



**Competency Statement:
Carbon Projects**



OCHIENG' OGOLA & COMPANY ADVOCATES

Working for Each Client's Success



This document is intended to acquaint prospective clients with the firm's carbon-related competencies and growing body of work.

Firm Overview

We are a Nairobi-based predominantly environment and natural resources law firm established in 2016. Since then, we have advised and consulted for some of the major players in the biodiversity conservation sector, including: The Northern Rangelands Trust (NRT) and its affiliates; The Nature Conservancy (TNC); Conservation International (CI); The International Union for Conservation of Nature (IUCN); The Rhino Ark Trust; Kenya Wildlife Conservancies Association (KWCA), among several others.

Tom Ogola leads the firm. He is an experienced and well-respected Kenyan-qualified Advocate called to the to the Bar in 2004. Most of his close to 20 exciting post-qualification years of practice have been spent contributing to biodiversity conservation in Kenya and East Africa, in the public and private sectors.

Tom is an active member of the Law Society of Kenya (LSK). He serves on LSK's Conveyancing and Land Committee and has previously been LSK's nominee (on merit) to the Tourism Appeals Tribunal (2016-2019).

Carbon Legal Issues

1. May 2024 to date - Mt. Kenya & Aberdares Carbon Project for a Stakeholder Consortium

The project involves water, carbon, biodiversity and human benefits. It is intended to develop a sustainable funding source for the protection and restoration of Mt Kenya so that it can continue to increase climate resilience in Central and Northern Kenya. The proposed finance mechanisms include a sustainability/climate resilience linked bond focusing on water, biodiversity, carbon to ensure climate resilience.

Some of the project aspects on which we are advising include:

- Rights of biodiversity, water, carbon, whether these can these be outcomes based only.
- Alternative natural resource payment for ecosystem services and biodiversity credits.
- How to obtain and structure group management rights to the project area that would be attractive to GOK and achieve project outcomes.
- Flexible outcome based outcome - linking right owners to the land.
- Upper Tana water legal issues.
- Climate change finance.
- Legal aspects of the financial arrangements, including regulatory framework for public entities to comply.
- Human Rights and FPIC, stakeholder engagement and related compliance issues.

- 2. December 2023 to date – Mt. Kenya & Aberdares Carbon Project for Prominent Local Trust**

The project is intended to generate carbon credits for sale to generate revenue for the next 30 years. Initial projections show that the project has potential to generate approximately USD Four Million Two Hundred Thousand (Approx. KShs. 650,000,000).

Tom has been engaged as Legal Project Counsel to advise on choice and structure of project SPV; designing and structuring the project grievance arrangements; advising on various aspects, including land tenure; project governance structure; affected statutory and customary rights; implications of the Climate Change Act, 2023 and the Carbon Market Regulations, and their impact on the Project.
- 3. December 2023 to date – Structuring a Carbon Project Under Development for a Well-Established Local Trust**

The project covers a total land area of approximately 40,000 Ha owned under different land ownership regimes, ranging from private to community land.

The Trust has engaged Tom to advise on various aspects of the Project, including: land tenure; project governance structure; affected statutory and customary rights; Climate Change Act and Carbon Market Regulations, and their impact on the Project.
- 4. June to December 2023 – Grievance Handling Mechanism for NRT**

As part of a broader human rights and Free Prior and Informed Consent (FPIC) training for close to five hundred NRT and conservancy staff and community members, Tom developed a grievance handling mechanism to facilitate resolution of carbon project-related and other grievances. The firm is providing all required technical assistance until full operationalization of the GRM.
- 5. September 2023 to date – Taita Taveta REDD Carbon Project**

Tom developed sample preliminary negotiation documents for KWCA members to assist them navigate the complexities of the initial stages of carbon contracting. These include a model Letter of Intent and Heads of Terms. Subsequent phases of the assignment will include developing a Handbook to assist strengthen KWCA member conservancies from the concept stage through to full operationalization and capacity strengthening.
- 6. December 2022 to date – One Mara Carbon Project**

The Project is in the Greater Mara Ecosystems in Kenya. It engages Maasai Mara Wildlife Conservancies Association (MMWCA) member conservancies and land stewards to implement sustainable grassland monitoring and management practices, landscape protection and restoration, improve vegetation and prevent deforestation, resulting in carbon sequestration and net carbon benefits. These activities would generate carbon credits, which would be sold to support continued MMWCA activities.

Tom is the OMCP local legal counsel, instructed by Conservation International. His specific tasks include: advising on the selection and structuring of the Project special purpose vehicle (the 'Project SPV') from available options; drafting any and all legal documents required under Kenyan law for establishment and operation of the SPV; advising on carbon rights and land tenure ownership issues for the Project and any other jurisdictional legal issues, including confidentiality agreements and data protection; drafting legal agreements between the carbon rights holders and the Project Proponent (the envisioned SPV) governing the transfer and allocation of carbon rights; advising on human rights issues,

including Free Prior Informed Consent (FPIC) and grievance handling; and performing any other related or ancillary services in connection with the Project as may be mutually agreed.

Tom's Legal Opinions have already enabled the parties choose the project SPV from available options and decide on how to navigate land tenure issues and ensure proper chain and vesting of carbon rights. He has put together the project governance structure and drawn the SPV governance documents. Tom is also advising on the implication of the recent changes in local legislation affecting the project.

7. March to June 2021 – Northern Kenya Rangelands Carbon Project (NKRCP)

Tom was local legal Counsel instructed by the Northern Rangelands Trust (NRT) in the trailblazing NKRCP. The project brought together 14 community conservancies with rights to land covering 1.9 million hectares (4.7 million acres) of community land in the North of Kenya (the 'Project Area'). The NKRCP delivered approximately 3,200,000 Project carbon credits which have already raised substantial revenues for communities in the Project Area.

8. 2016 – Taita Taveta Wildlife Conservancies Association (TTWCA)

Tom advised TTWCA on options for restructuring, redress and recovery arising from a botched carbon project with incautious vesting of carbon rights, putting the carbon credits out of the community's reach, and resulting in default in payment of **360,000 USD**. Based on our firm's advice and intervention, TTWCA was able to recover substantial payment of its dues from forward sales of the credits.

9. 2015 – Chyulu REDD+ Project

Tom represented and advised the Kenya Wildlife Service (KWS) as in-house Counsel in the project during his tenure as Corporation Secretary and Head of Legal Services [**December 2007 to February 2016**]. This included providing documented and verbal explanations to questions during independent project verification in preparation for validation. He also worked closely with CI representatives and Freshfields Brackhaus Deringer LLP, United Kingdom to structure, negotiate and establish the project SPV (a registered charitable trust) to hold legal title to the project carbon credits, entrench good governance and ensure equitable benefit sharing.

REFEREES

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