

FOREST DWELLING COMMUNITIES POSITION STATEMENT: SECURING OUR RIGHTS, OUR LANDS AND OUR FORESTS

To the National Land Commission Task Force on Historical Land Injustices

Nairobi

11th September 2014

WHO ARE WE?

We are the traditional forest dwellers of Kenya. We 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 unfortunately the Ogiek of Mau have been unable to be with us today, we have support from them and are in discussion with them.

1. **We are self-identified traditional Forest Dweller Communities** who share common historical and present land grievances.
2. **We have always depended on our forests** and we still do to this day.
3. **We are very severely marginalized:** our rights to our lands and resources have not been recognised and respected by the government and dominant neighbouring peoples who have encroached on our land, and continued that marginalisation and discrimination.
4. **We are the indigenous forest peoples of Kenya.** Although we recognise all Kenyans as indigenous to their area, unlike others we define ourselves as indigenous peoples according to both (i) our historical and current dependence on our forests and (ii) our being structurally marginalised because of that dependence and the because of our traditional livelihoods and social structures that are part of our dependence on the forests (as made clear in the African Human and Peoples Rights Commission definition).

WHY ARE WE WORKING TOGETHER?

We share the same historical land injustices and present-day challenges. We have come together because we have been weak on our own. We need to work together for solidarity and resolution of our problems. We will give each other help when needed.

We would like our issues dealt with jointly. If we don't get delivery on our request we will go to Court and find other ways of resolving the issues.

WHAT ARE OUR LAND GREVIANCES?

1. Dispossession from our ancestral lands without our consent by the government, more powerful communities and individuals
2. Burning our houses in our ancestral lands
3. Confiscating our property for resisting forceful movement from our ancestral lands
4. Criminalizing community members and supporters who speak against and challenge their land dispossession, and who are maligned, harassed and sometimes tortured
5. Government disobedience of court orders challenging our dispossession
6. Action by the government or those in positions of influence to divide communities to achieve their objective of dispossession
7. Persistent failure to address this grievance from when it started (at colonial time). We have had nearly 100 years of this without redress
8. Denied official recognition of identity and our homelands

9. Abuse of our livelihood rights by being deprived from using our traditional forest resources
10. Destruction of forest based culture and cultural practices
11. Like many other communities, we have suffered from denial of our right to own land collectively as whole communities, until the recent 2010 Constitution
12. Being left powerless in the face of the destruction and exploitation of our forests because of unchanging conservation policies and which has failed us and the forests each time. We have endured having control and rights to our forest taken away; parts of our forests being cleared to make way for exotic plantations; tea zones taking away the forest for others to profit from; Government agencies exploiting and destroying the forests including through the CFAs which only involve those not inhabiting the forest rather than those who have protected the forests for centuries, and which do not give communities real authority, and turn association members into workers for KFS..

WHAT ARE OUR MAIN DEMANDS?

1. To be acknowledged as traditional forest dweller communities
2. To have our principle lands - *our forests* – returned to us under community land titles
3. To have the right to conserve our forestlands in the interests of the nation, and so that water can flow again from our forests.

We cannot do this without having our traditional land rights recognised. We want our forests recognised as community lands and formally transferred to us, to be held under community land titles provided for by the proposed Community Land Act.

WHY IS THIS A HISTORICAL LAND INJUSTICE?

Because we were dispossessed of our lands without our consent, and because the colonial and post-colonial strategies for how to protect forests assumed that the State is the only safe pair of hands for conservation when that has been proven to be unjust and untrue.

WHAT WE ASK NLC TO DO?

1. Make our case a priority, the National Land Policy 2007 acknowledges this
2. Pass the Community Land Bill so we have a legal framework for community ownership
3. Direct conservation agencies to alter their strategies so that forest dwelling communities are recognized as the principal guardians of their forests
4. Underwrite this land rights; recognise our forests as community lands
5. Ensure that the Forest Indigenous Communities are allowed to use their lands sustainably within an agreed structure with conservation agencies.
6. Ensure court orders - such as injunctions against evictions - are not ignored, and not allow our lands to be leased to others.

WHY SHOULD OUR GRIEVANCE BE TACKLED AS A PRIORITY?

1. Because we have suffered enough; together we are some of the most marginalised and poorest peoples in Kenya
2. We are a discrete, special, definable and cross-ethnic group.
3. We have unique and straightforward issues that require immediate action.
4. Resolution of our grievance does not only help us; it also helps forest conservation. The forests are disappearing. There is an urgent issue of forest protection and Government

is continuing the failed old solutions when we can offer a lasting, cheap, just solution. We are organised and have already started to show how to protect the forests.

WHAT IS OUR PROPOSAL?

The conflict between the demands of forest conservation and our demand that our land rights be recognised ***need not exist***. Traditional forest communities are potentially ideal conservators.

Our proposal is that:*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.

Specifically our proposal is:

1. **That we are made the custodians of our forests.** The communities and forests being:
 - The Ogiek of the Mt Elgon forests
 - The Sengwer of the Cherangany Hills forests (including Embobut Forest)
 - The Yaaku of Mukogodo Forest
 - The Aweer of Boni and Dodori Forests
 - The Sanye of Lamu County
2. **That this starts on a pilot basis in 3 of these forests**, such as Mt Elgon, Embobut, and Mukogodo Forests. Identification of such pilot community owned protected forests has begun; we are in consultation with each other.
3. **That we are granted provisional title on condition that we protect our forests.** Our collective titles to be confirmed through the issue of community land titles, after verification by the Forest Dwelling communities' representative body (aided by impartial conservation bodies) that such sustainable use and conservation is being pursued, and that land has not been alienated, leased or lent to outsiders.
4. **That we are formally empowered to manage these forests** on behalf of the people of Kenya (including being empowered to keep outsiders out) with support from conservation agencies; and that wherever a community has been designated the formal custodian no evictions are attempted.
5. **That NLC requests technical support for us from the conservation agencies** to help us to pursue the most effective conservation practices with the guidance and oversight of those agencies.
6. **That we accept that these lands will be held in perpetuity** by the community for the present and future community, and that grant of community entitlements will exclude the right to sell or transfer those lands.
7. **That government cease attempting to evict traditional forest dwellers** and cease making divisions among traditional forest dwellers by bribing them to leave in return for compensation.

Win-win for land rights and conservation: the best solution to conservation and water tower protection and rehabilitation lies in meeting our land rights on condition of us protecting those forests. We historically protected those forests and we can do this again. This includes protecting against wrongful occupation and use by outsiders, against clearing and degrading practices, and actions to rehabilitate the forest. We want the bees, the wildlife, the canopy of trees, the diversity of trees and plants, and the water to come back. Our culture and our own forest-based livelihood depend upon this.

WHAT ARE WE DOING TO SHOW YOU THAT WE CAN PROTECT FORESTS FOR THE NATION?

At Mount Elgon, our Ogiek brothers have already instituted rigorous conservation byelaws, based on traditional norms. They have handed over charcoal burners to KFS, and their community scouts are soon to undergo training by KWS. They have alerted KFS to the dangers of the Shamba system destroying indigenous forest at Mt Elgon. The Community is now clear as to the actions they need to take, and actions they actively oppose, *to ensure the protection of the forest ecosystems*. The community has experienced years of evictions and do not want to experience a single further eviction. They despair of not being given the authority to limit entry by outsiders, including those who seek land for cultivation. These forests are presently classified as National Forests and presumed owned by the State. The community is determined to recover community ownership of, and protect, their traditional forests.

WHAT WILL WE ACCEPT AND NOT ACCEPT?

1. We wholeheartedly want to save our forests from degradation so we will work closely with KFS and other conservation agencies to adopt the very best practices for conservation.. We want our forests to remain Protected Forests of national importance, but we insist on being recognised as the owners of these Protected Forests.
2. We will not accept being moved out whether forcefully, or through being offered compensation in the form of money or false community based conservation (like CFAs).

HOW DO WE EXPECT THE TASK FORCE'S PROCEDURE TO INVOLVE US?

1. We want the law that the Task Force is drafting to state that the complainants will be involved in the investigations, are equal partners in investigations, discussion and decision-making.
2. We want an opportunity for community members to discuss the provisional findings and want a clear right to offer alternatives or adjustments, and to be able to appeal decisions with which we cannot agree in the courts.
3. We want to be given sufficient notice to be able to be part of the relevant working group and to be granted necessary financial support to attend such meetings.

We respectfully submit this statement. It will be followed up with details about our communities, the Forest Reserves with which we are concerned, examples of our Community Forest Conservation Byelaws, and detailed plans of action to become the Owner - Conservators of these Reserves.