

Mandate of the Special Rapporteur on the rights of indigenous peoples

REFERENCE: UA
KEN 2/2016:

4 May 2016

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 24/9.

In this connection, I would like to bring to the attention of your Excellency's Government the allegations concerning **violence against the indigenous Ogiek in the Ngongongeri area in Nakuru county, including the burning and demolition of homes, intimidation, forced evictions of some 500 people and the killing of a community elder, committed in the presence of State forces during the first two weeks of March 2016.**

According to the information received:

The Ogiek peoples are hunter-gatherers whose ancestral lands are located in the Mau Forest in Kenya's Rift Valley. During the first two weeks of March 2016, approximately 500 Ogiek people were rendered homeless after some 300 homes were torched or destroyed by land grabbers in an area the Ogiek claim to be their ancestral land. Over 100 Ogiek families were evicted or forced out of their homes and failed to receive adequate humanitarian assistance, including food, clothing and shelter. The Ndoswa primary school that had approximately 500 pupils was closed and Ogiek children were prevented from attending school.

The alleged forced eviction and land-grabbing occurred in the context of ongoing disputes between Ogiek communities and Tugen clans in the Ngongongeri area on the borders of Molo and Njoro, Nakuru county, within an area which Ogieks claim to be part of their ancestral land.

On 13 March 2016, Mr. Stephen Munyereri, an Ogiek elder of 60 years old, Ogiek, was shot at close range and killed while gathering his son's remaining belongings from their destroyed home following the forced evictions. The perpetrator was allegedly a person who claims to hold legal title of land within the Ogiek ancestral lands in the Ngongonger area. The shooting reportedly happened in view of multiple witnesses and in the presence of police officers who failed to intervene and protect Ogiek community members.

Subsequently, 20 individuals from the Ogiek community were allegedly arrested by police officers on charges of incitement; seven of them were charged at the Molo Court of Nakuru County, four of them were released on Kes. 20,000 bail each while three were not released because they could not afford the declared bond of Kes. 100,000 each. Furthermore, several Ogiek leaders were summoned for questioning before the Divisional Criminal Investigation Officer on 1 March 2016.

According to information received, State authorities have promised Ogiek community members restitution of their lands in the Ngongonger area and have expressed a desire to find a solution to the situation.

The displacement of the Ogiek indigenous peoples from their ancestral lands has been a long standing concern for my mandate and has also been addressed by my predecessors. The threats of removal of Ogiek indigenous peoples from the Mau Forest Complex and violations of their rights to their ancestral lands, access to livelihood and spiritual grounds have been the subject of previous communications, i.e. a communication sent by the Special Rapporteur Rodolfo Stavenhagen in 2002 (E/CN.4/2002/97/Add.1) and the mission report following his country visit in 2006 (A/HRC/4/32/Add.3). The Special Rapporteur James Anaya also sent a communication in October 2009 on the same matter. The response of your Excellency's Government in June 2010 has been duly acknowledged in Anaya's report in the same year (A/HRC/15/37/Add.1).

I am concerned that the displacement or threat of displacement and violations of land rights of the Ogiek people persist, despite the promising plans of your Excellency's Government contained in its letter in June 2010 to find a workable solution for the Ogiek of the Mau Forest Complex. I am particularly disturbed by the accounts that allege a broad pattern of local police failure to protect Ogiek peoples against attacks in the context of the land disputes.

I wish to recall that since 2009, the forced evictions of the Ogiek peoples from their ancestral lands in the Mau Forest is pending litigation in the African Human Rights System. On 15 March 2013, the African Court on Human and Peoples' Rights issued an Order of Provisional Measures in the case (application no. 6/2012), in view of the risk of

irreparable harm to the Ogiek, ordering the Kenyan Government to ‘refrain from any act or thing that would or might irreparably prejudice the main application before the Court’.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency’s Government to its obligations under binding international human rights instruments. Kenya is party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC).

Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. These fundamental human rights include the right to life and personal integrity, equality and non-discrimination, all rights which are recognized in the human rights treaties ratified by Kenya.

Article 7 of the Declaration provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. With respect to their rights to property in the form of land and natural resource rights, Article 26 states for the right of indigenous peoples to ‘the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’ and for legal recognition of those rights ‘with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.’ Article 10 affirms that indigenous peoples ‘shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.’

Furthermore, the Declaration provides for the rights of indigenous peoples to redress for actions that have affected the use and enjoyment of their traditional lands and resources. In that regard, Article 28 states that ‘indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.’

The full texts of the human rights instruments and standards referred to above are available on www.ohchr.org or can be provided upon request.

In addition, I would like to reiterate the recommendations of my predecessor, James Anaya, in his communication of 1 April 2010 and referenced in his report in 2010 (A/HRC/15/37/Add.1), which included a requested for information on actions that your Excellency’s Government has undertaken to address the situation. Among other

recommendations, the Government was urged to ‘carry out an investigation into the land and resources used by the Ogiek peoples within the Mau Forest Complex...and explore, in consultation with the Ogiek concerned, all possible options for advancing the Government’s legitimate interests in environmental conservation of the Mau Forest Complex without removing the Ogiek people from the area.’

As I continue to monitor and evaluate the circumstances surrounding the present situation, I would be grateful if you could provide information on the steps taken by your Excellency’s Government to safeguard the rights of the affected Ogiek community in compliance with international instruments and in particular the following details:

1. Are the facts as summarized above accurate? Please provide any necessary information or clarifications.
2. Please provide information whether investigations have been carried out in relation to;
 - a.) the forced evictions of members of Ogiek community during first two weeks of March 2016;
 - b.) the killing of Mr. Munyereri on 13 March 2016.

Please provide details of the outcome to date of these investigations and whether any suspected perpetrators have been detained, charged and sanctioned. If no investigations have taken place, or if they have been inconclusive, please explain why.

3. What measures has the Government taken to investigate the allegations of police failure to protect Ogiek peoples against attacks in the context of the land disputes. Have any penal, disciplinary or administrative sanctions been initiated or issued against members of the police.
4. Please provide information the basis of the charges against the 20 Ogiek community members and on what ground Ogiek leaders were summoned for questioning by the police.
5. What measures have been taken to provide humanitarian assistance and reparation, to members of the Ogiek community who suffered losses and damages during the events during the first two weeks of March 2016.
6. Please indicate how the Government has sought to comply with the Order of Provisional Measures by African Court on Human and Peoples’ Rights of 2013?

7. What measures have been taken to address the land tenure situation of the Ogiek, notably the legal recognition of their traditional land and natural resource rights;

8. Please provide information on the measures taken to implement the 2010 recommendations of my predecessor Mr. Anaya on the matter of forced evictions and ancestral land claims by the Ogiek.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples