

The case of the Cherangany Hills, Kenya - State forest protection is forcing people from their lands

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1. Background

This study focuses on State conservation initiatives in the Cherangany Hills, Kenya.

This concerns a World Bank funded project: the Natural Resource Management Project (NRMP) in Kenya's Cherangany Hills. Support for this project, in which the World Bank was joined by various other donor agencies, including the Finnish government, is in aid of the Kenyan Forest Service to protect the Cherangany Hills in order to secure their key water catchments functions. The foreign funded interventions by the KFS led to massive evictions of the region's traditional occupants, the Sengwer people, plus others who had moved into the area more recently. These developments led to international controversy and, following complaints, the World Bank's Independent Inspection Panel investigated the case. The Panel issued a report which highlighted serious violations of the Bank's own safeguards and Kenya's obligations under international environmental and human rights conventions.

The Cherangany Hills ecology

The Cherangany Hills cuts across four administrative districts in Rift Valley Province. The hills are largely covered by a series of indigenous forests. These forests are made up of 12 administrative blocks.¹ The Hills are important biodiversity hotspots as they harbour 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, including: Lake Victoria (Shared by Kenya, Uganda and Tanzania), Lake Turkana and Saiwa Swamp National Park. The watershed of Cherangany Hills forms major conservation areas which include: Saiwa Swamp National Park (known for Sitatunga, an endangered antelope species), South Turkana National Reserve, Rimo Game Reserve and Kerio Valley National Reserves.²

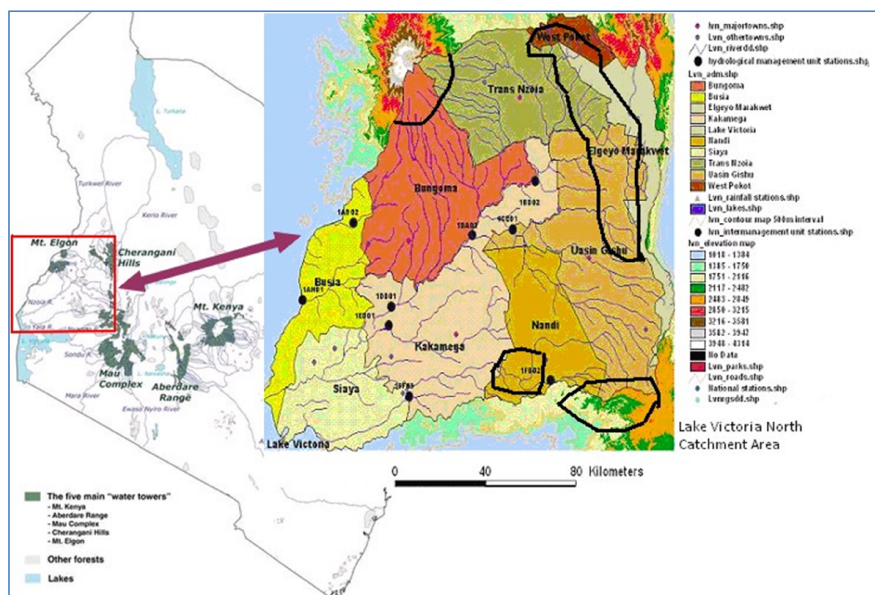
The Cherangany Hills form an undulating upland plateau on the western edge of the Rift Valley. To the east, the Elgeyo Escarpment drops abruptly to the floor of the Kerio Valley, while westwards the land falls away gently to the plains of Trans-Nzoia District. The hills reach 3,365 m at Cheptoket Peak in the north-central section. The hills are largely covered by a series of Forest Reserves. These are made up of 13 administrative blocks, totaling 95,600 ha in gazetted area. Of this, ca. 60,500 ha is closed-canopy forest, the

¹ Namely: Kapolet, Kapkanyar, Kipteeper, Sogotio, Chemurgoi, Kaisungor, Kerer, Empoput, Kipkunur, Lelan, Toropket and Cheboi

² Kiptum, Y. and Odhiambo, C. Safeguarding Sengwer Territory, Land, Culture & Natural Resources. Participatory 3-Dimensional Modeling of Cherangany Hills. p.2.

remainder being formations of bamboo, scrub, rock, grassland, moorland or heath, with ca. 4,000 ha of cultivation and plantations. Apart from a large south-eastern block along the escarpment crest, the forests here are fragmented and separated by extensive natural grasslands, scrub and (especially in the central part) farmland.³ In clearings, *Acacia abyssinica* occurs among scrubby grassland with a diversity of flowering plants. At higher altitudes, the forest is interspersed with a mixture of heath vegetation and swamps.⁴

Figure 1: Location Cherangany Hills⁵



The Cherangany forests are important for water catchment - also referred to as one of Kenya's five "Water Towers"⁶ - and sit astride the watershed between the Lake Victoria and Lake Turkana basins. Streams to the west of the watershed feed the Nzoia river system, which flows into Lake Victoria; streams to the east flow into the Kerio river

³ The lower western parts of Kiptaberr-Kapkanyar are clothed in *Aningeria-Strombosia-Drypetes* forest, with a large area of mixed *Podocarpus latifolius* forest on the higher slopes. The southern slopes hold *Juniperus-Nuxia-Podocarpus falcatus* forest, with heavily disturbed *Podocarpus falcatus* forest on the eastern slopes. Valleys in the upper peaks area shelter sizeable remnants of *Juniperus-Maytenus undata-Rapanaea-Hagenia* forest. Tree ferns *Cyathea manniana* occur in stream valleys, and there are patches of bamboo *Arundinaria alpina*, though no bamboo zone as such. Source: Birdlife,

⁴ <http://www.birdlife.org/datazone/sitefactsheet.php?id=6433>

⁵ Map in 'Changes in forest cover in Kenya's five 'water towers'. See:

<http://projects.csq.uwaterloo.ca/lvbc/lvbc/html/Gachania.%20Akotsi%20-%202004.html>

⁶ The other being the forests of Mt. Kenya, the Aberdare Range, the Mau Complex and Mt. Elgon

system.⁷ The rivers serve as sources of water for hydroelectric generation, irrigation, agriculture and industrial processes downstream. Cherangany's forests and biodiversity are a revenue earner through tourism. They are an immediate source of livelihood, culture and identity for local communities, such as the Sengwer.

The Sengwer People

The Sengwer (also Known as Cherangany or Dorobo) is an ethnic minority hunter-gatherer indigenous people living along the slopes of Cherangany Hills. They live distributed in three administrative districts: Trans-Nzoia, West Pokot and Marakwet districts in and around Cherangany Hills. It is estimated that the current population of the Sengwer, considered as one of the most marginalised groups, is about 30,000. The Sengwer's cultural administrative organization is made up mainly of sub-tribes, clans and totems. The Sengwer livelihood, health system and culture depend on the natural resources found in the forests. Their traditional economies were based on herbal medicine, bee keeping, and hunting and gathering. The forests support their cultural practices and so provide spiritual anchorage.

To place the current social and ecological problems in Cherangany in perspective, it is relevant to revisit the history of the area.

The invasion of Cherangany Hills

The Cherangany Hills includes 12 forest blocks gazetted as government forests by the colonial government. The proclamation was enacted without the community's endorsement. It prohibited anyone from residing in the forest or carrying out activities without the Government's authority. After Kenya gained independence in 1963 the Sengwer thought that better times had arrived. Every tribe was celebrating Uhuru (freedom) because they were promised their traditional land. The Sengwer felt sure they would get back their land. They were extremely disappointed when they discovered that their land was given to other tribes due to what they saw as nepotism and corruption, as well as the ignorance of the Sengwer. The consequences of losing their land was not only losing a place to hunt, to collect honey and to find their traditional medicines, but also losing their social and cultural anchoring and sustenance.

The exercise led to a dramatic loss of forest cover and to the destruction of large forest ecosystems. This process accelerated in 1992 when thousands of hectares of land were excised through illegal alterations of forest boundaries and irregular allocation of the land to non-Sengwer. The largest excision areas extended over the top of the Cherangany Escarpment (Eastern Cherangany Forest Reserve), impacting tremendously on water resources and altering the flow regime of major rivers feeding Lake Victoria and Lake Turkana, a trend threatening the stability of the lakes' ecosystem. Portions had already been converted into Agricultural Development Corporations (ADC) farms, but in the 1990s the ADC farms were further allocated to politically influential communities and individuals leaving Sengwer peoples even more landless and alien in their own territory.

Forced evictions and displacements of Sengwer Indigenous Peoples from their ancestral land coupled with forced assimilations into dominant tribes; failure to recognise the rights of Sengwer to live in their ancestral homes (their forests), and, settling other

⁷ Akotsi, E. and Ganchaja, M.: Changes in Forest Cover in Kenya's "Water-Towers" 2000-2003, 2004. http://www.unep.org/dewa/Portals/67/pdf/forest_catchment_2003_report.pdf

communities on Sengwer land, led to an increase in deforestation and pressure on fragile ecosystems. Besides, until 2010 the lack of a constitution and or national land policy that even recognized ancestral lands/community lands led to continued marginalization, oppression and discrimination of ethnic minority hunter - gatherer Indigenous Peoples in Kenya today.⁸ With the new 2010 Constitution and its recognition of such people's rights to their ancestral lands there is now a possibility of rectifying this situation, especially through the National Land Commission's Task Force on Historical Injustices. Forest Peoples Programme has been supporting the Sengwer and other traditional forest dwelling communities to engage with the Task Force in order to seek a resolution of their situation and, through that, rights-based protection for their forests.

2. The social impacts World Bank Natural Resource Management Project (NRMP)

The focus of this case study is the recent World Bank funded Natural Resource Management Project (NRMP) in the Cherangany Hills, Western Kenya and, in particular, it evaluates its impact on the region's notably population, the Sengwer people. The forestry aspect of the NRMP has been implemented by the Government's Kenya Forest Service (KFS). Its intention has been to build the capacity of KFS to help transform it from an institution whose conservation culture, policies and practice have been based on an enforcement and control approach, to one that is participatory and able to effectively engage communities in the conservation process.

It has become increasingly obvious, first to the communities themselves, then to FPP (as a support organization called in by the communities to help them manage this situation), and finally to the World Bank itself, that far from enabling such a transformation, the NRM Project has been operating through at the very same time that KFS have been evicting Sengwer forest dwellers from their lands at Embobut.

Among the many policy violations committed by the NRMP (which are detailed in the World Bank Inspection Panel's 30th September 2014 report), is the finding that the Bank was non-compliant with its safeguard policies because its project sustained the conditions for further evictions by failing to adequately identify, address or mitigate the fact that the institution it was funding, KFS, was and still remains committed to eviction "before, during and after the conclusion of the NRMP".⁹

For the Sengwer people, an outdated eviction approach to conservation has been pursued for decades, and most recently under the guise of the apparently 'participatory' NRMP. This approach has seen their whole culture outlawed. For decades, Sengwer children have grown up seeing Forest Department Guards and then KFS forest guards, along with police, routinely burn their families' homes, destroying food stores, school uniforms, books and blankets in the process.

Sengwer Peoples history in relation to displacement

The Sengwer indigenous people are a traditionally hunter-gatherer/forest people, whose ancestral lands are located in the Rift Valley province in western Kenya, in and around the forests of the Cherangany Hills. Their current predicament arises from continued

⁸ Kiptum, Y. and Odhiambo, C., p. 4

⁹ World Bank Inspection Panel Report: paragraph 27, Executive Summary.

discrimination and marginalization, in particular from the appropriation of their ancestral lands for 'forest conservation'.

Subsistence hunting and continued occupation of areas that have been legally designated as protected conservation areas has long been illegal in Kenya. Where they have not yet been forcibly evicted from their forestlands, the Sengwer rely on a combination of keeping beehives and cattle, as well as gathering and small scale cultivation in the forests and glades in places like Embobut forest.

The Sengwer were initially forcibly displaced from the lower reaches of their territories (considered as richer lands for agricultural purposes) by the British colonial administration, but were permitted to occupy the less agriculturally fertile highland forest and moorland areas of the Cherangany Hills

These forest highland areas – formerly held by the County Council as Trust Lands – were subsequently legally declared by the Government of Kenya as national forest reserve in 1964. Forest legislation in Kenya – consistent with the increasingly outdated 'fortress conservation' approach that excludes communities from living in protected areas – effectively outlawed Sengwer occupation of their ancestral lands, without regard for their customary ownership rights, and without regard for what makes for effective forest conservation.

NRMP Impact and Sengwer Response

The most recent expression of this fortress-conservation approach has been evident in the impact of the World Bank funded Natural Resource Management Project (NRMP), running from 2007 to June 2013 and becoming the subject of a World Bank inspection panel visit at the request of the Sengwer.

The World Bank invested \$68.5 million in the NRMP and states that the "objectives of the Natural Resource Management project are to enhance the institutional capacity to manage water and forest resources, reduce the incidence and severity of water shocks in river catchments, and improve the livelihoods of communities participating in the co-management of water and forests."¹⁰

The key point to make is that – whereas the NRMP is billed as working with communities to protect the forests – the funding has been through the Kenya Forest Service which has (as acknowledged in the Inspection Panel report) continually evicted the Sengwer from their forest lands while working with more dominant neighbouring communities and thereby increasing Sengwer marginalization.

Instead of supporting the Sengwer to conserve their forests, the NRMP has further marginalized them, putting the future of the forests in the hands of an institution (Kenya Forest Service) that is well known for destroying indigenous forest at Mt Elgon and elsewhere as it pursues an institutional and also (for many) personal focus on profit making¹¹.

¹⁰ 'Kenya - Natural Resource Management Project' <http://www.worldbank.org/projects/P095050/kenya-natural-resource-management-project?lang=en>

¹¹ This has been evident in court cases involving the institution, (e.g. at Mt Kenya) and most recently evident at Mt Elgon where it was only when the forest dwelling community there (the Ogiek) began arresting charcoal burners themselves that charcoal burning was (temporarily at least) halted. Similarly the Ogiek had to persuade the KFS that their shamba system – a system that encourages people to move from elsewhere to the margins of

3. Analysis of the legal and policy framework of the initiative in the context of national and local legal decision-making

The most important legal frameworks governing the management of such natural resources in Kenya are the existing Forests Act of 2005 which forbids communities from living on their ancestral lands, and the Wildlife Act (passed December 2013) which prohibits their hunting and gathering and does not require the Government to seek their FPIC (Free Prior and Informed Consent, as required by international law) when turning their land into 'Protected Areas'.

Communities have placed a lot of hope and time in contributing to the development of a Community Land Bill which, along with an Evictions and Resettlement Bill, are not yet before Parliament. Meanwhile an ongoing review of the 2005 Forests Act is being kept very much out of the public's eye.

The two key Ministries are the Ministry of Lands and the Ministry of the Environment, Water and Natural Resources. The latter oversees the KFS and Kenya Wildlife Service who undertake the eviction and control aspects of the conservation process with the assistance of the police. As well as these eviction and control processes, these bodies also manage the compensation processes that can work well for dominant people in neighbouring communities. These dominant players can doubly benefit from

- (i) no longer having traditional forest dwellers present to curtail their appropriation and unsustainable use of forest resources; and from
- (ii) using their privileged positions to take advantage of compensation schemes established to secure their support for KFS 'control' of these resources.

In their letter to President Kenyatta subsequent to the publication of the World Bank Inspection panel report, forest dwelling communities make clear their analysis of the legal and policy situation, and the changes required to ensure effective rights based conservation and effective rights based development. In their letter in October they ask the President to direct his government to meet four key requests:

- (i) Ministry of Environment, Water and Natural Resources, Kenya Forest Service and the Kenya Wildlife Service to adopt new conservation paradigm in which Forest Indigenous Communities are made the custodians of their forests under the supervision of the said conservation agencies.
- (ii) The National Land Commission to actively, effectively and efficiently implement their constitutional mandate of resolving the issues faced by forest dwelling indigenous communities and more so addressing issues of Historical Land Injustices,
- (iii) Review of the Forest Act 2005 to be in line with Constitution of Kenya 2010 and National Land Policy with active, effective and efficient consultation and participation of Forest Indigenous Communities.
- (iv) Kenya Forest Service to respect the rule of law (Conservatory Injunctive Orders issued by Eldoret High Court in March 2013 with respect to the case filed by Sengwer of Embobut forest) and to stop continued harassment and any other form of forceful eviction and displacement (destruction of property, burning of houses, arrests, intimidation, etc.) of members of Sengwer

the forest, ostensibly to reforest through planting trees amongst their crops – was responsible for a large amount of indigenous forest destruction. KFS finally had to accept the truth of this and declared a temporary moratorium on their shamba system there.

indigenous community from their ancestral homes and lands in Embobut forests.

The formal Government of Kenya policies which offer the framework within which this World Bank funded project can be placed includes, most directly, the 2005 Forest Act. The larger framework is set by Kenya's Vision 2030 and the World Bank's support for Kenya's five year plan. The Kenya Vision 2030 is understood as being the national long-term development blue-print that aims to transform Kenya into a newly industrialising, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment.¹²

The Vision comprises of three key pillars: Economic; Social; and Political:

- The Economic Pillar aims to achieve an average economic growth rate of 10 per cent per annum and sustaining the same until 2030;
- The Social Pillar seeks to engender just, cohesive and equitable social development in a clean and secure environment; while
- the Political Pillar aims to realise an issue-based, people-centred, result-oriented and accountable democratic system.

The three pillars are anchored on the foundations of macroeconomic stability; infrastructural development; Science, Technology and Innovation (STI); Land Reforms; Human Resources Development; Security and Public Sector Reforms

Connected to the 2030 Vision is the World Bank loan facility of 348 billion Kenyan shillings which has been approved. This is focused on supporting the development of the 20130 blueprint which aims at creating a globally competitive and prosperous nation with a high quality of life by 2030.¹³

From the outside it can be easy to be persuaded that such Visions and Blueprints are what is guiding action on the ground, but this might lead to a misunderstanding of the nature of political decision making here.

On the one hand this 2030 Vision and World Bank support can be understood as reflecting a global preoccupation with (i) accelerating economic growth through facilitating the growth of the private sector (often including sweeping land tenure reform which facilitates the privatization of collective land tenure systems); and (ii) seeking to use enforcement and restraint approaches to stem the inevitable environmental consequences of such a growth trajectory.

On the other hand, this broader policy framework is mediated through both (i) an approach to local development and forest conservation which seeks to break peoples connection to their forest lands in the name of supposedly improving their development prospects and supposedly protecting the forests; and (ii) it is mediated through kin and political networks where patronage and reward can redirect policies and practice into ways to build and reward networks of political patronage rather than to secure the objectives of the policy as it is conceived in the abstract, and conveyed on paper.

4. Analysis of the key actors and stakeholders

¹² <http://www.vision2030.go.ke/index.php/home/aboutus>

¹³ <http://www.cnbc africa.com/news/financial/2014/06/09/world-bank-to-support-kenya-in-5-year-plan/>

Before moving on to focus more sharply on the role of the World Bank and KFS, it is important to note that there are no NGOs that address land rights issues operating in this area. Forest Peoples Programme began to work with the Ogiek of Mt Elgon in 2011 in response to a call for help, and in the process became acquainted with the Sengwer situation, providing some support but only beginning to work very fully with the Sengwer as a consequence of the evictions they experienced in 2013.

The World Bank, as well as the Finnish Government through their Miti Mingi project, have been funding KFS. As mentioned above, a major part of their intention has been to help transform its top-down enforcement and control approach to a participatory one. However, as acknowledged in the Bank's Inspection Panel report, they have failed to do so. One of the absolutely key reasons for this failure is that they have thought that the weakness is in implementation and training. They have continued to see KFS as a 'weak' institution in need of strengthening through more finance, whereas it has proved to continue to be a very strong organization that continues to strongly pursue not only an enforcement and control approach but also, from the top down, an approach which sees forest as a means for making money as an institution and as individuals in the institution. In this context it is important to note that although the World Bank currently has very good Indigenous People safeguards, and developed a very good Indigenous Peoples Planning Framework for the NRMP, at the end of the day the impact of funding depends both on the management side of the Bank which is driven by the need to get funding out, and it depends on the quality of the implementing agency (in this case KFS) and the quality of the Bank's analysis of this agency (something the Inspection Panel found was very inadequate).

This broader political economy and policy analysis is in sharp contrast with the analytic starting point of the Bank or the Finnish Government. This is evident in, for example, the following extract from an evaluation the Finns carried out on their funding:

"The Forest Act (GoK 2005) established the Kenya Forest Service in February 2007 which is a semi-autonomous institution governed by an independent board. KFS aims to become a financially viable institution that sustainably manages Kenya's forest resources for the benefit of the State and Kenyans. The Forest Act also sets up a framework for participatory forest management by creating Community Forest Associations (CFAs) adjacent to government forest reserves. The Act also allows for the development of management agreements, concessions and partnerships between KFS and the private sector regarding the long-term management of forest plantations.

"Participatory forest management (PFM) is yet to effectively take off in Kenya. The Forests Act of 2005 gives some indications on PFM aspirations but offers different interpretations on the role, function and application of PFM between KFS and civil society institutions. PFM plans were developed in 2007 with support from UNDP, PFM Guidelines and a PFM Manual were prepared by the then Forest Department in collaboration with civil society. Pilot sites were established in the Mt. Kenya area and nine management plans were elaborated and endorsed. However, several PFM issues remain unresolved which include policy position on suitability of PFM for different forest types (plantations, indigenous forests), land tenure arrangements

(state forest reserves, trust land) and policy position on how benefits/costs are shared between different parties.”¹⁴

Where this analysis says “several PFM issues remain unresolved” it then goes on to not include in its list the two key points:

- (1) The need to address the institutional culture of KFS that is focused on extracting benefits for individuals in, and the institution of, KFS itself; and
- (2) The fact that the Community Forest Associations (CFAs) - that Finnish funding has helped promote - can be extraordinarily counterproductive. As we know from the extensive literature on commons regimes, unless a community has long term ownership rights to their resources then it is hard to take a long term sustainable approach to those same resources. The CFA approach is specifically designed to benefit communities “adjacent to government forest reserves”. Those forest dwelling communities such as the Sengwer or the Ogiek of Mt Elgon are not ‘forest adjacent’ they are forest communities who have strong cultural, social and livelihood relations with their forests and wish to continue to maintain those forests. These are the very people whose presence is criminalized by the interlinking set of institutional and legal arrangements described here, arrangements which also provides the means for the dominant elements of adjacent communities, and dominant elements in the wider society including KFS, to extract maximum resources from forests without any consideration for their long term well being.

Every year since 2007 when KFS began receiving funding from the World Bank for NRMP (apart from 2012) Sengwer homes have been being burnt by KFS guards in a process of harassment and intimidation that completely disregards the Bank’s safeguard policies, as well as disregarding the Bank’s own Indigenous Peoples Plan (IPP) that was drawn up prior to the project. The IPP highlighted the fact that unless the project secured Sengwer rights to their land, then far from improving livelihoods it would – as has been demonstrated – devastate communities.

Over the period from 2007 to the present the Sengwer have been offered land elsewhere but each time have refused to move from their ancestral lands. In a change of tactic, the new President and Deputy President came to Embobut in November 2013 and offered 400,000 Kenyan Shillings to a list of 2,784 ‘beneficiaries’. These included some of the indigenous Sengwer, as well as internally displaced people (IDPs) who are mostly landslide victims, as well as to the much larger group from more dominant neighbouring communities who have land elsewhere but have seen Sengwer land as available to cultivate since the Sengwer’s right to their land is not recognised.

400,000 shillings may be a lot of money for an IDP or for someone who has simply come to benefit from cultivation. However, for the Sengwer eviction means being torn from their only lands, their ancestral lands, and it means the end of their community. For them 400,000 is nothing and will soon disappear.

The list of ‘beneficiaries’ has never been made public, probably because so many on the list are not residents of Embobut, but are politically connected to those who drew up the list. But more importantly, there was no consultation, and no agreement from the Sengwer. Most Sengwer residents of Embobut are not on the list, and for them, and even for those Sengwer who had money placed in bank accounts that were newly

¹⁴ <http://www.oecd.org/derec/finland/48479137.pdf>

created for them for this purpose by the government, none had agreed to giving up their land for this temporary amount of money that requires those few families on the list to search for an acre of two elsewhere far from their own lands and far from each other, and requires those not on the list to squat on the edge of their ancestral lands with nothing to sustain them except through risking on-going access to their lands in the face of armed KFS guards.

Subsequent to the President's intervention in November 2013, and despite a High Court's court injunction secured by the Sengwer at Eldoret High Court in March 2013 (and still 'in force') forbidding their eviction from their lands, in January 2014 KFS began a process of forcefully evicting and burning all Sengwer homes in the Embobut forest and glades, forcing the thousands of Sengwer living their off their ancestral lands.

The World Bank Inspection Panel Report is very clear that:

- (1) The Bank failed its own Indigenous Peoples OP 4.20 safeguard policy, including "because the proper steps to address the potential loss of customary rights were not taken as provided by the policy". In other words it has not safeguarded Sengwer rights to their lands; and
- (2) The Bank was non-compliant with its safeguard policies because its project sustained the conditions for further evictions because it failed to adequately identify, address or mitigate the fact that the institution it was funding, KFS, was and still remains committed to eviction "before, during and after the conclusion of the NRMP".

The World Bank's response to the Inspection Panel's findings is evasive and seems to ignore the Panel's conclusion as cited above: "Management shares the Panel's view that the NRMP has not caused the evictions. At the same time, Management acknowledges that the evictions were symptomatic of a complex underlying tension between GoK and forest communities that the Project was not well equipped to address."¹⁵ The Bank does, however, indicate that "Management has viewed with concern the evictions that occurred during Project implementation and has responded diligently to those incidents, including bringing this to the attention of the borrower and facilitating a moratorium on evictions. Likewise, after Project closure Management has reacted to the reports of the widespread evictions that started in early 2014 and has called upon the borrower to adhere to good international practice in dealing with issues of resettlement and indigenous communities."¹⁶

In a recent report by the Guardian it is noted: "Forest peoples are being removed to protect water resources for burgeoning urban areas. Last month Jim Yong Kim, the president of the World Bank, appealed to the Kenyan president, Uhuru Kenyatta, to resolve a Bank-backed Kenyan conservation project that has led to the eviction of thousands of Sengwer people living in the Embobut forest. ..."^{17 18}

¹⁵ Management report and recommendation in response to the inspection Panel Investigation report Kenya natural Resources management Project (IDA Credit No. 42770): p. 11-12 http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2014/07/10/000442464_20140710100909/Ren_dered/PDF/893690INVR0P0900IPN0Request0RQ01302.pdf

¹⁶ Ibidem.

¹⁷ Vidal, J.:How the Kalahari bushmen and other tribes people are being evicted to make way for 'wilderness', The Guardian 16 November 2014, 'Racist' governments are forcing native people from their land, supposedly to benefit wildlife and environment, according to a report. See: <http://www.theguardian.com/world/2014/nov/16/kalahari-bushmen-evicted-wilderness>

This latest experience with the NRMP and the KFS is simply one example of a much longer-term process the Sengwer have experienced.

Given that the President and Deputy President visited the area to dispense compensation and ensure people moved from Embobut, it would seem that the area is of strategic importance. However, to understand what is at stake for the Government of Kenya in the Cherangany Hills, it is important to distinguish immediate short-term political actions and motivations from the larger macro – political, macro -economic and macro-ecological perspective:

(1) Immediate short-term political purposes:

The distribution of compensation by the President and Deputy President in November 2013 was part of a larger political strategy they were undertaking. This was a strategy of using compensation to move all of the IDPs (Internally Displaced People) from their camps in an attempt to demonstrate that the problem of IDPs was over. They are both charged by the International Criminal Court with crimes against, and this use of compensation to disperse IDPs was intended as a way of persuading the ICC that they were dealing with the consequences of the post-election violence issue that led to their being in court. The timing was very strategic in terms of the court case. Although the Sengwer situation has nothing to do with the post-election violence; IDPs, and other more local actors were happy to go along with this compensation process in order to be able to be beneficiaries off the money being distributed as a result of the land grab from the Sengwer. In other words the immediate reasons for the compensation programme were nothing to do with addressing any macro political, economic, environmental or social problems.

(2) Larger macro – political, economic and ecological perspective:

As outlined above, the NRMP sought to address genuine water problems in Kenya. The World Bank justified the NRMP - and the Government of Kenya and KFS in particular justified the evictions that (in practice) are central to the NRMP - in terms of securing the water supply for large downstream populations. In fact securing their water supply cannot be secured through evictions but only through securing rights. A series of funding programmes from Finland then this World Bank funded NRMP, and now in November 2014 3.5 Billion Kenya Shillings funding from the EU continues this process.¹⁹

¹⁸ The question remains what seems at stake for the government of Kenya in Cherangany hills? The area must be of strategic importance if the president is visiting the area. It seems that a distribution of money by the President and Deputy President when visiting the area was to show they were dealing with the problem of IDPs (Internally Displaced People) in an attempt to demonstrate to the International Criminal Court that they were dealing with the consequences of the post-election violence issue that had led to their being in court. The timing was very strategic in terms of the court case. Although the Sengwer situation has nothing to do with the post-election violence IDPs, other more local actors may have been happy to go along with this in order to (a) be able to siphon off the money being distributed by the President during his visit, and (b) be able to complete the land grab from the Sengwer. In other words the compensation programme that was the focus of the President and Deputy President's visit may have nothing to do with addressing any macro political, economic, environmental or social problems.

¹⁹ <http://www.environment.go.ke/?p=589>

Box 1: Quotes by the Ministry of the Environment, Water and Natural Resources on the latest funding from the EU

"Environmental protection has received a shot in the arm following the signing of a sh. 3.5 billion agreement to conserve two of the country's largest water towers and ecosystems."

"Mt. Elgon and Cherangany water towers in western Kenya will benefit from the joint strategy between the Ministry of Environment, Water and Natural Resources and the European Union in an effort to protect long-term water needs in the region."

"Hundreds of thousands of residents who rely on water supplies from Mt. Elgon in Trans Nzoia, Bungoma and Mt. Elgon Counties and those dependent on Cherangany Hills, including West Pokot, Uasin Gishu, Kakamega, Busia, Siaya and Counties will benefit from the program."

"The joint strategy was signed by Dr. Richard Lesiyampe the Principal Secretary of Environment and Natural Resources on behalf of the Government and the Head of Development at the European Union in Kenya, Erik Habers. The country has five major water towers, including the Abadares, Mt. Kenya and Mau Forest."

"The initiative will protect ground supplies of water which are essential for farming and improves Sanitation. The targeted areas are tracts of land that store rain water, enable regular river flows, recharge ground water storage, improve soil fertility, reduce erosion and sediment in river water, and host a diverse species of plants and animals."

"During the signing ceremony held at the Ministry headquarters, Dr. Lesiyampe said "Kenya's water assets are vital to the country's future. They need to be conserved especially in this era of climate Change that is starting to hit Kenya". He said that conserving, restoring and regulating Kenya's water towers will benefit tens of thousands of people in ten counties and that action is needed now to build long term solutions to protect Kenya's future agriculture and water supplies."

Clearly this latest 3.5 Billion KSH funding from the EU is seeking to address a very serious problem. However, like the NRMP it is in the hands of those who address it in a way which pitches human rights against environmental security and thereby makes both worse rather than better.

5. Analyze the implementation of the initiative and its implications

The reason for the NRMP provided by KFS, by dominant neighbouring communities, and by bilateral agencies and donating Governments, is that the forest needs to be protected both for itself and as a critical water catchment for people living downstream and for the whole of Kenya. The problem with this analysis is that – as we have witnessed with the nearby KFS controlled forests at Mt Elgon – KFS control through armed guards and through 'Community Forest Associations' set up to benefit non-forest dwelling neighbouring communities, leads to the destruction not the protection of indigenous forests.

The Sengwer, like the Ogiek at Mt Elgon, are clear that a socially just and ecologically sustainable way to protect the forests and the water catchment area that it sustains, is only possible and sustainable through establishing rights based conservation that is built on the recognition of their rights to their ancestral lands.

This is an approach which has been clearly presented by forest dwelling communities to the relevant conservation authorities, political actors, World Bank, EU and other critical actors. This approach has been presented at the local level by the Ogiek at Mt Elgon (with the attendance and support of Sengwer representatives) through two field trips that brought County Government, IUCN, KFS, KWS, World Bank and other players to see the forest situation at Mt Elgon. It has also been presented to the National Land Commissions task Force on Historical Land Injustices, at the National and County level as outlined below.

Meanwhile, it should be noted that perhaps over 70% of the Sengwer have returned to their lands since being forcibly evicted from them, and are currently living in inadequate temporary shelters, being harassed and arrested by KFS guards. The key point to note here is that other peoples (who had either been moved into Embobut forest by the Government, or had taken advantage of the Sengwer's rights to their land being denied, and so had taken over land for cultivation) have not returned. That the Sengwer have insisted on returning, despite the ongoing harassment, highlights how vital their ancestral home is to them.

When the World Bank Executive Board met under the Chairmanship of President Kim on September 30th to decide its response to the Sengwer's situation. It had to decide between:

- (a) The Bank's own Inspection Panel's strong criticisms of the Natural Resource Management Project (NRMP), and
- (b) The Bank Management's proposed Action Plan in response to the Panel's findings. This plan was – from a Sengwer point of view – entirely inadequate, in that it tried to refute or deflect all criticism, and simply proposed a few inadequate responses.

Although the Inspection Panel could not prove a direct link between Bank funding and the KFS forced evictions of the Sengwer, the Panel had found that:

- (1) The Bank failed its own Indigenous Peoples OP 4.20 safeguard policy by not safeguarded their rights to their lands, including "because the proper steps to address the potential loss of customary rights were not taken as provided by the policy"; and
- (2) The Bank was non-compliant with its safeguard policies because the project sustained the conditions for further evictions by failing to adequately identify, address or mitigate the fact that the institution it was funding, KFS, was and still remains committed to eviction "before, during and after the conclusion of the NRMP".

Despite some differences of view in the Board, the Board responded by requiring a far more robust response from the Bank, including President Kim's commitment to contact President Kenyatta, which he subsequently did by addressing the issue in a face-to-face meeting with President Kenyatta in early November. Some argue that the problem with the World Bank offering to help solve problems it has created is that it uses the same approach that created the problems in the first place.

However, the affected communities have welcomed the Bank's, and have proposed a very clear plan of action to enable the Bank's intervention to support a real resolution that can secure the forests through securing forest peoples' rights. As noted above, forest dwelling communities have outlined a very clear legal route through to rights-based conservation.

6. Analysis of the challenges and prospects within the initiative and their impact

If we turn from considering the situation in Cherangany in terms of the failed World Bank NRMP initiative, to considering the initiative being taken by forest dwellers themselves, in terms of the rights based solution being proposed by the Sengwer (the Sengwer Indigenous Peoples Programme) and the Ogiek (the Chepkitale Indigenous Peoples Project), then there is a possibility – no more than that – of a positive outcome.

Policy dialogue is continuing alongside the ongoing court cases. The Sengwer and the Ogiek are in dialogue with the World Bank, the KFS, and with key political players including the informal Human Rights caucus in Parliament, seeking to persuade them to pilot this rights-based approach at Mt Elgon and Embobut.

The key Sengwer representatives do not want to be named (they asked for their identity to remain anonymous in the request they sent to the World Bank) but they are key leaders in their community, and have held several crucial face to face meetings with the World Bank in Nairobi, as well as with KFS in the Cherangany Hills.

Persuading any players (for whom the protection of the forests or the protection of human rights) is fairly simple if they are willing to look at the evidence and to look at the proposals forest dwellers are putting forward for piloting an approach in which they are granted full rights to their lands on condition that they maintain the forests and ecological integrity of their lands. However, it is a very difficult task to persuade those whose primary focus is on retaining, gaining or facilitating those with political and or financial power.

In this context, the role of the Finnish Government (which, as noted above, has been a major funder of KFS and appears unwilling to challenge the fundamentally unproductive direction KFS is taking), the role of the EU (which has recently granted further funding to KFS despite the evidence that this will have the opposite effect to that purportedly intended) and the future role of the World Bank, are all critical, and bringing pressure from Europe on these key donors to help bring the activities of such key institutions as KFS in line with international human rights and scientific conservation is absolutely critical.

Interestingly enough, a USAID commissioned study reiterates the need for support for institutional reforms and improved governance; for example, for better stakeholder participation and for devolved/decentralized forest sector institutions, such as community forestry associations.²⁰ Point of departure, however, are the customary

²⁰ ECODIT: Kenya Tropical Forest and Biodiversity Assessment. Prosperity, Livelihoods and Conserving Ecosystems. A report prepared for review by USAID, 2011. <http://www.brucebyersconsulting.com/wp-content/uploads/2011/11/Kenya-Tropical-Forest-and-Biodiversity-Assessment-Sept-2011.pdf>

entitlements of the Sengwer people which should guide further institutional arrangements – as clearly voiced in the proposals tabled by the Sengwer to the Kenyan government and the concerned funding agencies.

It should, however, be noted that subsequent to the World Bank Inspection Panel's critical report on the NRMP, these players have become more open to listening to the solutions being proposed by the Sengwer and the other traditional forest dwellers of Kenya. These include the Ogiek of Mount Elgon, the Sengwer of Cherangany, the Yaaku of Mukogodo, the Aweer/Boni of Lamu District, and the Sanye of Lamu District. Although the Ogiek of Mau have expressed support for the proposals of these forest dwelling communities, and are in discussion with them, they are engaged in their own court processes and so are not signing up to these proposals at this moment.

In a presentation given by the Forest Indigenous Peoples Network to the NLC's Task Force on Historical Injustices in Nairobi on the 11th September 2014, the forest dwelling communities describe themselves and express their main demands. They are clear that they cannot do this without having their traditional land rights recognised. They want their forests recognised as community lands and formally transferred to them, to be held under community land titles provided for by the proposed Community Land Act. A proposal is formulated as follows: 'In return for restitution of our customary forestlands through a transfer from public to community land status, we are willing to be legally bound to rehabilitate, conserve, and manage our forests for the people of Kenya. In fact, we look forward to that responsibility even although we know it will take a lot of work on our part.' ²¹ The conflict between the demands of forest conservation and their demand that their land rights be recognised need not exist because in their opinion traditional forest communities are potentially ideal conservators.

Conclusion

In addition to the information provided in the initial quick scan, this case study has sought to give a deeper analysis of: the motivations of the institutions and funders involved; the reasons for the negative impact of this funding and project, and a clear sense of the effective alternative which, if pursued, can meet substantial environmental and social needs rather than set one set of needs against the other, leaving those who wish to extract resources and power free to do so at the expense of the environmental and social worlds.

What is clear is that there is a huge amount to learn from what has been happening at Chernangany, and there is a huge amount of potential that positive learning and practice can follow from a willingness to re-orientate such projects so that, instead of opposing humans and their environments, they help secure forest conservation and watershed protection through securing forest peoples rights.

²¹ forest dwelling communities position statement: Securing our rights, our lands and our forests. See: <http://www.forestpeoples.org/sites/fpp/files/news/2014/10/Forest%20Dwellers%20Position%20Statement%20to%20the%20NLC%20Task%20Force%20Historical%20land%20Injustices-1.pdf>