Political Rights
 ACHWA - African Charter on Rights of Women in Africa
 ACRWC - African Charter on the Rights and welfare of the Child
 ADC - Agricultural Development Corporations
 AP Administration Police
 ASAL Arid and semi-arid land
 CA - Children's Act
 CAT - Convention against Torture
 CBO - Community Based Organizations
 CC - County Council
 CEDAW - Convention on the Elimination of all forms of Discrimination on Women
 CLOS - Community Land Ownership Systems
 COHRE - Centre on Housing Rights and Evictions
 CoK - Constitution of Kenya
 CRA - Commission on Revenue Allocation
 CRC - Convention on the Rights of the Child
 CRPD - Convention on the Rights of Persons with Disabilities
 FBO - Faith Based Organizations
 FFMT - Fact Finding Mission Team
 GoK - Government of Kenya
 Ha - Hectares
 HRC - Human Rights Council
 ICA - International Crimes Act
 IEBC - Independent Elections and Boundaries Commission
 ICCPR - International Convention on Civil and Political Rights
 ICESCR - International Convention on Economic, Social and Cultural Rights
 ICGLR - International Conference on the Great Lakes Region
 IDP(s) - Internally Displaced Persons
 KFS - Kenya Forest Service
 KFWG - Kenya Forest Working Group
 KHRC - Kenya Human Rights Commission
 KNBS Kenya - National Bureau of Statistics
 KRC - Kenya Red Cross
 MCA - Member of County Assembly
 MoU Memorandum of Understanding
 M.P - Member of Parliament
 NFI(s) - Non food items

NGO - Non Governmental Organization
NLA - National Lands Act
NPSA - National Police Service Act
PC - Penal Code
PWDA - Persons with Disabilities Act
SFTP - Settlement Fund Trustees Programme
UDHR - Universal Declaration on Human Rights
UN - United Nations
UNCERD - United Nations Committee on Elimination of Racial Discrimination
UNCESCR - United Nations Commonwealth on Economic Social and Cultural Rights
UNEP - United Nations Environment Programme
UNHRC - United Nations Human Rights Commission
URP - United Republican Party
WBIP - World Bank Inspection Panel

Glossary of Terms

Baraza - a public forum

Clan - a group of Sengwer united by actual or perceived kinship as well as ideologies

Totems - symbol representing an animal that serves as an emblem of the Sengwer communities



Acknowledgements

The Kenya Human Rights Commission (KHRC) thanks all who participated in helping us generate this report. We can't mention them all but we gratefully acknowledge the many citizens living around The Embobut forest and forums held at Eldoret; those who talked to us on the eviction situation in the in the region. Though some seemed 'as if life had moved on' it was not easy for them to narrate their painful experiences but they did so with great courage with the hope of being resettled soon.

The Fact Finding Mission Team (FFMT) therefore appreciates the support provided by the KHRC as well as the affected communities who provided us information used as annexes in this report.

Lastly, the Commission acknowledges the participation and contribution of the staff.

FOREWORD

One of the more daunting challenges evictees face today is the State failing to provide protection to people evicted from their habitual place of residence who are at risk of starvation among other serious abuse of their human rights. These evictions have pointed out the vulnerability of men, women and children evicted from their homes and communities, deprived of food, medicine and shelter and subjected to arbitrary vulnerable as well as deplorable conditions.

Although the primary responsibility for the protection of the internally displaced rests first and foremost with the Kenyan government, this has not been the case especially the recently witnessed case for Embobut. The Government has tragically often lacked the will or the capacity to consider protecting the rights of its citizens.

In scenarios where people are evicted by the same government which is supposed to oversee their wellbeing, the displaced people in particular often appeal to the Non-Governmental Organizations (NGOs) as well as other humanitarian agencies to provide them with material assistance and also to protect them from egregious human rights violations.

Over the past decade the Kenya Red-Cross has become increasingly involved in providing food, medicine and shelter to evicted populations.

After the Fact Finding Mission Team (FFMT) concluded its work, the team concluded that although no considerable efforts have been made by the government in protecting the rights of the evicted, especially the marginalized and indigenous groups for instance the Ogiek of Mount Elgon and the Sengwer of the Embobut Forest.

This field report importantly presents an extensive set of practical recommendations for the Government of Kenya (GoK) to addressing the protection problems of the evictees and the internally displaced as a whole. It calls for more assertive development of proper guidelines to be considered before any eviction is undertaken.

It urges greater the government to prioritize the integration of protection of citizens' concerns to the programs and plans of humanitarian, development and human rights. It emphasizes the importance of strengthening local and national institutions to deal with forced evictions and of developing national laws and policies based on the guiding principles on forced evictions.

The recommendations present a formidable challenge to the Government that must be met. The government must assume a leadership role in advocating for the protection of those persons who are evicted to safeguard the human rights of people. Only through its concerted and collaborative efforts the government will hope to contribute to the creation of a more effective system for addressing the protection and assistance needs' of one of the Kenya's most marginalized and indigenous communities.

Executive Summary

The Kenya Human Rights Commission (KHRC) is a Non-Governmental Organization (NGO) which was founded in 1992 and registered in Kenya in 1994 with a mandate to entrench *human rights and democratic values in the society*. In 2012, the Commission evaluated its 2008-2012 strategic plans and developed an interim strategic plan for 2013-2018 in which it envisions: *A human rights state and society* and outlines its mission as to *foster human rights, democratic values, human dignity and social justice*. This vision and mission will be driven by the goal and new mandate of *enhancing human rights centred governance at all levels*.¹

Due to media reports that went round locally, regionally and internationally, KHRC was concerned about the manner in which the Government of Kenya used to forcefully evict the citizens living in and out of Embobut forest and the surrounding areas. As witnessed, the Government torched their houses which send them out to the cold.

Kenya's History of forest evictions

For many years in Kenya, the government has tried to evict the residents living inside as well as the surroundings of gazetted forest with Embobut being the latest one.

Although the number of people affected as a result of forest eviction was high, the number of the affected persons remained disputed. According to Centre on Housing Rights and Evictions (COHRE), Massive eviction in Kenya's history was witnessed between July 2004 and June 2006².

From the government and environmental organizations views, forest evictions are always carried out so as to protect Kenya's forests which are under depletion by human being.

The Kenya Human Rights Commission (KHRC) undertook a fact finding mission in the Embobut forest of the wider Marakwet East Constituency with a view to actually identify the extent of forceful evictions and asses the nature of human rights violations as well as humanitarian situation on the ground as said and witnessed by media reports of forceful evictions of communities living in the forest done by the State agencies. This was in lieu to arising calls that forest eviction has always been conducted in a not so humane approach and that these evictions do not incorporate a rights-based approach. This kind of eviction will thus leave an unbearable burden to the evictees. This was

¹ See <http://www.khrc.or.ke>

² ..., the other four water towers are Mt. Elgon, Mt. Kenya, the Aberdare Range and the Cherangani Hills,...., 'Forest evictions: A way forward?' Kenya Housing Rights Update, August 2006, available at www.cohre.org/kenya

done on the dates of 31st January to 2nd February 2014. A team of 5 was deployed to the region.

Prior to the Mau eviction in 2005, the then Government had promised the United Nations that it see to it that if there will be other evictions the government is going to carry out, it will ensure that it will lead by example to comply with international human rights standards. But sad to note is that up to date, there are still no concrete guidelines or laws at the national level, or policies and programmes within the Ministry of Environment, that ensure that these standards will be respected.

The objective of the mission was to try to unravel the surroundings leading to forceful evictions witnessed in Embobut.

The objectives of the fact finding mission were:

- a) To find out the forces and causes of the eviction as witnessed in the region;
- b) To find out the state, nature and extent of human rights violations;
- c) To determine the humanitarian assistance and situation (whether in form of Non food items {NFI(s)} or any other form) by who/ which organizations and if not, find a way in order to inform appropriate interventions.
- e) To make and direct appropriate recommendations to various stakeholders including but not limited to the government.

KHRC identified a team and deployed this to the region twice to undertake a fact finding mission to conduct further investigations into the Eviction witnessed.

The team had a one on one interview with the victims and their leaders on 31st January at The Embobut Mission Dispensary and 1st January 2014 at The Highlands Inn respectively. The team spoke to more than 60 witnesses whom included government officers.

The outputs of the fact finding mission were:-

- A comprehensive and detailed report with which provides various recommendations on accountability matters to effectively address the issues and the extend of human rights violations and to prevent future violations of people's rights in scenarios like the ones witnessed at Embobut;
- Comprehensive analysis of the factors of the eviction;
- Comprehensive documentation of chronological events witnessed and mapping of the patterns of eviction;
- Assist in the provision of policy, legal and other recommendations.

CHAPTER ONE

“Internal displacement has emerged as one of the great human tragedies of our time. It has also created an unprecedented challenge for the international community: to find ways to respond to what is essentially an internal crisis”

Kofi Annan.

Introduction

Kenya is facing a fresh upsurge of land related resource conflicts. There has been a massive programme and timelines of evictions by all the four administrative governments including but not limited to the colonial government. This is evident especially to communities living around or inside the forests who become most vulnerable especially during evictions by the Government resulting to loss of property, economic instability, displacement and even to a larger extend death resulting from weather related sickness. Houses, schools dispensaries and other public institutions have not been spared either. This has been recurrent in Kenya. In analysis, a number of persons have been evicted from various forest the latest one being Embobut. With this kind of evictions, there has been growing concerns by humanitarian agencies to the rising humanitarian needs as a result of forceful evictions by the government which actually could be prevented if done procedurally. There is growing increase in Internally Displaced Persons (IDP) from forest zones.³ In reference to what the Government said earlier in 2006 that *“Evictions will go on to save forests”*, up to date, they have lived by their word.⁴ In this instance therefore, land is considered to be the most basic resource. Throughout history, man has confirmed to draw most of his subsistence and much of his food, clothing and shelter from land. To this extend therefore, we can draw conclusion that land has been man’s habitat and living space to which it has been a matter of life and death.

In this instance therefore, we can unanimously say that forced evictions have been described as a “gross violation of human rights” by the former UN Human Rights

³ See, for instance, ‘Kyeni displaced protest treatment, conditions’, UN Office for the Coordination of Humanitarian Affairs, available at <http://www.irinnews.org/report.aspx?reportid=25656>; Internal Displacement Monitoring Centre, Continued conflict and displacement in the Rift Valley (Special report, December 2006), available at [http://www.internaldisplacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/E91FC740643EDFEEC12572480053E483?OpenDocument](http://www.internaldisplacement.org/idmc/website/countries.nsf/(httpEnvelopes)/E91FC740643EDFEEC12572480053E483?OpenDocument)

⁴ Daily Nation 5 April 2006. ‘Evictions will go on to save forests, says top official’

Commission {UNHRC} (now the Human Rights Council {HRC})⁵, of which Kenya has done it several times year in year out.

Background and Methodology

The issues surrounding the Embobut eviction captured and discussed in this report, reveal negligence, failure reluctance by the Government and the Kenya Forest Service as well as other authorities to abide by national, regional and international human rights principles and treaties and standardized procedures in respect to forceful evictions of population. The notice provided (according to residents of Embobut) was inadequate and confusing as there was no prior consultation with residents to reach an agreed consensus or any other effort to find an alternative to evicting them from their homes. In this case, eviction was still carried out despite a court injunction halting evictions given by the High Court in Eldoret. Evictions were executed with excessive force and the authorities responsible for ensuring respect for the law failed to take appropriate action to stop the abuses or to investigate allegations of human rights violations.

The fact-finding mission team obtained information that the forced evictions undertaken in the Embobut Forest was based on a directive from the Kenya Forest Service Offices and the Office of The County Commissioner's office in support of the recommendations of the Embobut Forest Taskforce report. A decision was reportedly taken to commence evictions in forest areas.⁶

The Commission conducted several group interviews with the evicted communities (representatives of landslide victims) as well as their coordinators, former political leaders, media representatives as well as having a series of meetings with different stakeholders including but not limited to the security agencies and civil society organizations.

The main trigger was actually to visit the eviction site to try to unravel the so many questions as to what, when, where, why, how, the causes and dates when the eviction was done and when did it start; where were they evicted from, how many times have they been evicted, the historical and chronological aspect of surrounding events of the evictions, the actors prior to eviction, during evictions and after the evictions , victims (evictees), effects caused and felt and the nature of impacts. The mission also went ahead to find out where those who were evicted from the forest were at the time of the visit, the number of houses torched as well as the worth of property destroyed,

⁵ United Nations Commission on Human Rights, Resolution 1993/77 on Forced Evictions, adopted unanimously on 10 March 1993, UN Doc. E/CN.4/. RES/1993/77 (1993), para 1.

⁶ Embobut Taskforce report submitted to the Minister for Forestry and Wildlife dated 6th January 2010

whether there are livestock killed during the eviction, disintegration by gender, disability and response by state and non-state actors as well as that of humanitarian assistance.

As such, the mission was to try to unravel the truth and anything concerning the forceful eviction in terms of the root causes, document the alleged human rights abuses, as well as to investigate the action taken by the State agencies in torching the evictees' houses.

Our mission gave them an environment to boldly speak about their experiences during the forceful evictions.

Apart from the one-on-one interviews with the evicted persons, the report would not be completed without a top-up of information from secondary sources conducted through desk-top researches for instance the print media, information from the court, theses and already conducted reports. Video and voice recordings of victims and witness, witness statements, community memorandums and photographs of the affected communities were collected, transcribed or scanned for inclusion in this report.

To support our report, the team took photos of the areas visited and filmed as well as taking short notes on the chronological events that were witnessed as well as historical background of the same events.

The areas visited were Endul Sub-location which lies in the wider Embobut, Maron Sub-location and Kaben where landslide was experienced in 30th April 2010 according to one witness⁷. In his assertions, there lower regions of Embobut and other areas bordering it experienced massive landslide in 1951 and 1961 leading to loss of lives and properties.

Thus in general, this report envisages and recognizes the various atrocities committed by the State agencies during the days of forceful evictions. As such, the report also traces the chronological events as well as the history among other issues such as the reasons of the eviction and whether the evictees voluntarily accepted to receive the Kshs 400,000; whether they were whole heartedly willing to come out of the forest; whether they were involved in all these developments right from step one; the loopholes being raised by the evictees that the County Commissioners' office is liaising with the bank to defraud the compensated evictees and whether an alternative option for example the evictees' being given an alternative land was prioritized by the government among other issues and make recommendations for sustainable interventions to address the humanitarian needs and security of each individual evictee.

⁷ Representative of the 2010 landslide victims

Geographical Location of Embobut

Marakwet East District is one of the districts found in the larger Elgeyo Marakwet County. The District borders Marakwet West district, Pokot West and Pokot East to the south and Pokot Central to the East respectively. Elgeyo Marakwet County borders the following Counties: West Pokot to the North, Baringo to the East, South East and South, Uasin Gishu to the South West and West, and Trans Nzoia to the North West with an estimated area of 3,029.8 Km² and receives adequate rainfall of 400mm and 1,400mm per annum⁸. According to the County Commissioners' office, Embobut Forest is close to 22,000 Ha divided into three zones namely the highlands, escarpments and the Kerio River. The larger part of the forest according to the residents covers Kapyego and Tirap divisions

The Embobut forest Hills cuts across four administrative districts in Rift Valley Province. Embobut is found in Marakwet East Constituency and is believed to be the major water tower since it supplies water to Eldoret town and its environs which is approximately 180 kilometers away as well as Lake Victoria and river Turkwel which drains into Lake Turkana and Saiwa Swamp national park. The hills are largely covered by a series of indigenous forests.

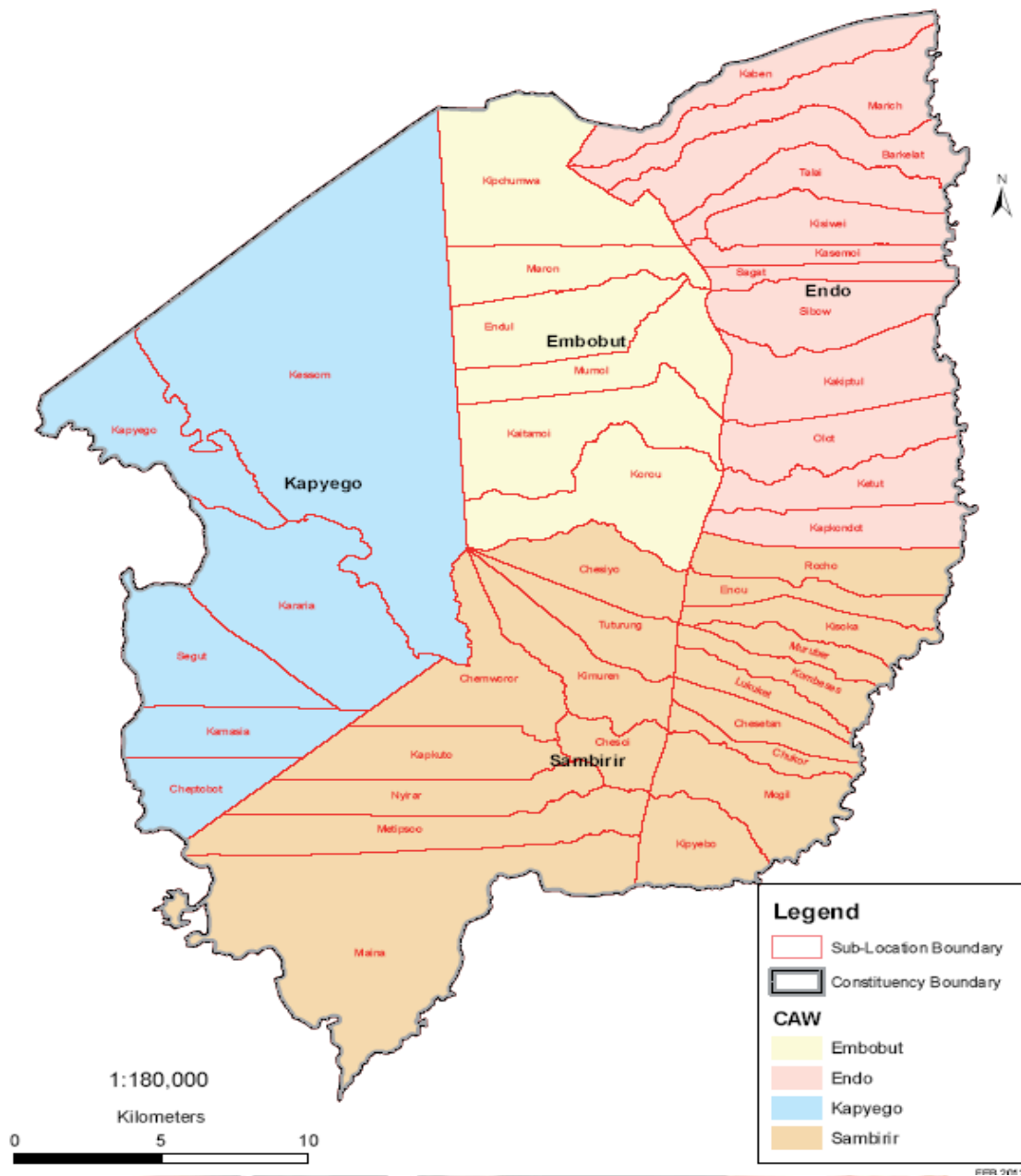
These forests comprise 12 administrative blocks namely Embobut Sub-Location, Olot Sub-Location, Endo Location, Maron Sub-Location, Lelan Location, Kapyego Sub-Location, Enon Sub-Location, Mosop Sub-Location, Kutoyo Sub-Location, Mongorian Sub-Location, Kale Sub-Location, Chesoi Sub-Location, Ptalam Sub-Location.

The soils are well drained and moderately fertile. The Hills are important biodiversity hotspots as it harbors several forest types and regionally threatened species such as the Lammergeyer, African Crown Eagle, Red Chested Owlet, *Sitatunga* and Thick Billed Honey Guide. Several Ecosystems depend on water originating from it.

⁸ <http://softkenya.com/elgeyo-marakwet-county>

Map depicting Marakwet East Constituency⁹

IEBC REVISED MARAKWET EAST CONSTITUENCY COUNTY ASSEMBLY WARDS



⁹ (Source: Independent Elections and Boundaries Commission)

Political boundaries of Elgeyo Marakwet

Marakwet East constituency is found in the larger Elgeyo Marakwet County. It lies in the larger Marakwet district and is one of the two constituencies of Marakwet District¹⁰ made up of four wards namely Kapyego, Sambirir, Endo and Embobut/Embolot.

Marakwet East Constituency, which covers an estimated area of 784.30 Sq. Km according to IEBC, has an approximated population of 78,749¹¹ inhabiting the area: Kapyego ward hosting a population of 17,057, Sambirir Ward hosting around 21,585, Endo ward hosting 21, 619 and lastly Embobut/ Embolut Ward hosting 18,458. Honorable David Kangogo Bowen is the current Member of Parliament for Marakwet East Constituency¹². This is his first time in august house and he was elected on a United Republican Party (URP). His Marakwet West Counterpart is Honorable William Kipkemoi Kisang.

Out of the two constituencies, Marakwet East constituency witnessed greater eviction.

The table below shows the population of the people living in the constituency in each and every ward of the constituency.

NO	WARD	POPULATION
1	KAPYEGO	17,057
2	SAMBIRIR	21,585
3	EMBOBUT/ EMBULOT	18,488
4	ENDO WARD	21,619

Source: http://en.wikipedia.org/wiki/Marakwet_East_Constituency

Key Findings:

Nature of Embobut forest: The Embobut forest covers nearly 22,000 Ha. It is has several indigenous trees most commonly cedar. The forest according to residents was gazetted in 1954 by the colonial government and subsequently in 1964 immediately after independence.

¹⁰ IEBC(<http://www.iebc.or.ke/index.php/home/regional-offices/273-marakwet-east>)

¹¹ Kenya National Bureau of Statistics (KNBS)

¹² The Kenya Gazette, Vol. CXV-No. 45 published in Nairobi, 13th March, 2013

Population: According to the 1999 census, Marakwet was estimated to have a population of 148,000 people which evenly distributed.

Chronology of Eviction in the forest: According to the County Commissioner's Office, eviction has been like cat and dog game between the residents and the Kenya Forest Service in that the Government as attempted to evict people 20 times by the past administrations without success and thus yielding no results for both the government and the Forest dwellers (Sengwer/ Kimala/ Ndorobos).

Structural factors: there is uncertainty associated to recurrent occurrences of landslides in the regions surrounding the Embobut forest as well as cultural beliefs of Sengwer communities as hunters and gatherers;

Proximate factors: perception of Sengwer, Ndorobos and Kimala as forest dwellers, permit holders and landslide victims;

Effects of eviction vis-à-vis Human rights violations: The effects of the eviction as narrated by the evictees were greatly and painfully felt. There was massive witnessed form of human rights violations primarily by police and forest officers (State) instead of being the first to observe and protect the residents from evictions through acts of omission and commission. During the "operation evict to conserve the Embobut forest" the officers evicting the population, violated human rights by torching their houses thus violating the right to housing as enshrined in Article 43 (1b) of the Constitution of Kenya 2010 (CoK).

Planning and organization: The eviction witnessed in the forest had some level of organization and planning by the Government of Kenya (GoK) and possible financing during the eviction. The investigations revealed that there was a reasonable degree of organization and coordination between the County Commissioner's Office and the Kenya Forest Office prior and during the evictions.

Role of State actors: The State's responsibility was contrary to Article 21(1) which states that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights¹³.instead, the State ought to have played a more prominent role in observing and protecting its citizens rights;

¹³ See Chapter four of the Constitution of Kenya (2010)

Humanitarian Situation: The response of humanitarian actors to the situation on the ground by the State and other organizations such as, The Kenya Red Cross and Faith Based Organizations haven't been seen in the area. The interventions haven't been timely as the evicted haven't received any humanitarian assistance. The major immediate gaps that need to be addressed are on education, shelter, medication and sustained relief assistance;

In an exclusive interview with one of the evictees, he asserts that they were not consulted. "I heard about it (registration for compensation) from our area chief between the months of September and mid October in at Tangu market. I just heard that names were being profiled, so I was told to put down my name as well. So I wrote mine the same day to my shock that some of those we wrote our names the same day were compensated while my name did not appear in the list of those to be compensated. If given a chance, I wouldn't take the money. I want to stay up here in Embobut because my grandfathers and some of my family members have been buried here."

Responsibility: The Forest officers have been adversely mentioned as responsible in their individual capacity as well as their roles for the forceful evictions of population living in the forest. The chain of commands' responsibility applies to forest officers in command or in charge of operations for their acts and roles of commission and omission prior, during and after the eviction;

The Government, security and forest officers, who torched various houses are criminally responsible and should be promptly and effectively investigated and prosecuted.

Compensation and Resettlement

A dire direct impact that was witnessed in the Embobut forest eviction was the forcible and massive displacement of hundreds of families. However, there has been a mixed reaction as well as contradictory signals from government officials on the compensation and resettlement issue.

The fact-finding mission team was able to confirm that the Government did not compensate all the squatters as claimed by the residents. "The government compensated only 2,874 people out of close to 27,000 people living in the forest. To add salt to the wound, some people who were in the initial report were not compensated since their names were curved out in the second list used to compensate victims"¹⁴. Local government officer insisted that

¹⁴ Interview with one of the evictees on 1st January 2014

the affected communities have “somewhere to go to”¹⁵ but the evictees refuted to these claims saying they had no place to go.

According to Arthur Osiya, “the government agreed that the permit holders and their sons were to be given ten acres per household while land slide victims were to be given two and a half acres per every adult. The forest dwellers in this case (Kimala/ Sengwer/ Ndorobos) were to be five acres per adult.”¹⁶

In Endul Sub-location for instance, a significant number of those who were forcibly evicted were still living at the edge of the forest, many in inadequate housing. Many people said they were living below the road while others moved back onto the forest from which they were forcibly evicted secretly to bring back their livestock as well as to harvest their farm produce of which was dangerous if found by the KFS officers. They all claimed they had nowhere else to go.

Under international law there can be no justification to forcibly evict hundreds of thousands of women, men and children and exposing them to a range of serious human rights violations. Had the Government intended to ensure inclusivity of all the persons living inside the forest (as claimed by the residents) to have access to adequate alternative housing, this would have had to be done prior to any evictions of which should have had consultation among the affected parties. In the Basic Principles and Guidelines on Development-based Evictions and Displacement (DBED), the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living has identified the criteria against which to assess whether the resettlement plans are compatible with international human rights standards. The Rapporteur says that “no resettlement shall take place until such a time that a comprehensive resettlement policy consistent with the present guidelines and internationally recognized human rights principles is in place”.¹⁷

Ethnic and Religious Composition

The Embobut region is composed of the following communities: The Marakwet (who comprises the larger ethnic population) and the Sengwer/ Kimala considered as the indigenous communities who have traditional rights to the forest. Although these seem

¹⁵ An interview with police officer who sought anonymity for fear of persecution

¹⁶ Arthur Osiya, County Commissioner Elgeyo Marakwet County

¹⁷ UN. Doc E/CN.4/2006/41, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G06/118/59/PDF/G0611859.pdf?OpenElement>

to be the larger communities living in the forest, there are other minor tribes for instance the Tugens and the Pokots. All these tribes and communities are Protestants.

Socio economic profile

The welfare of the Embobut population is best observed using employed levels of the population, their income, consumption levels and savings as well investments. Most of the population is employed in agriculture. Small-scale farming and livestock keeping are the most commonly practiced economic activities. The main crops grown are millet, maize, beans, cassava and Irish potatoes. The land use strategies in Embobut are determined by socio-cultural and economic factors. The pattern and strategies of land use has evolved over various phases such as pre-colonial era, the colonial era, the immediate post-colonial era and the current era. The elderly respondents (age 65 years plus) confirmed that the various traditional communities whose mode of production were tuned to “living nature”. Their land use strategies were geared towards resource utilization for basic survival. These in turn were governed by a system of norms and taboos, which were dependent on the people’s cultural background. The Sengwer communities’ knowledge for instance garnered by these communities was critical in their perception of the linkages between them and their resource base. Evidence from these communities demonstrates the importance of wild foods and medicinal plants for supplementary diets and increasing their variety. According to one of the interviewee, wild foods also substitute for meals when away from home during times of famine as well as preventing and for curing diseases¹⁸.

Land settlement history

From the interviews conducted, most of the interviews said that they were born and have lived in the forest since time immemorial. However, a certain percentage of the population happened to have migrated either form the highland or from the valley into the forest. This was attributed to either search for farmland, insecurity from their Pokot neighbours and other unquantifiable factors such as marriage.

¹⁸ Dickson Rotich-Sengwer Elder

Land Tenure

Land, an economic source of income, was allocated to them by the colonial government as permit holders through Community Land Ownership Systems (CLOS). Whereby it was owned by clans then allocated to individual households, by respective clan holders. Any decision making regarding the land, its designation and allocations was based on socio-economic considerations of respective clans. The plot sizes ranged from 1-5 acres though some were unquantifiable¹⁹.

Land Degradation

Even though land is a major source of income within the area, it is faced with the problem of land degradation. The region plays host to major communities that were living in the forest. The communities are the Marakwets, Ndorobos, Sengwer and the Kimala who are believed to be the forest dwellers as well as victims of the recurrent landslides who have shifted to live in the forest for fear of other natural calamities. It thus faced with the problem of land degradation. According to the residents, soil erosion and landslides are the most prevalent.

Forest Conservation

Forest conservation is what the Government of Kenya has categorically stated as its driving force in undertaking the evictions. The Government has had to forcefully evict residents of Embobut in what is said to conserve the biodiversity. This is perhaps its justification for them to embark on forceful evictions. In forming the taskforce on Embobut forest, the main resultant feature was the avoidance of serious negative consequences for water supply, climate, livelihoods and biodiversity.

The Embobut forest is one of the largest remaining continuous blocks of indigenous forest in east Africa. It is one of Kenya's five water towers.²⁰ A number of environmental groups including the United Nations Environment Programme (UNEP) and the Kenya Forests Working Group (KFWG) have identified the significant negative impacts of the Government of Kenya's failure to prevent degradation of the forests in Kenya.²¹

¹⁹ Kilimo Chelan'ga - Coordinator

²⁰ See: KFWG and UNEP, *Changes in forest cover in Kenya's five major "water towers 2000-2003*, September 2004.

²¹ KFWG and UNEP, *Changes in forest cover in Kenya's five major "water towers 2000-2003*, *ibid*.

It is believed by environmentalist groups that the Cherangani Hills is key in supporting the ecosystems, and thereby tourism for instance Saiwa Swamp national park. It is well believed that the hills serve thousands of people living in Eldoret and Kitale and their surroundings with water. It is also believed that the rivers originating from the forests drain its waters to Lake Victoria and river Turkwel as well.

The importance of forest conservation might really be a genuine one. Although this might be the case, the Government should first understand that the Sengwer have for long been conserving the forest. In as much as it tries to strike a balance between conserving the forests as well as its human rights obligations as a means to ensure the right to water and a healthy environment for all on one hand, with its obligation to respect, protect and fulfil the right to adequate housing on the other (without the use of forceful evictions), then the government should see to it that evictions are a last resort but spare those whom are not forest destroyers but conservationists, in this case the Sengwer. In doing this therefore, it should only carry it out where necessary, and always in a way consistent with international human rights law. To this end, the government should develop and implement clear guidelines on evictions, drawing on the work of the UN Committee on Economic, Social and Cultural Rights, the UN Special Rapporteur and others.

In this essence therefore, the human rights of the entire population of the nation that could be adversely and negatively impacted by loss of the forests are the rights to food and water. Although there may indeed be a concise and genuine need to limit encroachment of people into the forests as well as the use of the forest, the Kenyan government has obligations under international human rights law to take steps to ensure that adequate water and sanitation are available to the entire population.

As well, it is obliged under the African Charter, to respect, protect and fulfil the right to a healthy environment. The interrelations between human rights and preservation as well as protection of the environment have long been recognized. The 1972 United Nations Conference on the Human Environment declared that “man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights--even the right to life itself.”²² In this sense the Government of Kenya has obligations in international human rights law to act to protect Kenyan forests.

²² Declaration of the United Nations Conference on the Human Environment, Stockholm, 1972. Subsequent work by the UN and academics in both environment and human rights have highlighted numerous examples where degradation of the environment has directly contributed to violations of human rights, such as the impact of pollution of the rights to health, livelihood and life.

Forest eviction in Embobut

The forest eviction seen in Embobut was forceful and more inhumane. In regard to this, we can conclude that the Government and the Kenya Forest Service failed in prioritizing the rights of its citizens and thus failed to abide by the local (enshrined in the constitution) and international rights approaches while carrying out the evictions.

According to the residents, the short notice given to them was short and confusing since there was a stay order till the 6th of February 2014.²³ As such, there was confusion all over and thus the burning of houses caught them unaware and unprepared. According to the residents, incidents of eviction in the forest have been done so many times without prior consultations and this has been done using excessive force.

They thus call for appropriate action to be taken in order to put to an end the abuses experienced not only in Embobut right now but also in the days to come elsewhere.

Embobut forest eviction was done following a government decision after the taskforce appointed by the then Minister for Wildlife and Forestry gave its recommendation and eviction started in 1st May 2009 according to the report. The process as stated in regard to the eviction clearly constituted mass forced eviction.

With this therefore, the process failed to meet the most basic human rights standards in respect of consultation towards compensation, adequate notice as well as legal remedies.

Categories of Squatters

Prior to eviction, a taskforce was formed with a mandate to actually determine and identify genuine and qualified squatters living in Embobut forest. In its findings, the taskforce identified three categories of squatters. These groups are;

- a. Permit holders and their associates
- b. Landslide victims and the
- c. Forest dwellers (Sengwer/ Kimala/ Ndorobos).

In an interview with a 21 year old lady, “The police came at around 8:30 am and burnt down my father’s house, on 15th January 2014. Blankets, utensils, were burnt and nothing was spared.”

²³ Stay order issued in the High Court of Kenya at Eldoret: Environment and Land

a) Permit holders and their associates

During its vetting, the taskforce found out that the permit holders were given permits to settle inside the forest. In their findings, the found out that these permit holders were issued to them by the colonial administration where they have been living there from then until when they were evicted.

b) Landslide victims

According to the taskforce report, this category of squatters moved into the forest as a result of recurrent landslides that have rocked the area year in year out. The most devastating one was witnessed in 1951 and 1961 while the recent one was witnessed in April 2010. As a result, it was unfit for human habitation and that is why they chose to go to the forest.

c) Forest dwellers

These people are indigenous and marginalized groups living in Kenya. In this case, they are the Sengwer/ Ndorobos and Kimala. Sengwer is an ethnic minority who since time immemorial have been hunter-gatherer indigenous peoples living along the slopes of Cherangany Hills. Thus, Embobut forest has been their ancestral and communal land. They are found in Trans Nzoia, West Pokot and Marakwet districts. The many of them who are living in Embobut found themselves there as a result of forceful eviction they experienced from the other side of Tranzoia.

Thus they are recognized as minorities and marginalized groups under the Constitution of Kenya and their rights are entrenched in article 56 of the CoK.²⁴ Owing to the fact that they are considered as minority and marginalized groups, they are associated to the forests and have held, managed and used the forest as grazing areas and a significant place for conducting their shrines. As such, they are protected by the Constitution.

Eviction of these minority groups would therefore amount to violation of their human rights as well as denial to their right to the customary sustainable use and conservation of biodiversity if they are forcibly evicted from their ancestral lands. With this, they will be deprived of their own indigenous means of subsistence integral to their forest life,

²⁴ See Article 56 of the CoK

identity as well as their characteristic sources of food, water, health and shelter and to their cultural survival as a people.²⁵

The forest dwellers (Sengwer/ Kimala/ Ndorobos) are the most deserving group from the two other categories of squatters since they have had no original home. According to the Report of the Parliamentary Select Committee on the Resettlement of the Internally Displaced Persons in Kenya, the report recognizes the Sengwer communities as indigenous communities since 18th Century. ²⁶

“The Sengwer also referred to as Kimala are the indigenous people of Embobut [...] scattered all over Embobut forest”. “There are one thousand five hundred and forty six (1546) households of the Sengwer people in Embobut forest.” “The Embobut community had lived in the forest since the 18th century and the land they occupied was their ancestral land and even after the coming of the colonial government, they were issued with permits to continue living in the land.

The forest dwellers livelihoods, health system and culture have for long depended on the natural resources found in the forests and as such their economic activity has been harvesting herbs, medicine, bee-keeping, hunting and gathering.

Thus the forest has been a significant and convenient place for them to offer cultural

Sengwer are believed to be around 30,000 in numbers and are clustered in sub-tribes which comprises Kaptogom, Kasaango, Kapcheper, Kapchongwony Kamengetiony Kepoch, Kapkotit, Kipsirat, Kapteeteke, Kaplema, Kapsorme, Kimarich, Kaptapkitiny, Kapkutung and Kapumpo among others. They are made up of the following clans; Kobilu, Soti, Terik, Toyoi, Sogome, Kaboon, Moi, Talai and Kaptooso. In addition to sub-tribes and clans, they are also clustered in totems which include Chepkuukwa nyi lel kat, Soo, Moororoch, Cheptuke, Asis, lilat and Chepsirere.

rights and spiritual anchorage to their forefathers. In an attempt to conserve their

²⁵ ICCPR 1.2 and 27, ICESCR articles 1.2, 11, 15.1 a, UNDRIP, articles 7- 8.2, 9-10 and 20, CCPR General Comment 23, CCPR/C/21/Rev.1/Add.5 , 26 April 1994, paragraphs 3.2 and 7 and CESCR, General comment No. 12 E/C.12/GC/21, 21 December 2009, paragraph 32-33, A/HRC/21/47/Add.1, 30 August 2012, paragraph 39

²⁶ Report of the Parliamentary Select Committee on the Resettlement of the Internally Displaced Persons in Kenya to the Republic of Kenya, Kenya National Assembly Tenth Parliament– Fourth Session – 2012, pages 40-41

territorial and cultural lands for instance their natural resources and cultural heritage, the Sengwer/ Kimala/ Ndorobo people have resisted several times the attempts of successive Governments to forcefully evict them as well as to reallocate their ancestral and cultural lands. In this instance therefore, we can say that the pre-colonial and post colonial governments have always denied the Sengwer community rights over their ancestral domains.

During the eviction, Sengwer lost all their ancestral land to Colonial white settlers as the forests were gazetted as government forests. This was done putting no consideration to the Sengwer in allowing them to have native reserve for the marginalized and indigenous communities. Even after independence, Sengwer lost of their land to immigrants through Settlement Fund Trustees Programme (SFTP). Parcels of land that remained as a result of the Settlement Fund Trustees Programme were converted into Agricultural Development Corporations (ADC) farms. In the 90s, the Agricultural Development Corporations farms were further allocated to politically influential communities and individuals leaving Sengwer peoples landless as aliens in their own territory. Forced evictions and displacements of Sengwer Indigenous Peoples from their ancestral land coupled with forced assimilations into dominant tribes of Marakwets and Pokots. This was seen as a failure to recognize the rights of Sengwer to live in their ancestral homes. In the long run, settling other communities on Sengwer land led to an increase in deforestation and pressure on fragile ecosystems. Other than this, lack of national land policies by then that protected respected and recognized Sengwer's ancestral /community lands led to continued marginalization, oppression and discrimination of ethnic minority hunter-gatherer Indigenous Peoples in Kenya today. International Development Agencies which focused on the Cherangany Hills put more pressure on the survival of Sengwer peoples since it complicated the survival of the community. This is because most of these programmes failed to recognize the fundamental freedoms, human and indigenous rights of Sengwer intend to carry out the development projects.

CHAPTER TWO

Analysis of Legal and Normative Framework

Kenya Human Rights Commission was guided by existing National, regional and international human rights and legal framework on displacement and human rights. For formality reasons and in lieu of this fact finding mission, we define eviction as “to force out or to eject” in order to recover something.

Eviction threatens human security as well as the enjoyment of human rights. The principle and ultimate goal and purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social to ensure that every human being lives free from fear.

During eviction process, a number of interventions occur in between activities and steps that takes place of which at last may/leads to numerous and massive violation of or promotion of human rights. This entails consultations, community engagement and humanitarian response.

This chapter reviews the legal and human rights framework applicable prior, during and post eviction to give a picture to broaden the individual, States and actors’ responsibilities and obligations to amicably address eviction through consultations to both parties as a way of preventing and managing evictions as well as providing avenues for mitigation.

Human rights and legal framework applicable to non-state actors, more so those that are concerned and those that responds to humanitarian crises and needs are looked at in this Chapter.

Human Rights Obligations as whole

The action taken by the Government of Kenya as well as the Kenya Forest Service in evicting people residing inside and

According to UN Special Rapporteur on the rights of indigenous people, the Government of Kenya “should ensure that the human rights of the Sengwer indigenous people are fully respected, in strict compliance with international standards protecting the rights of indigenous peoples. Indigenous peoples shall not be forcibly relocated from their lands or territories. Any removal of Sengwer people from their traditional lands should not take place without adequate consultations and agreement with them, under just terms that are fully protective of their rights”

around the Embobut forest culminated into a number of human rights violations. More so, the people living inside the forest, among them Sengwer who for a long period of time have been considered indigenous were not spared contrary to the rights of marginalized communities as enshrined in the Constitution.

There is a legislative and normative framework for the protection of citizens against forceful evictions and can be divided into categories, namely National, Regional and international.

A Nationally

1. In whatever situations that may come up, it is the utmost and ultimate responsibility and obligation of the State to see to it that before eviction, during eviction and after eviction, its citizens are in a position to enjoy, at all cost, their fundamental rights and freedom to the greatest end possible. While the constitution of Kenya does not provide explicit protection against eviction, we can just interpret the widely provide rights entrenched in chapter four of the Bill of Rights. These rights which can be interpreted includes but not limited to right to life, equality and non-discrimination, the right to the protection of one's dignity, freedom and security of the person, right to privacy, religion, freedom of expression, right to access information, protection to right to property, right to adequate food, the right to accessible and adequate housing, right to clean and safe water, right to education, belief and opinion, access to information , and right to language and culture as entrenched in Articles 26, 27, 28,29, 32, 33, 35,40, 43 and 44 respectively .
2. The nature, impact and extent of eviction on vulnerable such as women, children, elderly, youth, persons with disabilities and to a larger extend the marginalized groups in this case the Sengwer/ Kimala, is a matter of big concern and to this extend, the State is/should be obliged to instigate at all costs measures to see to it that the said groups are ensured and guaranteed of their rights and that no rights should be deprived of them except by law.
3. The normative and legal analysis guidelines are those guidelines that see to it that human rights are respected and protected at all levels. Its credibility will largely depend on how these guidelines together with the State stands up for human rights in all policy fields; these guidelines are enshrined in national, regional and international instruments and operationalized through various legislative means such as the Penal Code, the National Police Service Act (NPSA), International Crimes Act (ICA), National Land Act (NLA), the Children Act and the Persons with Disabilities Act (PWDA).

B Regionally

1. Regionally, most of these guidelines and principles are stipulated diversely. They are rights granted and found for instance in the African Charter on Human and People's Rights (Banjul Charter) which states everyone has a right to be protected against forced evictions can only take place as a last resort after which it has been determined that all other possible alternatives have been exhausted. International law further provides that, in cases where an eviction is unavoidable, the process must be done through consultation, evictions should not be done under bad weather conditions as well as there should be fair compensation and resettlement. Other instruments include the Protocol to the African Charter on Rights of Women in Africa (ACRWA), and African Charter on the Rights and Welfare of the Child (ACRWC).
2. Again, Kenya is a member of the International Conference on the Great Lakes Region (ICGLR) which together with other core States as well as co-opted states whose objectives is to provide a legal framework governing relations between Member States, provide the platform for implementing the contents of the Pact, create the favorable conditions for security, stability and sustainable development between the Member States. The participating nations signed a Pact. The Pact is made up of 10 protocols and of relevance here is the Protocol on the Protection and Assistance to Internally Displaced Persons; and Protocol on the Property Rights of Returning Persons.

C Internationally

- 1) Crossing borders internationally, the country is a party to various instruments and guiding documents that address issues of security, stability and development. These include the United Nations Guiding Principles on Internal Displacement and the Beijing Platform for Action.
- 2) The Universal Declaration of Human Rights (UDHR) for instance, the International Covenant on Civil and Political Rights (ICCPR)²⁷ which prohibits forceful eviction (Article 17) as part of the right not to be subjected to arbitrary or unlawful interference with one's privacy, family and home as well as that of effective remedy²⁸. The International Covenant on Economic, Social and Cultural

²⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (Kenya acceded to treaty on 1 May 1972).

²⁸ Article 2(3), ICCPR and Article 7, African Charter.

Rights (ICESCR)²⁹ are some of the internationally recognized guidelines. According to the Committee on Economic, Social and Cultural Rights (ESCR), [I]nstances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.³⁰

- 3) There are several other key instruments (treaties). They include the Convention against Torture (CAT), the Convention on Elimination of all forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Rights of the Child (CRC).
- Other than setting them out, these guidelines (national, regional and international frameworks) acts like a watchdog that establishes the States' obligation to respect, protect and promote human rights in all policy fields. This mandatory obligation to respect, protect and promote the enjoyment of human rights requires the State to cease from any acts or omissions that may result in massive violation of these rights.
 - The mandatory obligation to respect, protection and promotion thus urges the State to block other third parties from blocking, interfering with or infringing on another person's rights. If the State does all it can to put in place measures to ensure the protection, promotion, respect and the realization towards the full enjoyment of these rights, then it is complying with its utmost obligation to fulfill human rights. These obligations thus extends to all including but not limited to the State as well as citizens and any other persons.
 - In reference to this, entitlement to human rights and fundamental freedoms are not absolute and can be limited in compliance with set laws and principles. For instance in Kenya, and to be specific in article 24 (1) of the Constitution, "a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human

²⁹ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (Kenya acceded to treaty on 1 May 1972). Article 11(1) of the ICESCR has been consistently interpreted as providing legal protection against forced evictions, most notably within the UN Committee on Economic, Social and Cultural Rights. See Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing, (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997) and General Comment No. 4

³⁰ Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing, (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), para. 18.

dignity, equality and freedom, taking into account all relevant factors including the nature of the rights or fundamental freedom, the importance and purpose of the limitation, the nature and extent of the limitation, the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others and the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose”.

- In whatever the case or situation, there are certain rights and principles that shall not be limited regardless of the circumstances. These are freedom from torture, cruel, inhuman or degrading treatment or punishment, freedom from slavery or servitude, the right to a fair trial and the right to an order of habeas corpus (Article 25).

Government’s responsibility to forced evictions in Embobut Forest

- 1) The Governments’ mandatory obligation to respect, protect, promote human rights during the eviction should have been prioritized. What the Government and the Kenya Forest Service should have done before the eviction was carried out for instance, it ought to have known that respect, promotion and protection of individual rights should be a key priority. The government should have to put in place mechanisms to ensure that they peacefully evict people and as such, prior negotiations should have been done including extending the 21 day period to close to six months to one year as stated by the evictees. Now that the eviction is done, it is the responsibility of the State to profile those who still claim that they have nowhere to go, as well as the Sengwer, Ndorobo and Kimala who have since time immemorial have been living in the forests.
- 2) In instances where eviction is deemed as the final determined resort after all the possible avenues towards eviction has been exhausted, there is need to consult with the communities. In reference to Embobut eviction, adequate and reasonable eviction should have been given out prior to the day of the eviction.

Thus throughout the fact finding mission on the Embobut evictions, the legal, normative and human rights framework discussed above formed the basis of our findings as the KHRC.

CHAPTER THREE

Key Analysis of events to present time

Date	Incident
1920 - 1922	Residents of age eighty plus allege to receive permits given to them by the colonial government and earned themselves the name permit holders. Sengwer are believed to have not earned permits.
1954	Embobut forest was gazetted through the proclamation order No. 26 of 6 th November 1954 ³¹ .
1958, 1961	The Chairman of the landslide victims said that the region witnessed massive landslides that killed so many residents.
1964	After the gazettement of 1954 was held by the County Council as Trust Land, the gazette was re-stated by legal notice No. 174 of 29 th May 1964 as a national forest reserve in the same year immediately after the independence.
2009	The government plans to evict people from the forest through consultative meetings with leaders, stakeholders & the community through <i>Barazas</i> .
1 st April 2009	The Government issues a seven day notice for eviction with a grace period of three weeks.
4 th April 2009	The taskforce upholds recommendation reached during the Marakwet Leaders meeting on the same day which reiterated that squatters living in the gazetted area to move out to pave way for restoration for the forest.
1 st May 2009	The Government evicts population from the forest whereby the report alleges that some moved voluntarily while others refused claiming that they had nowhere to go. However, residents claim that the government attempted to evict them in 2007, 2008, 2009, 2011 and 2013.
8 th June 2009	The taskforce visits Kessom Glade, holds a public <i>Baraza</i> after which vetting came in and identifies 14 genuine squatters and 56 as their sons/associates. In Sinen glades, 6 were found to be permit holders and were granted permits still by the colonial administration in 1935 and

³¹ Embobut Taskforce report page 9

	1935 respectively.
January 2013	Sengwer community files a complaint to the World Bank inspection panel claiming that World Bank's activities undertaken in the forest towards the indigenous people in this case the Sengwer, Kimala and Ndorobos. In their complaint, they claim the project caused displacement to their habitual homes.
26 March 2013	An interim injunction is granted at Eldoret High Court on 26th March 2013, and served on the relevant authorities on April 2nd 2013.
15 th April 2013	The government attempts to evict people. This saw burning of houses belonging to those living inside and around despite the interim injunction secured in the High Court.
May 2013	The World Bank Inspection Panel visits Kenya to assess the eligibility of the complaint. The Inspection Panel finds the complaint admissible and recommends a full investigation.
30 August 2013	The UN Committee on the Elimination of Racial Discrimination (UN CERD) write to the Permanent Representative of Kenya to the UN, citing concern over the burning of Sengwer homes in the Embobut forest area of the Cherangany Hills by the KFS.
September 2013	The Inspection Panel visits Cherangany Hills.
15 Nov 2013	President Uhuru Kenyatta, Deputy President William Rutto and Elgeyo Marakwet County Senator Hon Kipchumba Murkomen accompanied by other political leaders and Cabinet Secretaries visits Embobut and issues cheques worth Kshs 400,000 per family as compensation fee for the evictees.
12 December 2013	Elgeyo Marakwet County Commissioner, Mr. Arthur Osiya, issues a statement that the Evictees were given the cash and had no reason to continue staying in the forest and that by January 3rd 2014, all squatters are expected to be out of the forest.
3 January 2014	The evictees through their leaders hold a meeting and calls on the Government to cease undertaking the forceful evictions. They claimed that the Kenya Forest Service officers together with the officers from the Administration Police (AP) had pitched tents ready for eviction. They saw this as an indication that the government was ready to evict those who were residing in the forest.

5 January 2014	A platoon of Kenya Forest Officers and those from the Administration police gathered and made a timeline for first phase of evictions. Their numbers were estimated to be between 150 to 200 KFS in total all operating from three points: Tangul, Kipsitono and Maron, to commence the eviction operation.
13 January 2014	The UN Special Rapporteur on Rights of Indigenous Peoples urges Kenyan Government to stop the forced eviction of the indigenous Sengwer communities in Embobut forest area.
16 th January 2014	KFS accompanied by Administration Police officers begins to burn houses inside and those around the forest.
18 January 2014	The environment and Land Judge sitting at the High Court at Eldoret urges the County Police Commandant and County Administration Police Commandant to respect the court orders and enforce the injunction issued at the court that were served to them.
21 January	The KFS accompanied by Administration Police officers continues with their mission of burning houses inside and those around the forest in Koropkwen Kipsitono, Kapkok and Sinen, Kapolet, Lelan, Kamolokon as well as other parts of the upper side of Kaptirpai glades in Embobut forest.
31 st January	The Fact Finding Mission Team visits Embobut forest, meets with the evictees at Embobut Dispensary. Also, we got to listen to politicians' address the evictees through a public baraza at St Michael's primary school. The politicians were Senator Kipchumba Murkomen, Hon. Kipyego Bowen and M.C.A Benson Kiptire.
1 st February	The Fact Finding Mission Team meets with various leaders, representative as well as political and women leaders at highlands Inn Hotel at Eldoret.

CHAPTER FOUR

Impact of Forceful Evictions in Embobut

The eviction that was witnessed in Embobut forest has had devastating and adverse impacts on the population living inside and around the forest as well as its environs. One of the most common phenomena as a result of this eviction is displacement of hundreds of people, destruction of livelihoods and disruption of access to basic needs and services including education, housing, and health.

Perhaps in all the administrations i.e. the colonial administration, the Kenyatta administration, the Moi Administration, the Kibaki administration and the current administration, has disrupted normal community operations which has caused deep sense of fear, confusion and tension between the government and the community living in Embobut. Considering the way things are on the ground, this may take quite some time and effort to address the issues of Evictions not only in Embobut but also other forests within the country. The impact of forceful eviction is a cycle like event which will continue to be witnessed. This section thus analyses the nature and impact of the eviction from a human rights perspective.

Loss of property and psychological injury to the evictees

According to the evictees, more than 800 houses were burnt. This could as well be more since the population living inside the forest is more than 27,000. By the time KHRC visited the area, some residents claimed that they were not sure where their livestock were since their houses were burnt down on 16th January 2014. What the team found out was that it was even harder and difficult for them to go after their livestock since the Kenya Forest Service officers were going round the forest.

According to the Forest Peoples Programme, the forceful eviction witnessed in Embobut violated the rights of the Indigenous people (in this case the Sengwer/Ndorobos/ Kimala) who have their right to the customary sustainable use and conservation of biodiversity. If they are forcibly evicted from their ancestral lands, they are deprived of their own indigenous means of subsistence which is integral to their forest life, identity, their characteristic sources of food, water, health and shelter and to their cultural survival as a people"

The highest number of evictions was witnessed in Embobut areas Chebairwat, Kamalagon, Kapkook, Kapchorwo, Kamoyokwo and Katapseron which has led to closure of schools forcing children to register their children in the neighboring schools such as Kamasia, Tangul and Kapchelaga in Kapyego division. In Embobut/ Embolot area, Kapchebau, St Michael's Embobut, Tirap, Chawis and Moror have witnessed massive influx of school children who were evicted in the forest.

By the time this report was compiled, there was no information on any assessment done on the damage to farm produce as well as loss of other household items and other personal belongings and other property in general.

Number of families displaced

Worth noting is that there was no profiling of persons leaving in the forest. It is important to note that the number of evicted families could be higher than the available information since other persons might have fled to far flung areas out of the forest. The main challenge facing the evicted persons is the uncertainty as to where they will go after eviction.

Exact number of households and persons evicted is unquantifiable. However, residents claim that the people who lived in the forest is approximated to be between 15,000 to 27,000 people.

Most of the persons evicted displaced persons settled along the roads during the first days of eviction.³² Others went to integrate with the local community living below the road which is said to be phase two of eviction process while the rest moved to locations outside the district in places like Iten, Kapsowar, Tot and Chebiemit to stay with their relatives. As for the Sengwer communities, they said they had nowhere to go and as much as that remains the way they were, some had gone back secretly to the forests since they believe their livelihood is associated to the forest.

Livelihood

The eviction disrupted the communities' economic activities around the forest. Most of the evictees said that they were farmers and as such, they depended on farming as their livelihood. As for the Sengwer, they said that theirs is dependence on forest since they are hunters and gatherers. In this case therefore, farmers left their farm produce unattended and some fear they might as well be destroyed. They also believe their

³² An interview with a group of people who said they had an area where relatives were living of which they would go.

livestock might have been stolen by Pokots due to its proximity to Pokot who are “perceived as cattle raiders”.

Those who were traders inside the forest too have suffered great losses since their stores were vandalized and torched at the same time.

With their farm produce still at the forest, and it being their sources of food and livelihood, most of the evicted persons are appealing for humanitarian assistance since the KFS had not allowed them to go harvest their produce.

In the medium to long term analysis of the eviction aftermath, evictees believe that the forceful eviction will have an impact on their future food security situation since there is only one planting season in the area and to top it up, they have no land to plant this year.

Health and psycho-social support

Since the eviction was done, most vulnerable people especially children have had cold related sickness. They claim there is no medical centre since most of them were in the forest. Their appeal was to bring mobile clinics near them considering no person is allowed to go into the forest.

In an interview with a nurse at a local dispensary, she says that most vulnerable groups are women and children. Most diseases treated are cold related diseases.

The dispensary, according to her had hosted evictees for sometime as holding grounds as they looked for other alternatives.

The main challenge will be to ensure that the vulnerable evicted persons, more so the women and children have continued access to primary health care.

Education

Education had been disrupted by the time the team reached the area. The eviction was carried out just when the schools were re-opened for the first term session in their calendar and subsequent displacement followed. 15 schools were closed indefinitely.³³

Political leaders urged the government to award titles to the schools in the forest. Speaking in a public Baraza attended by Senator Murkomen, area Member of Parliament (M.P) Hon Bowen and Kapyego ward Member of County Assembly (M.C.A) Benson Kiptire, they urged the un-affected schools to absorb the influx of students searching for education. He donated Kshs. 1,000,000 to the two locations affected. In areas where evicted persons sought refuge, school facilities in those areas were over

³³ The Star; 31st January 2014

stretched and unable to cope with the influx of new pupils for instance, the student population of St Michaels' Embobut.

According to some local leaders, most of the pupils evicted had suffered psychological trauma and there was need for counseling. Schools inside the forest still remained closed.

Housing

The displaced persons claimed to have not received any humanitarian assistance in terms of standard non food items including tarpaulins, kitchen sets, mosquito nets, and soaps among other things from any relief agencies.

The housing condition, especially for the indigenous Sengwer community was a hurdle to them. As such, there was no privacy and dignity of the person according to them. Considering the region is a highland zone, the place is nearing the long rain season, and in line with this, there is the possibility that many of the evicted will continue to suffer in the cold and suffer the indignity of spending their nights in floods. In the medium term, the community will require support to enable them rebuild houses but the big question is where now.

Loss of valuable documents

In our interviews with the evicted communities, many of the displaced persons revealed to us that many of them had lost important documents for instance their identification cards, voters' cards and birth certificates as well as certificates which now becomes a puzzle of when and how to get them back.

To them, they consider these documents as vital as they are required for one to be able to access most basic rights including health and education. However, the Government has not undertaken any comprehensive assessment of the extent of this problem with a view to assist the victims. The witnesses complained that it ordinarily takes longer for residents of the region to obtain vital documents like national identity cards and birth certificates and loss is a blow to them.

Analysis of the Role of the Various Actors in the in regard to eviction

The government plays a vital role in any society, by ensuring that the rights of its citizens is protected and promoted. The fact finding team can confirm that there were several actors and key players involved in the entire eviction process. Much of the issues surround activities done prior, during and after eviction. This Chapter shall

therefore discuss the role played by these key players in relation to their involvement in the eviction and their response.

Direct actors

The fact finding team received information on the direct and indirect involvement of various individuals as well as actors in the forceful evictions witnessed in Embobut. The primary participants in the evictions were the Kenya Forest Service. They in collaboration with administration officers, following a directive from their office began torching people's houses in the forest.

Indirect actors

However, there is perceived involvement of other indirect actors. The World Bank has occasionally been named by evictees as indirectly contributing towards a project supported by the government to evict the communities living in the forest. The indirect involvement of other actors in the eviction was through reports of incitement by politicians.

The team received reports that some politicians and local leaders from region might have taken advantage of the situation to advance their political interests as well as to compensate their political aides. The team received statements indirectly implicating various political leaders, past and current from the region that had vested interests.³⁴

However, the KHRC acknowledges the role that was played by some politicians in trying to mitigate the eviction through their participation in various consultative meetings.

The team established that the government was in a better place to put up mechanisms and structures to see to it that there was no violation of human rights at all cost prior to the forceful eviction. During the eviction, there was heavy presence of armed police officers in the forest. The government deployed heavy security in the region by deploying extra officers to reinforce the KFS officers to create patrol bases.

³⁴ Various witnesses interviewed by the Fact Finding Team

CHAPTER FIVE

Conclusion and Recommendations

Conclusion

Having looked at the nature and the extent of eviction and how the evictions were carried out, we can ultimately conclude that it was not done in a more humane way. Forest conservation and protection of human rights are not mutually exclusive, and as witnessed by the FFT in reference to Embobut Forest evictions, the failure to protect and promote human rights and fundamental freedoms has undermined forest conservation. With this therefore, it would be our ultimate happiness that the government should see to it that there are no further evictions from the Embobut forest and perhaps other forests in Kenya not until effective human rights safeguards are in place. These should include profiling of all residents living in the forests. Thereafter, there should be assurances of adequate alternative resettlement and compensation to those affected. At the same time the government of Kenya, with the support of international assistance as required, should take immediate steps to see to it that other forms of reparation is prioritized to all of those affected by forced evictions. The government of Kenya should see to it that they implement a human rights approach to forest evictions.

The overall consensus amongst environmentalists in Kenya is that the forced evictions have largely failed to protect the forest – in many cases people have simply returned to their former homes. They have done so because they have nowhere else to go. Without an adequate resettlement plan in place, evictions not only violate international human rights law but also fail to provide a solution to forest conservation.

The Government of Kenya has failed to tackle, in any systematic and meaningful way, the many underlying problems which contribute to forest destruction. While it has forcibly evicted thousands of poor families from small plots, few of the powerful political actors involved in the illegal allocation of so much public land have been subjected to investigation and prosecution.

Rather, than address the serious and ongoing issue of corruption in relation to forests, the

Government has been willing to deny thousands of ordinary people due process of law and cancel or disregard their title deeds. The Government's argument that the title deeds are illegitimate fails to recognize that many poor people acted in good faith when

they obtained title. Moreover, where people are suspected of having obtained title deeds through corrupt or illegal practices, the burden of proving this rests with the government.

Key recommendations:

1. The Government of Kenya should accept the fact that the Sengwer/ Kimala/ Ndorobos are indigenous and marginalized communities who have for long lived in the forest as their ancestral land. To this extent, they have full rights to their ancestral land of which the government should respect.
2. The Government should find the best means possible to create/develop transparent policies and procedures for dealing with evictions so as to ensure that evictions from settlements do not occur unless those affected have been consulted and appropriate resettlement arrangements have been made.³⁵
3. Despite a stay order given by the High Court in Eldoret, the Government still went ahead to burn people's houses. Thus, the Government should respect the Courts, its independency as well as its decisions.
4. The Government is requested to give time and allow those who were evicted from the Embobut forest a place to reside as they look for alternatives. According to residents, the 21 period notice was not enough and what they propose is to be allowed to stay below the road as their holding grounds.
5. The Government should process and give out title deeds to public institutions inside the forest which have already been constructed. This should be between 15 to 30 acres per institution according to the residents.
6. The Government, the Kenya Forest Service (KFS) should incorporate the community in decision making process whether it has to do with relocation or compensation through consultation in order to reach an amicable solution through consensus since the evictees felt the money compensated was dictatorial.
7. There are reported incidences of politician's interest in receiving parcels of land in areas around the forest. Some allocations of parcels of lands are believed to be irregularly acquired. Some have claimed that they have been conned to buy non-existing parcels of land. The government therefore is called upon to conduct investigation and prosecute illegal and irregular land allocation and establish a land tribunal for such purposes as suggested by the Ndungu Commission. In this

³⁵ Concluding Observations of the Human Rights Committee: Kenya, 28 March 2005, CCPR/CO/83/KEN.

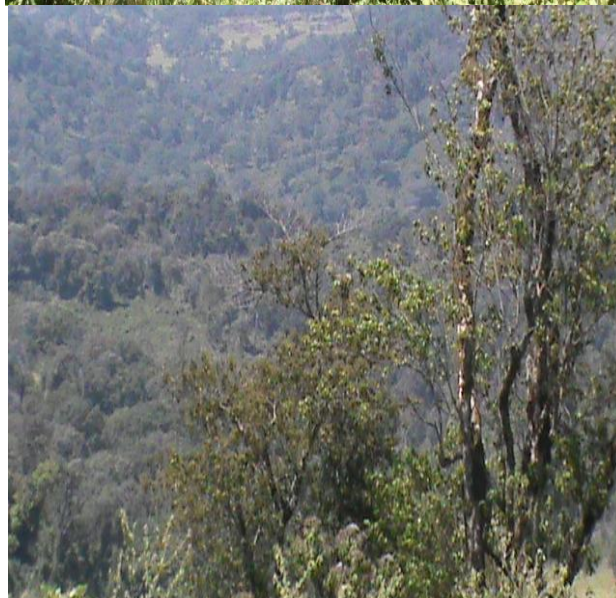
- case therefore, those who are found responsible to such actions such as the illegal sale, transfer and allocation of forest land should be investigated and prosecuted.
8. The Government is requested to review the gazettement of some sections of the forest especially the one below the road earmarked for phase two where people have stayed for a long time. This should envisage regions fit for habitation far from places prone to landslides and soil erosion.
 9. The Government together with the Kenya Forest Service should do exchange agreements together with people who have their private lands near the landslide prone zones which are unsuitable for habitation. This will curb loss of lives of the residents as well as reducing soil erosion in the region.
 10. The Kenya Forest Service should incorporate the community in matters relating to forest rehabilitation as well as conservation to prevent conflict between them.
 11. The Kenya Forestry Service should employ the locals so as to generate income for them to avoid illegal logging inside the forest. This can be done through Community Forest Association.
 12. An audit of beneficiaries should be done with utmost urgency through the provision of bank statements as well as the list of beneficiaries from the County Commissioners' office since there have been allegations that the area M.P in cahoots with other individuals have altered the original list and removed the list of genuine squatters who were to be compensated.
 13. Many people who were compensated have claimed to be conned into returning some amount of money to the County Commissioner's office as some interviewees stated to the mission team. We thus call upon the government to conduct speedy investigate such claims and bring the culprits to book.
 14. The Government as well as the Kenya Forest Service should cease and must with immediate effect torching peoples' houses as well as other properties belonging to the evictees living in the forest. They should as well allow the evictees to bring back their livestock from the forest and give them time to harvest their farm produce for instance maize, millet and potatoes.
 15. The Government should bring a market closer home for their livestock for those who were compensated and wish to relocate to a distant place outside Marakwet East.
 16. The humanitarian situation in the region in terms of medicine and other necessities is calling and thus there is need for urgency of the concerned parties, stakeholders and other humanitarian agencies to reach out to them and provide these humanitarian needs.
 17. There should be a comprehensive approach in terms of needs to be adopted to address the issues of forced evictions.

18. The Government should speed up vetting for the next phase to ensure that all those who were evicted from the forest are profiled and compensated.
19. There is need for review of the money given as compensation fee since those with larger families claimed the money was not sufficient enough.
20. There should be flow of consultation with those affected at the planning stage and with respect for the right to participation in decision-making in these areas.
21. There is need for a clear evictions policy and specific legislation in this regard, such as a National Act on Evictions. In the meantime, an absolute moratorium on forced evictions should be implemented.
22. The government should respect, preserve and maintain knowledge, innovations and practices of indigenous and marginalized communities; preserve their traditional lifestyles relevant for the conservation and sustainable use of biodiversity as well as ensuring access to genetic resources for environmentally sound uses in this case the Sengwer/ Kimala and Ndorobos.

List of interviewees

- Arthur Osiya County Commissioner
- Kilimo Chelan'ga Coordinator
- Richard Cheptorus Berur Foundation
- John Bunyasi North Rift Hurinet
- Stephen Cheboi North Rift Hurinet
- Edward Chesire Ndorobo's Representative
- Dickson K Rotich Sengwer Elder
- Henry Kizinja Sengwer Tribe
- Benjamin Wagor Chairperson-Kaben landslide victims
- Johana Rono Yator Ndorobo Tribe
- Joseph Kanda Permit Holder
- Elijah Kanda Former Councillor
- Caleb Kemboi Media
- Anna Mosop Former Councillor
- Mary Chepkoiyo Woman Leader
- Jeremiah Mumol Resident Embobot
- Kimutai Mrefu Resident Embobot
- Lucy Cheruto Resident Embobot

Annex 1-Pictorals



1. The pictures above (Top left, Top Right and Bottom left) show the side views of Embobut forest from Tirap area.
2. Bottom Right: This picture shows a tree that was cut but never fell down.



1. The above pictures show various speakers evicted from Embobut forest narrating their painful grievances during the interview session.



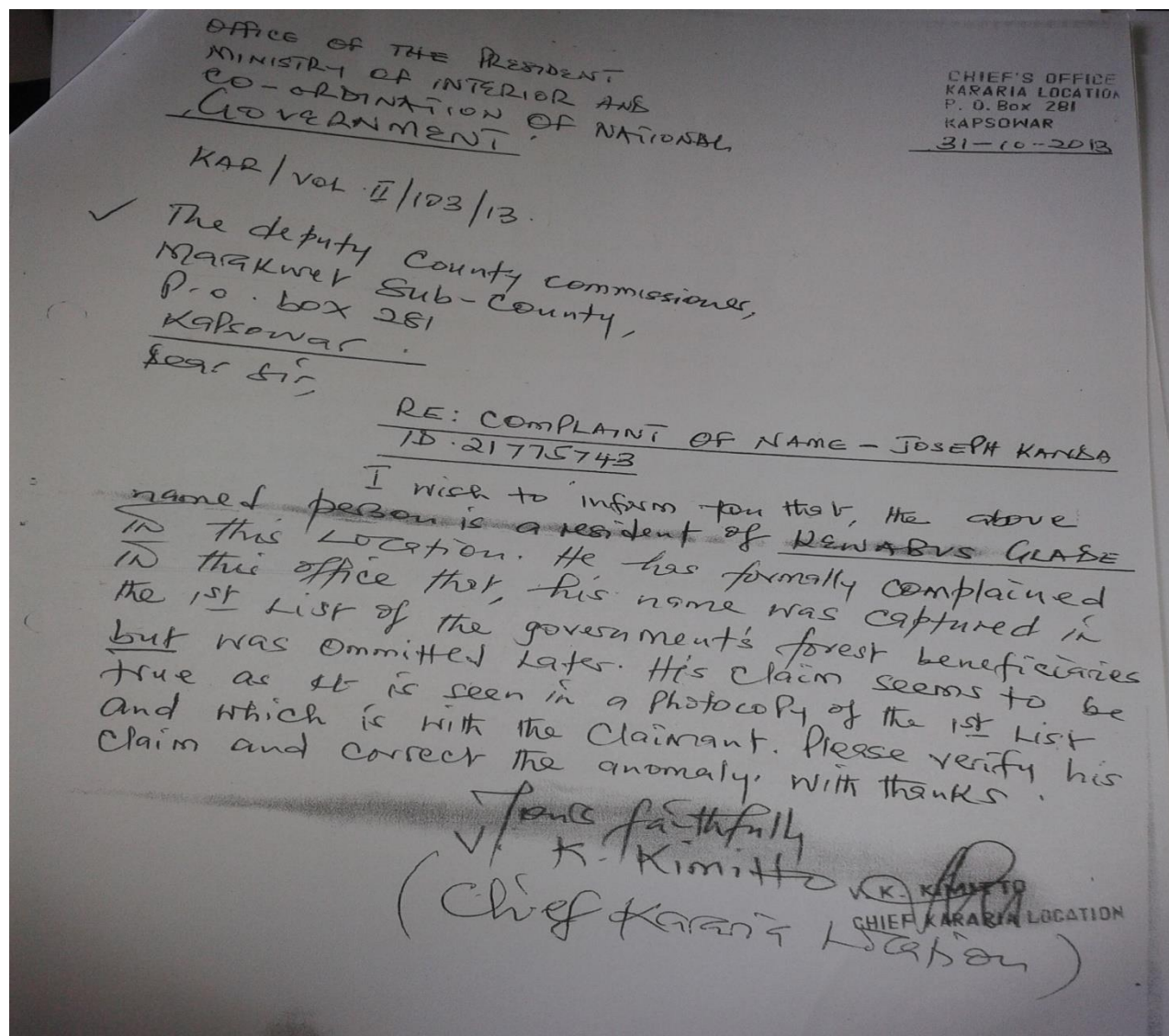
3. **Top Left:** The house in this picture belongs to Senator Kipchumba Murkomen. It is below the road (where it is alleged phase two of eviction will take place).
4. **Top Right:** This picture shows houses below the road that were not torched. Surrounding the houses is a maize farm (some harvested while others not yet harvested).
5. **Bottom Left and Bottom Right:** These two pictures depict a section of Embobut forest encroached by people with already and fenced tilled parcels of land.



2. The above pictures show a group of evictees flushed out from Embobut forest who appeared for our interviews.



- 1 Left: The sign-post of the Chief's and the Assistant Chief's offices at Embobut.
- 2 Right: This picture depicts houses torched from Tirap view point.



- 1) A complaint letter for Joseph Kanda addressed to the Chief of Kararia Location to be forwarded to the Ministry of Interior and Co-ordination of National Government on grounds that his name was in the original 1st list of the beneficiaries but didn't receive the 400,000 shillings awarded as compensation.

Annexes 2- Embobut Forest Taskforce Report submitted to the Minister for Forestry and Wildlife formed to investigate, examine and identify genuine and qualified squatters

Annex 2- Harmonized registers of Embobut forest evictees, (This is the list used by the Government to compensate the 2874 squatters each receiving Kshs 400,000)

Annex 3- Amended Petition

Annexes - Affidavit of support - Edward Kosgei Chesire (Representative of Ndorobo)
- Joseph Kanda (Representative of Permit Holders)
- Richard Chebii (Representative of Landslide Victims)



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