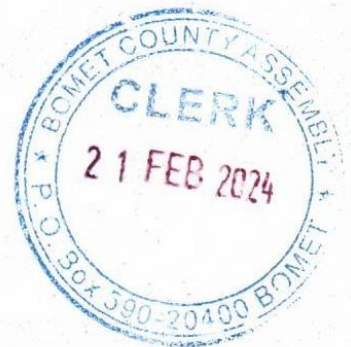




## COUNTY ASSEMBLY OF BOMET

### REPORT OF THE COMMITTEE ON COUNTY PETITIONS ON PETITION NO.3 OF 2023 BY PAULO MOSBEI AND 5 OTHERS CONCERNING HISTORICAL INJUSTICES SUFFERED BY THE TOROBEEK COMMUNITY

FEBRUARY, 2024



③ Tabled on 22/02/2024  
at 2:30 p.m.

② Approved for  
tabling  
Shirah.  
21/02/2024

① Hon Speaker  
You may approve  
for tabling  
2/2/24

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## 1. CHAPTER 1

### 1.1 PREFACE

The Committee on County Petitions is one of the select committees established under the Standing Order 200(1) of the County assembly Standing orders.

### 1.2 Committee Membership

The Committee on County Petitions comprises of the following Honourable Members: -

- |                          |                   |
|--------------------------|-------------------|
| 1. Hon. Josphat Kipkirui | -Chairperson      |
| 2. Hon. Emily Cheruiyot  | -Vice Chairperson |
| 3. Hon. Peter Rono       | - Member          |
| 4. Hon. Japhet Cheruiyot | -Member           |
| 5. Hon. Joseah Samoei    | -Member           |
| 6. Hon. Chemutai Naomi   | -Member           |
| 7. Hon. Nathan Kibet     | -Member           |

### 1.3 Mandate of the Committee

The Select Committee on County Petitions derives its mandate from provisions of Standing order 200(3) of the County assembly standing orders which provides that the committee shall consider and report on all public petitions presented to the Assembly.

### 1.4 Petition No.3 of 2023

Pursuant to Standing order 200(3) of the County assembly standing orders, the County petitions Committee shall consider and report on all public petitions presented to the Assembly.

The Committee on County Petitions formally received a petition from Paulo Mosbei and five other petitioners namely: Joseph

Kiplangat Sigei ID N0.2423980, Chepkoech Mutai ID N0.27800204, Samuel Kipkurgat Soi ID N0. 3264454, Emmy Chepngetich ID N0. 23416048 and John Cheruiyot Mutai of ID N0.1745253 on behalf of the Torobeek Community of Rift Valley Region on 2<sup>nd</sup> May, 2023.

The main issue in the petition relates to the eviction of members of the Torobeek Community from the Mau Forest and other forests across the country without either being resettled or compensated. The petitioners also alleged to have been systematically marginalized and discriminated against by the colonial and subsequent governments including in access to employment opportunities and government services. The petitioners therefore prayed that the County assembly intervenes by ensuring that their grievances are addressed expeditiously so as to save the community from further marginalization and neglect by the government and in the case of their ancestral lands which they lost through systematic evictions, the petitioners are praying that the County assembly recommends a mechanism / framework with timelines to resettle or compensate the community members in their respective sub-counties and in any available land in Bomet County.


In dealing with the matter, the committee held a number of sittings during which the committee was able to engage the Petitioners and the County Executive Committee Member Lands, Housing and Urban Planning.

Upon deliberations in the said sittings and based on the submissions from the petitioners and the County Executive Committee Member,



Lands, Housing and Urban Planning the committee came up with a report in response to the petition as provided for under the Standing Order 213 (2) of the County Assembly Standing Orders.

It is therefore my pleasant duty and privilege, on behalf of the Committee on County Petitions to table this report on the Petition.


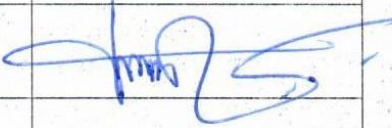
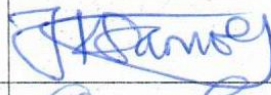
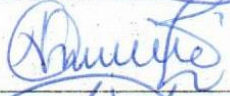

SIGNED  Date 21/02/2024

**HON. JOSPHAT KIPKIRUI**

**CHAIRPERSON, COMMITTEE ON COUNTY PETITIONS**

#### 1.5 ADOPTION OF THE REPORT

We, the Hon. Members of Committee on County Petitions do hereby append our signatures to this report to affirm our approval and confirm its accuracy, validity and authenticity: -

No.	Name	Designation	Signature
1.	Hon. Josphat Kipkirui	Chair	
2.	Hon. Emily Cheruiyot	V/Chair	
3.	Hon. Peter Rono	Member	
4.	Hon. Japhet Cheruiyot	Member	
5.	Hon. Joseah Samoei	Member	
6.	Hon. Chemutai Naomi	Member	
7.	Hon. Nathan Kibet	Member	

#### 1.4.1 Background

Petition No.3 of 2023 was tabled and committed to the committee on county petitions on 2<sup>nd</sup> May 2023. In the petition, the Petitioners sought to draw the attention of the County Assembly to the following:

**THAT**, the name Torobeek is derived from the name “Dorobo” who are forest dwellers within the Kalenjin Community. In Kenya, the Dorobos were found originally living together with OGIEK Community before forceful eviction and displacement from the regions of Mau complex of Nakuru and Narok counties, Mt. Londiani across to the forests of the northern Tindiret in Nandi county, Tim-boroa (Tim-boroa) from Maji Mazuri, part of Koibatek forest, Tugen hills, Mt. Elgon forest and Cherangani hills) etc.

**THAT**, the Community was evicted from their original forest habitat, forcefully displaced by the colonialist and thereafter by the Kenya government after independence.

**THAT**, most of Torobeek Community lived and still living with Ogiek Community in Mau Complex while the rest are scattered across the Rift Valley Counties, some as far as Kiambu, Nyandarua, Migori, Isiolo, Bungoma Counties etc.

**THAT**, there has been delayed resettlement and neglect of Torobeek Community by the Government of Kenya. Therefore, the Community has suffered from marginalization, abuse of their

human rights and has not been recognized by the Government thus are living in abject poverty and undignified life.

**THAT**, the Community deserves to live a dignified life hence the Government has a responsibility towards the Community to fulfill the rights expounded in the Constitution of Kenya under the Chapter on Bill of Rights.

**THAT**, the Torobeek Community in Bomet County has compiled a list of Members of the Community scattered across the county. The said list has been verified by the community leaders and elders across the counties.

**THAT**, currently some IDPs and squatters from the Ogiek Community are in the process of being compensated or resettled across the country by the government. However, the Rift Valley and Western region counties Torobeek Community has not been given such considerations. Counties like Nandi are in advanced stages of resettling their Torobeek Community through the interventions of both the National and County Governments.

**THAT**, the Torobeek Community of Rift Valley and Western Region Counties through their leaders need to be assisted by the Assembly; to engage a number of relevant government agencies such as the National Land Commission, Ministry of Interior and Co-ordination of National Government, Ministry of Lands, Environment and

Natural Resources, the Kenya National Commission on Human Rights amongst others.

**THAT**, the issues in respect to which this petition is made are not pending before any court of law or constitutional or legal body.

## 1.5 LEGAL BASIS FOR PETITIONS

### **The Legal Framework**

#### **Petitions**

The right of citizens to petition public authorities is enshrined in the Constitution. **Article 37 of the Constitution** provides that; ***‘Every person has a right, peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to public authorities’***

Section 15(1) of the County Governments Act, 2012 makes a provision for citizens’ right to petition the County assembly. The said section provides that; ***“A person has a right to petition a county assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.”***

The Standing Order 213(1) of the County Assembly Standing Orders provides that every Petition presented or reported pursuant to this Part, shall stand committed to the County Petitions Committee.

**Standing Order 213(2)** further provides that whenever a Petition is committed, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner



by way of a report addressed to the petitioner or petitioners and laid on the Table of the County Assembly and no debate on or in relation to the report shall be allowed, but the Speaker may, in exceptional circumstances, allow comments or observations in relation to the Petitions for not more than twenty Minutes.

## 2. CHAPTER 2

### 2.1 CONSIDERATION OF PETITION

#### 2.1.1 Specific Prayers of the Petitioners

The specific prayers of the Petitioners to the County Assembly was to implore/request the County assembly to investigate and-

- i) Address the grievances expeditiously hence saving the Community from further marginalization and neglect by the Government.
- ii) Recommend a mechanism/framework, with timelines to resettle/compensate the Torobeek Community members in their respective sub-counties and in any available land in Bomet County.
- iii) Set aside funds to compensate and resettle the community in collaboration with the relevant National Government Ministries.
- iv) Support the community through legitimizing their existence in the county.
- v) Not to approve any allocation in the county until Torobeek issues are addressed.

#### 2.2 Approach taken by the committee

1. In considering the petition, the committee observed that it would be important to verify the facts alleged in the petition. The committee therefore resolved to conduct an inquiry on the issues raised in the petition.
2. In this regard the committee received the petition on 2<sup>nd</sup> May, 2023 after being tabled and committed to it.
3. The Committee invited the petitioners on 12<sup>th</sup> October, 2023 to clarify the issues raised in the petition.
4. The Committee then later invited the County Executive Committee Member for Lands, Housing and Urban Planning on 7<sup>th</sup> December, 2023 to respond to the issues raised in the petition.
5. On 8<sup>th</sup> December, 2023, the County Executive Committee Member for Lands, Urban Planning and Housing wrote to the committee indicating that the county doesn't have any records of the Torobeek Community in Bomet County.

### 2.3 SUBMISSIONS FROM THE PETITIONERS

The Petitioners appeared before the Committee on Thursday 12<sup>th</sup> October, 2023 and stated under oath as follows;

1. **THAT** they appreciate the opportunity granted to appear before the committee, to give their submissions and make presentations on the subject matter.
2. **THAT**, the submissions are borne out of their petition to the assembly and that the petition is signed by the National Chairman one Mr. Paul Kiprotich Mosbei on behalf of the

Torobeek Community under the umbrella body of the Torobeek Community Association of Kenya. The petition was also co-signed by 5 other members of the community, citizens of good standing within the Republic of Kenya.

3. **THAT** the petition can be summarized in the following thematic areas which largely informed the body of their humble submissions;-

- (a) Who the Torobeek Community are.
- (b) Where the community is found and where its members are.
- (c) What are the plights of the community past and present.
- (d) What interventions has the community sought in the past?
- (e) What remedies do they now seek from the County Government of Bomet.

#### 2.4 WHO ARE THE TOROBEEK PEOPLE?

4. **THAT** the Torobeek people (commonly referred alongside the Ogieks" and Dhorobos) are a community within the Republic of Kenya largely drawn from the Mau Complex of Nakuru County, Mt. Londiani across to North Tindiret Forest, Serengonik Forest, Ceng'alo Forest and Kipkurere and Kapchorua forest areas of what is in Nandi, Baringo and Uasin Gishu counties. The other counties include Laikipia, Turkana, Elgeyo Marakwet, Kericho, Bomet, Trans Nzoia,

Kajiado, Narok, Bungoma, Kakamega, Kisumu, Nyamira, Migori, Nyadarua, Kiambu, Isiolo, Nairobi and Marsabit.

5. **THAT** in its Etymology the name “**Torobeek**” is derived from the name “**Dorobo**” which was a name associated with forest dwellers within the Kalenjin community. In Kenya they were found originally living together with the **Ogiek community** before the forceful displacement by the government.

6. **THAT** in pre-colonial, colonial and post-colonial Kenya the Torobeek lived in close affinity to the forest environment drawing sustenance and livelihood from their natural ecosystems, which is the forest.

7. **THAT** as norms and culture changed being overrun by modern civilization, there was a shift in the national consensus on the occupation of otherwise gazetted forest by local communities. Subsequently the government began a process of mass evictions of their community and its members from their natural residence, first started in April of 1981 and concluded in the year 2006.

8. **THAT**, this process however noble in the eyes of modern society failed to take into consideration the need to provide alternative residence for the Torobeek. The Kenya Government despite acknowledging their way of life (Arusha East Africa

Court of Justice decision) proceeded with their decision to end their occupation and evict them from the forest. To date the community is yet to be settled and continue to reside in squatter villages around the forest as they await the Government's program to recognize their plight, adopt an all of government strategy to resettle them, mitigate their immediate needs, educate their children and leveraging their cultural heritage integrate them in local economies and at the global stage in the mitigation of climate change.

9. **THAT** the Torobeek Community Association of Kenya is an association duly registered to advocate for their rights. The objective of the association is to advocate for the rights of the vulnerable in society and thus serves as the ideal avatar for the community in its quest for justice and the protection of its most vulnerable members of the community.

## 2.5 WHERE THE COMMUNITY IS AND WHO ARE ITS PEOPLE?

10. **THAT** the Torobeek are believed to be the first people to have settled in Eastern Africa and were found inhabiting all Kenyan forests before 1800AD. Due to domination and assimilation, the community is slowly becoming extinct with figures showing about 20,000 countrywide. The Torobeek people commonly known as "Dorobo" are one of the most widely distributed communities in Kenya, inhabiting, now or in the recent past, virtually all of the high forest areas of Kenya.

11. **THAT** the Torobeek are a marginalized community and that traditionally they partake in hunting and gathering, though today virtually all of them now have added animal husbandry or cultivation, or both. The Torobeek have been living in Mau Forest since pre-colonial times on communally held pieces of land, which were administered through customary law.
12. **THAT** everyone has ignored the fact that the Torobeek too have a right to their lands. When the British carved out areas of Kenya into tribal reserves for the various communities, the Torobeek were excluded as they lived in small scattered groups over large areas and did not appear to have any property. This and many other agreements signed with other communities with the colonialists and poor government policies since independence has seen the loss and dispossession from their ancestral lands. This has in turn led them to becoming “squatters” on their own land who face eviction notices from their own government.
13. **THAT** a majority of the community members were found living alongside their Ogiek brothers in the Mau complex and Londiani crossing into Nandi, Baringo and Uasin Gishu counties. After recent displacement from the forest, those who did not remain in surrounding communities were scattered across the Rift Valley counties some ending up in other counties such as Kiambu, Nyandarua, Migori Isiolo and Bungoma just to name a few.



14. **THAT** acknowledging this fact, the Association leadership has reached out to elected leaders and officers in the administrative state. In these engagements the priority has always been recognition of the plight of the community and where possible direct intervention and assistance to the vulnerable members of the community.
15. **THAT** as to who the Torobeek are, they are a people whose life revolved around their close affinity to nature drawing sustenance and livelihood from their natural ecosystems that is the forest. From the geographical placement, one reasonable conclusion is inevitable and can be drawn that these are communities surrounding Kenya's forest ecosystems.

## 2.6 WHAT INTERVENTIONS HAVE THE COMMUNITY SOUGHT IN THE PAST?

16. **THAT** the petitioners are acutely aware that this is not the first time or first time they have sought interventions from state and non-state actors. None the less the central issue at the core of their plight is the question of justice and they are seeking the same before the committee. They further stated that the determination of their petition will cement their claim and obligate a response(s) to some of their paltry demands. They further stated that the past responses from other authorities have been ranging from the fact that there is lack of mandate or transferred mandate or lack of resources and/or referral to

other actors and that the most painful sting has been lack of response.

17. **THAT** the community have approached the following institutions:-

- a. The Senate
- b. Office of the Deputy President
- c. The National Land Commission
- d. The Ministry of Devolution and Planning
- e. Ministry of Interior and Coordination of National Government
- f. Regional Commissioner – Rift Valley Region
- g. Various host county governments.

## 2.7 WHAT ARE THE PLIGHTS OF THIS COMMUNITY PAST AND PRESENT?

18. **THAT** several petitions over the years have been presented to different forums concerning the government evictions of persons from Northern Tinderet Forest and other forests in Nandi and Uasin Gishu and the greater MAU.

19. **THAT** generally, their petitions are premised on partial resettlement of the FOREST DWELLERS (generally referred to as Ogiek, Dorobos Torobeek) by the Government in the years between 1993-1996 and some as late as the year 2015 and the

rest of the families who were not resettled remained in the forest until the year 2006 when they were finally evicted.

20. **THAT** their eviction was done on the premise that they would be resettled elsewhere after identification of genuine Forest Dweller Communities.

21. **THAT** to resolve the eviction issue, the Government vide a letter through the then permanent secretary for Environment and Natural Resources dated 4<sup>th</sup>August, 1993 authorized the excision of 1,500 Hectares of land from Northern Tinderet Forest for purposes of settling members of the petitioners. The Chief Conservator of Forests vide letter dated 13<sup>th</sup>January, 1999 indicated that the District Surveyor Kapsabet had undertaken cadastral survey of the area that was to be excised thus expected to submit his report for processing.

22. **THAT** in the year 2001, the government excised 788.30 Hectares from the said forest vide gazette notice NO. 898 of 16<sup>th</sup>February, 2001 and that it is unclear whether the intended resettlement was done on the excised land though the petitioners paid survey fees. They also claim that the excised portion is still vacant to date.

23. **THAT** in the foregoing, it seems the intent and purpose of the excision of 788.30 ha from the Northern Tinderet Forest was to settle members of Torobeek Community.

24. **THAT** it is also unclear why the process of resettlement on the excised portion stalled and that the petitioners paid the requisite fees and justice demands that they be resettled as intended. The Forest Service, KFS herein did not traverse the petitions.

25. **THAT** the matter has also been handled by;

a) The East Africa Court of Justice

b) The Land and Environment Court by Lady Justice Nyamweya.

## 2.8 REMEDIES BEING SOUGHT FROM THE COUNTY GOVERNMENT OF BOMET

26. **THAT** the transition to an open democratic society whose values envisage the recognition, enjoyment and protection of human rights has been the most gainful experiment in the history of human existence and just like in any army that has to be fast enough for the strong but slow enough for the weak. They further stated that the failure to honor this principle will always have its consequences and communities being left behind in the march of progress. They further stated the unintended victims are always women, children and persons with disabilities. Large swathes of their community thus remain illiterate or semi-illiterate due to years of lack of access to education.

27. **THAT** the Torobeek generations have been left behind as the rest of the country developed and their plight has further been exacerbated by the directive on cessation of farming within government forests which was their source of livelihood.
28. **THAT** there is need for the recognition both in law and practice that Kenya has not only marginalized communities but also that indigenous communities exist and with such recognition will come the safeguarding of their rights.

### 3. CHAPTER 3

#### 3.1 FINDINGS AND RELIEFS

29. **THAT** As a community, they pray that the County Petitions Committee makes the following findings and the corresponding reliefs:

#### 3.2 THE COMMUNITY AND CULTURAL RIGHTS OF THE TOROBEK PEOPLE;

30. **THAT** the petitioners are a minority, marginalized indigenous people, with a distinct and unique culture and heritage of the broader Kalenjin Community and within the Republic of Kenya whose members can be found living within the county of Bomet.

31. **THAT** the county government of Bomet therefore recognizes the Torobeek as indigenous forest dweller community.

32. **THAT** the petitioners should be registered as a community and issued with a code by the ministry of interior and coordination of National Government.

33. **THAT** the county government of Bomet supports the community's quest for national recognition, and endorses its registration and entry into the national statistics by the issuance of a community code.

34. **THAT** where possible, the County Government of Bomet shall extend monetary and non-monetary support to the community in the recording, documentation of the communities culture; and in the collection of artefacts, restoration of shrines and other cultural sites.

### 3.3 HISTORICAL LAND INJUSTICES

35. **THAT** as a community, they invite the committee to find that the eviction of the petitioners by the government from the forests where they called home between 1982-2006 was a violation of their human rights and that further failure to resettle them was an exacerbation of their plight.

36. **THAT** in light of the forgoing the county government should take affirmative and restorative action in the following terms;



- a) The identification and reservation of suitable cultural sites for the restoration of shrines and cultural centers.
- b) The county government becomes an active advocate for the community when the community engages with the national government.
- c) The county government to partner and enjoin the community in its conservation efforts such as in tree nurseries and in programs for the mitigation of climate change.
- d) Noting the commercial utilization of the forest in tree forest farming the county and national government to remit the share of revenue due and payable to the community.
- e) Finally as and when land for the settlement of the community is available as in (a) above, the county waives the land adjudication fees payable during the process of survey and titling.

### 3.4 EDUCATION SECTOR INTERVENTION

37. **THAT** it is an empirical fact that the community lags behind in education, having had no place to call home. This is largely prevalent among those who were not able to transition fast enough out of the forest station squatter camps. To this end it is our humble view that education is the surest way to lift large portion out of the vicious cycle of poverty, disease and ignorance.

38. **THAT** in light of the foregoing the county government should take affirmative and restorative action in the following terms;

(a)The county government to consider and approve the setting aside of a quota out of the bursaries program specifically for the Torobeek people as they are usually left out in the allocation process.

(b)The county government waives certain criteria and requirements such as proof of residence when vetting applications for bursaries as most of the members are integrated in local communities across the county.

(c)The community be given special consideration when awarding local and international scholarships.

(d)Vocal support and advocacy by partnering with state actors such as the ministry of education towards affirmative action in school placement especially to national schools and in the allocation of ministerial scholarships.

(e)Vocal support and advocacy by partnering with non-state actors such as; Equity Bank's Wings to Fly program, Kenya Commercial Bank ,Co-operative Bank andSafaricom Foundation which supports needy students.

### 3.5 INDEMNITY FOR PAST AND PRESENT VIOLATIONS OF HUMAN RIGHTS

39. **THAT** this committee having made the recognition that both in law and practice, Kenya has not only marginalized communities but indigenous communities that exist including

but not limited to Torobeek Community and that there is need to restore and safeguard their rights.

40. **THAT** as such the Torobeek Community are an indigenous forest dweller community, marginalized by colonial and post-independence governments and has suffered historical and continued violations of their rights.

41. **THAT** they have been deprived of the cultural right, property rights and the shared participation in the local economy and especially proceeds from natural resources in the their ecosystems such as water and timber including fringe benefits such as in carbon trading and funds towards the mitigation of effects of climate change.

The county government can thus in exercise of its devolved function take the following remedial steps;-

- i. Provision of relief food for members of the community who are still at forest camps with immediate effect.
- ii. Expansion of universal health for the vulnerable i.e PWDs, pregnant women, children to the ages of 18, and the elderly from the ages of 55 and above.
- iii. Affirmative action via quotas for the community at the county level during recruitment for a reasonable period of time.

- iv. Establishment and gazettelement of structures to enable the community benefit from the windfall of timber and water(natural resources) exploitation from their indigenous homes.
- v. Support by the county in securing their intellectual property rights in products such as honey and traditional medicines andpatents in cultural artefacts and processes in their manufacture.
- vi. Any such programs that the County government may deem fit and achievable towards the greater goal of assisting the community.

## 4. CHAPTER 4

### 4.1 ANALYSIS OF THE PETITION

The main issues in the Petition by the Torobeek community relate to depravation of indigenous land rights and forced eviction of the community from their traditional, ancestral and habitual dwelling places which were mainly in the forests without being either resettled or appropriately compensated to enable them acquire alternative lands to settle on.

Forced evictions according to the United Nations constitute gross violations of a range of internationally recognized human rights, including the right to adequate housing, food, water, health, education, work, security of the person, freedom from cruel, inhuman and degrading treatment, and freedom of expression.

Some of the major effects of forced evictions are that people are often left homeless and destitute, without means of earning a livelihood and often with no effective access to legal and other remedies. Forced evictions intensify inequality amongst people, social conflict, segregation and discrimination and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of the society, especially women, children, minorities and the indigenous people.

Arising from this realization, states are obligated under various international human rights instruments to refrain from, and protect against forced evictions of peoples and communities from their home(s) and land. Among these are the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights which instruct parties to take necessary steps to safeguard the rights to housing.

The main issues that are raised in the Petition are-

- (a) **THAT** the members of the Torobeek Community originally lived together with the Ogiek Community in the regions of Mau Complex of Nakuru and Narok counties, Mt. Londiani across to the forest to the Northern Tinderet in Nandi County, Timboroa from Maji Mazuri across Rift Valley, with some going as far as Kiambu, Nyandarua, Migori, Isiolo and Bungoma counties.
- (b) **THAT** the community was evicted from their original habitat by the colonialists and thereafter by the Kenya Government after independence rendering them internally displaced.

- (c) **THAT** while some internally displaced persons from the Ogiek Community have been compensated and resettled by the National Government, the Torobeek Community have neither been compensated nor resettled. Additionally, the Torobeek Community have remained marginalized and;
- (d) **THAT** the Torobeek Community through their leaders had made efforts to have the matter addressed by the relevant Government agencies all of which have not borne fruits.
- (e) **THAT** the Torobeek Community are currently living amongst the various sub-tribes of the Kalenjin Community and other major tribes such as the Luhya community.
- (f) **THAT** the Torobeek Community as a result of living within other communities have been systematically assimilated and are gradually losing their identity as a distinguished community which its members initially lived quiet and decent lives as hunters and gatherers.
- (g) **THAT**, the Community have lost its original places of worship because their shrines were destroyed as they were evicted by the colonial and post-independence governments.
- (h) **THAT**, the Torobeek Community as a result of forced evictions, lost their ancestral land and have since lived in squalid conditions. Most of the members are landless and those who managed to acquire some land amongst the various communities are living in very small uneconomic parcels.

#### 4.2 The Mau Forest Eviction of 2004 to 2008



The petitioners in their petition stated that they originally lived together with the Ogiek Community in the regions of Mau Complex of Nakuru and Narok counties before they were evicted. They further claimed to have been treated differently from their Ogiek neighbors when it came to compensation and resettlement of the evictees.

The forced evictions that took place in the Mau Forest Complex between the years of 2004 to 2008 are documented in a number of documents among them being a Briefing Paper which was published by the Amnesty International in May 2007. In that Paper, it was reported that over a hundred thousand persons were forcibly evicted from the six forest areas with the government stating that this was done in order to protect Kenya's forests and water catchment areas.

Arising from the forced eviction was forced displacement of thousands of families who were living within the Mau complex.

In the year 2001, the government in a bid to resettle the evicted members of the Ogiek Community who were originally living in Mau Forest excised some parts of the Mau Forest to provide room for the resettlement of the members of the Community. This was done to secure the long-term conservation of the biodiversity and water catchments of the Mau forest complex.

However, in accordance with the Report of the Government Taskforce on the Conservation of the Mau Forest Complex, the

resettlement did not proceed as planned, with beneficiaries of the excisions including government officials, political leaders and companies. The Taskforce therefore recommended that the Ogiek, who were to be settled in the excised areas and had not been given land be settled outside the critical catchment and biodiversity areas.

The National Land Policy of 2009 acknowledged the infringement of the rights of the Ogiek and other minority and marginalized communities that were evicted from forests and identified this as one of the priority areas requiring special intervention to address.

The policy acknowledged in paragraph 198 that the Minority communities are culturally dependent on specific geographical habitats. Over the years, they have lost access to land and land-based resources that are key to their livelihoods. For example, such loss of access follows the gazetement of these habitats as forest or national reserves or their excision and allocation to individuals and institutions, who subsequently obtain titles to land.

It further acknowledged in paragraph 199 that these communities are not represented adequately in governmental decision making at all levels since they are relatively few in number. Their political and economic marginalization has also been attributed to the fact that colonial policies assimilated them into neighboring communities. In addition, the colonial Government alienated their lands through forest preservation policies, which effectively rendered them

landless as they were denied the right to live in the forests. Colonial administration also led to the marginalization of other minority communities both urban and rural, such as hunters-gatherers. To protect and sustain the land rights of minority communities, the Government shall:

- a) Undertake an inventory of the existing minority communities to obtain a clear assessment of their status and land rights.
- b) Develop a legislative framework to secure their rights to individually or collectively access and use land and land based resources.

It is also evident in the Report of the Government Taskforce on the Conservation of the Mau Forest Complex that no reference was made to the Torobeek community, while members of the Ogiek community are referred to inter-changeably as either “Ogiek” or ‘Dorobo’. In the present Petition, Mr. Paulo Mosbei and 5 other petitioners state that the name ‘Torobeek’ is derived from the word ‘Dorobo’. The committee further observed that, besides the Mau Forest Complex, the petitioners claim to have been evicted from forests in other parts of Kenya where they traditionally inhabited as hunters and gatherers and where they had shrines as their places of worship and other cultural artefacts necessary for freedom of expression.

Article 40 of the Constitution provides for the rights to property. Article 40(3) prohibits the State from depriving a person of property unless it is for a public purpose or in the public interest, and is

carried out in accordance with the Constitution and the relevant laws of Kenya. One of the conditions provided for in the law is that there should be prompt payment in full or just compensation to the affected persons by the state. The provision further provides for payment of compensation to occupants of land in good faith who may not hold title to the land.

The constitution further provides for right to adequate housing under Article (43)(1)(b) of the Constitution. The right is further recognized in the National Land Policy of 2009, the National Land Use Policy of 2017 and the Land Act, No.6 of 2012, which sets out elaborate procedures to be complied with in carrying out evictions. The application of these provisions is however restricted to unlawfully occupied public, community or private land, and does not address instances of evictions from ancestral or indigenous lands, as is the case with traditional forest dwellers such as the Ogiek and the Torobeek communities.

Article 67(2) (e) of the Constitution of Kenya mandates the National Land Commission to initiate investigations, on its own initiative or on a complaint, into historical land injustices and recommend appropriate redress. This was further effected under section 15 of the National Land Commission Act, No. 5 of 2012 which provides the legal framework for redressing historical land injustices.

The Commission deals with complaints that were occasioned by a violation of right in land on the basis of any law, policy, declaration,

administrative practice, treaty or agreement which resulted in displacement of persons from their habitual place of residence and which occurred between 15<sup>th</sup> June 1895 when Kenya became a protectorate under the British East African Protectorate and 27<sup>th</sup> August, 2010 when the Constitution of Kenya was promulgated and have not been sufficiently resolved.

The National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 further set out the procedure for the investigation and resolution of claims arising out of historical land injustices. The procedure include how an investigation may be commenced, the conduct of hearings, the making and publication of decisions of the Commission, as well as the right to appeal against such a determination.

#### 4.3 CASE STUDY: OGIEK COMMUNITY

In *Joseph Letuya & 21 others v. Attorney General & 5 others* [2014] eKLR, twenty-two members of the Ogiek community filed a representative suit on behalf of communities living in East Mau Forest. They asserted that their fundamental rights to life and settlement within Kenya were violated through forced eviction and loss of livelihood. They had sought legal redress to declare these injustices and claim compensation from the Attorney General.

The court determined that substantial irregularities occurred during the allocation of land in the Mau Forest area, including the allocation of land previously inhabited by the applicants.

In its judgement, the Court referenced various international environmental agreements such as the Stockholm and Rio Declarations, highlighting the rights bestowed upon individuals concerning land and the environment. Notably, the court cited Article 24 of the African Charter, affirming that *“All peoples’ shall have the right to a general satisfactory environment favourable to their development.”*

In its conclusion, the court ruled that the applicant’s rights to life, dignity, and social and economic wellbeing were violated during their eviction from the land. The National Land Commission was mandated to identify suitable land for the resettlement of the Ogiek members and the applicants, following the recommendations outlined in the Government Task Force’s Report on the Conservation of the Mau Forest Complex.

Further, in a distinct legal proceeding brought before the African Court on Human and Peoples' Rights, the community effectively contested their displacement from their ancestral lands and territories within the Mau Forest, along with the systematic denial of their related rights. In a ground breaking verdict issued on May 26<sup>th</sup> 2017, the Court delivered explicit rulings concerning the role of indigenous peoples and hunter-gatherers, particularly in conservation efforts. It underscored that the preservation of the Mau Forest could not justify the failure to acknowledge the indigenous status of the Ogiek community, nor could it warrant the denial of the rights inherently linked to that status.

However, there is no documented instance of the Torobeek community pursuing legal recourse for historical land injustices in court, as has been witnessed from the Ogiek community who have actively presented its case in multiple forums. Remarkably, it has secured favourable judgments from both national courts and regional human rights bodies, under circumstances strikingly similar to those faced by the Torobeek.

## 5. CHAPTER 5

### 5.1 Committee Observations

Based on the submissions from the petitioners and the County Executive Committee Member for Lands, Urban Planning and Housing and its own findings, the committee made the following observations:

- (i) **THAT** the members of the Torobeek Community originally lived together with the Ogiek Community in the regions of Mau Complex of Nakuru and Narok counties, Mt. Londiani across to the forest to the Northern Tinderet in Nandi County, Timboroa from Maji Mazuri across Rift Valley, with some going as far as Kiambu, Nyandarua, Migori, Isiolo and Bungoma counties.
- (ii) **THAT** the community was evicted from their original habitat by the colonialists and thereafter by the post-colonial Kenyan Government rendering them internally displaced.
- (iii) **THAT** while some internally displaced persons from the Ogiek Community have been compensated and resettled

by the National Government, the Torobeek Community have neither been compensated nor resettled and therefore the Torobeek Community have remained marginalized and;

- (iv) **THAT** the Torobeek Community through their leaders had made efforts to have the matter addressed by the relevant Government agencies all of which have not borne any fruits.
- (v) **THAT** the Torobeek Community are currently living amongst the various sub-tribes of the Kalenjin Community and other major tribes such as the Luhya community.
- (vi) **THAT** the Torobeek Community as a result of living within other communities have been systematically assimilated and are gradually losing their identity as a distinguished community which its members initially lived quiet and decent lives as hunters and gatherers.
- (vii) **THAT**, the Community has lost its original places of worship because their shrines were destroyed as they were evicted by the colonial and post-independence government.
- (viii) **THAT**, the Torobeek Community as a result of forced evictions, lost their ancestral land and have since lived in squalid conditions. Most of the members are landless and those who managed to acquire some land amongst the various communities are living in very small uneconomic parcels.



## 5.2 Committee Recommendations

The committee having investigated the matter in accordance with its mandate under Standing order 200(3) of the County Assembly Standing orders recommends as follows: -

- (1) **THAT**, in response to the Petitioners' Prayer N0.1 the committee recommends that the County Government of Bomet Liaises with the relevant agencies of the National Government to expeditiously look into the issues affecting the Torobeek Community so as to save them from further marginalization and neglect by the Government.
- (2) **THAT**, in response to the Petitioners' Prayer No.2, the committee recommends that the County Government of Bomet Liaises with the National Land Commission for it to expeditiously investigate into the historical land injustices that were meted against the Torobeek Community and provide the requisite redress as provided for under Article 67(2) (e) of the Constitution.
- (3) **THAT** in response to Prayer N0.3, the committee recommends that once the National Land Commission investigates the issue of historical land injustices meted against the Torobeek Community, the Commission shall recommend the appropriate redress.
- (4) **THAT** in response to Prayer N0.4, the County government of Bomet liaises with the National Gender and Equality Commission and other relevant National Government

Agencies to facilitate the recognition of Torobeek Community as an ethnic community in Kenya. Further that following such recognition, the community be given affirmative action programmes designed to ensure that:-

- (a) They participate and are represented in governance and other spheres of life;
  - (b) They are provided special opportunities in educational and economic fields;
  - (c) They are provided special opportunities for access to employment;
  - (d) They develop their cultural values, languages and practices; and;
  - (e) They have reasonable access to water, health services and infrastructure.
- (5) **THAT**, Prayer NO.5 can't be granted because of the underlying public interest concerns on the matter.