

ABS KENYA: PROCESS AND LESSONS FROM THE ENDOROIS BCP DEVELOPMENT

Introduction

In 2015/ 2016, the Kenya Wildlife Service (KWS), through the Lake Bogoria National Reserve Ecosystem Planning Project (LBNREPP), set out to review the integrated management plan 2007-2012 and develop a new ecosystem management plan for the Lake Bogoria National Reserve (LBNR) in order to be inline with the Constitution of Kenya 2010 and the Kenya Wildlife Management and Conservation Act, 2013.



Photo 1: Lake Bogoria, a section of the larger LBNR

The Access and Benefit Sharing aspect was particularly important owing to the history of land contests in the area,¹ and a proposed agreement between

1. The Endorois Community had been living in Lake Bogoria for almost 300 years and regarded Mochongoi Forest and Lake Bogoria as sacred ground due to the use of these locations for key cultural and religious ceremonies. In 1973, the Government of Kenya forcibly evicted the community to create the Lake Bogoria Game Reserve without any prior consultation, thereby challenging their customary rights. Subsequently, the Endorois were not involved or consulted in the management and operation in the reserve; did not receive any share in the benefits emanating from the reserve; nor were they even compensated for the grazing land for their livestock that they had lost in the reserve. In fact, community members were arrested if they trespassed the reserve for cultural and religious purposes or to graze their livestock, which forced them into poverty as well as threatened their spiritual and cultural survival emanating with their ties to their ancestral land. In 2010, the African Commission on Human and People's Rights made a determination which recognized the rights of the Endorois community over their ancestral land, and thereby allowed them unrestricted access to the reserve to graze their cattle as well as pursue their cultural and religious practices. It emanates from these rights that they should get a

the Endorois community, the KWS and tertiary institutions who seek to access genetic resources from Kenya's Soda Lakes in the development of a Microbial Biotechnology Industry. This agreement was presented as an effort at building multilateral partnerships under the Convention on Biological Diversity and the Nagoya Protocol, both of which emphasize fair and equitable sharing of benefits accruing from use of natural resources between the users and providers. Emanating from the rights enshrined in the international and national laws is that the Endorois community would, in fact, share any benefits arising from the indigenous knowledge and resources arising from these ancestral lands.

The Endorois BCP: The 2016/ 2017 year in Review

The key stakeholders in the process were the KWS, the County Government of Baringo, Natural Justice and the Endorois community, supported through the Endorois Welfare Council. Throughout the BCP development process, Natural Justice's role was to support the Endorois Community through the provision of technical advice.

To initiate the process, a series of preparatory meetings were undertaken with the Endorois Welfare Council (EWC) and the Kenya Wildlife Service. These meetings assisted in setting the objectives of the community protocol process and to clarify the decision-making process of the Endorois in the context of upcoming ABS agreements.² The County Government of Baringo was also involved in these meetings, given the management of the LBNR is currently a function of the County under the new Constitution and other sectorial laws.

The EWC then organized a series of community-level meetings between mid-February and May 2017. Natural Justice participated in the first of these meetings (see details in photo 2 below), to introduce the community protocol approach and the ABS framework. Two teams comprising three members each conducted the meetings.

share in any benefits arising from indigenous knowledge and resources originating from these ancestral lands.

2. On 14th October 2016, the EWC invited NJ to a meeting in Nakuru to discuss the way forward on the agreement with KWS and more importantly identify the issues to be ascertained before the development of the Endorois Bio-Cultural Community Protocol.



Photo 2: A meeting held on the 15th February 2017, the Endorois Welfare Council (EWC) held the first of a series of meetings for the Endorois Bio-Cultural Community Protocol (BCP). Please refer to Annex 1: A summary of observations of the 1st meeting in Koibos Location and Annex 2: The Structure and Content of the Endorois BCP.

In May, a first draft of the Endorois BCP was submitted to Natural Justice for comments and advice. Comments were provided for the EWC to consider further. In July a second draft was provided to Natural Justice. The next stage in the process was to be validation however this was slowed significantly due to the August elections and regional insecurity.

Insecurity: Insecurity in the region brought about by the ongoing resource conflict between neighbouring communities affected the conduct of the community-level meetings. In particular, the EWC members facilitating the process were unable to gain access to Arabal and Chabanyiny locations or undertake meaningful consultation as the residents had already relocated to safe grounds.

National and county level politics: 2017 has been an electioneering period for Kenya. The national and county level politics that concluded recently had to a large extent an effect on the BCP development process.

Legal empowerment: Natural Justice's role in the BCP development process has been to facilitate community process, provide technical input, and assist the community with the drafting of the protocol. However, one of the key

outcomes of the process has been the legal empowerment of the community to facilitate a good bottom-up process, which ensures local ownership, flexibility, and a process that corresponds to local realities. As such, Natural Justice has refrained from taking over tasks but rather work with community members to enable them develop their own protocol by providing direct legal empowerment and legal support.

The community protocol will be used to provide key inputs into the Lake Bogoria National Reserve Management Plan. For this to occur, the validation BCP validation process will take place in January/February, followed by meetings with both KWS and the County Government in March, 2018. These meetings shall form the basis for negotiations on the Management Plan. A final workplan and project budget on this project is now being discussed with the EWC. To this end, EWC members will meet with Natural Justice in Nairobi on Wednesday the 6th of December.