

**Mandate of the Special Rapporteur on the rights of indigenous peoples**

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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 33/12.

In this connection, I would like to bring to the attention of your Excellency's Government the allegations concerning **violence against the indigenous Sengwer peoples living in the Embobut Forest, including the eviction of 13 families and the burning of their homes during the first half of December 2016, as well as intimidation and threats of further forced evictions of some 1,200 Sengwer families by the Kenya Forest Service (KFS) and other governmental agencies.**

According to the information received:

The Sengwer peoples are an indigenous group living in the Embobut Forest, along the slopes of the Cherangany Hills in western Kenya. The Sengwer are a community which is dependent on the forest for its socio-cultural and economic sustenance. The Sengwer's economy is traditionally based on bee keeping, hunting and gathering; over the years, they have also engaged in livestock keeping and began cultivating small family gardens in the glades in the forest. Despite the Sengwer's strong ties with their ancestral lands, Kenyan authorities have made repeated efforts since the 1970s to forcibly evict the Sengwer from the Embobut forest for resettlement in other areas. In early 2014 waves of large-scale of forcible evictions took place. In March 2016 the Sengwer wrote to the President calling for a halt to evictions while reaffirming their commitment to act as forest guardians and to ensure conservation in cooperation with the KFS.

The situation has escalated since 1 December 2016, when 1,200 Sengwer families were given a verbal 7 days' notice by the Deputy County Commissioner and the KFS Regional Commandant to move out of the forest under the threat of mass forced eviction. During the following days, 13 Sengwer dwellings and household property were reportedly burned down by KFS guards and police officers. These acts took place despite the existence of ongoing judicial proceedings aimed at clarifying the right of the Sengwer community to inhabit the forest. Following an injunction issued by the Eldoret High Court in 2013 forbidding any eviction of the Sengwer, evictions by KFS took place in 2014 prompting the Sengwer community to return to court for contempt of the 2013 injunction. However, in February 2015, the High Court observed that the Sengwer 'had left the forest' and

requested preservation of the 'status quo' pending the full determination of the matter. Two different interpretations emerged with regard to what the 'status quo' meant. KFS claims that the status quo entails the community being outside the forest, while the Sengwer claims that they never left the forest and hence the status quo entails their inhabiting the forest.

The recent evictions led the Sengwer community to pursue new judicial measures before the Eldoret High Court. On 8 December 2016, a judge resolved that, pending determination of the case, no Sengwer should be evicted from the forest and those outside the forest should not go back. The Sengwer community subsequently made an application in court for the judge to recuse himself from the matter, on grounds that he had already made a determination on the issue of status quo in 2015 without listening to the submission from the Sengwer community. A hearing to hear the application for recusal was set for the 9 January 2017 however did not take place because the judge was not sitting. No date has been given for the next hearing.

Reportedly, an ongoing dialogue process led by the National Land Commission (NLC) between indigenous forest peoples and the KFS and other state agencies and institutions has sought to find a solution for the issues of land tenure. In this regard, information received indicates that a roadmap to solve the issue was adopted in July 2016 and that, on 12 August 2016, the Chairman of the NLC, Mr. Muhamad Swazuri, requested that KFS guards stop evicting members of the Sengwer community living in the Embobut forest.

Nonetheless, sources report that, in a meeting on 15 December 2016 with the presence of several high-level governmental officials, the Chairman of the NLC informed the Sengwer that he was giving them 14 days to leave the Embobut Forest, in contradiction to his previous statements. According to the information received, Mr. Swazuri assumes that some members of the Sengwer community who were evicted from the Embobut forest received financial compensation in 2013, hence presuming the "illegality" of their "return" to the forest. Allegedly, Mr. Swazuri's assumption fails to acknowledge that most members of the Sengwer community were not paid any compensation and continued to live in the Embobut forest. Among those who accepted the financial compensation, there are many who did so under extreme pressure and misunderstood it to be compensation for past harassment. Finally, sources note that the compensation process did not involve any consultation or agreement, and that the value of the monetary compensation was not an adequate replacement for the loss of their livelihood and way of life.

The community is extremely affected by the continuation of the evictions by KFS guards who have burnt down Sengwer houses and their household properties,

including clothes, food and blankets. According to the information received, the evictions have exposed the Sengwer to psychological hardship, physical and verbal abuse, arrests and sexual violence. On a collective level, they affect the socio-economic and political life of the Sengwer, result in the loss of the community's livelihood and access to food and threaten the continuity of this indigenous people's culture and identity. The destruction of their dwellings has rendered the Sengwer, particularly women, children and older persons, vulnerable and caused them extreme poverty. While the allegations received indicate that the evictions and intimidation practices resulted in the expulsion of some members of the Sengwer community from their ancestral lands, sources also report that most Sengwer continue to live in the Embobut forest, hiding in caves or in thick forest for reported fear of harassment by KFS officers.

Forced evictions and intimidation of the Sengwer have allegedly been exacerbated by conservation projects, which resulted in restrictions or loss of access to the forest. The World Bank's Inspection Panel recognized that this was the case during the activities of the Natural Resource Management Project (NRMP), which was run by the World Bank from 2007 to 2013. In an investigation report issued on May 2014, the Inspection Panel concluded that the NRMP violated innumerable World Bank safeguard policies. Particularly, the Inspection Panel raised concerns that the project neglected the customary rights of the Sengwer and that NRMP's implementation agent, the Kenya Forest Service, whose activities were then funded by the World Bank, applied a policy based on undertaking evictions, which was not adequately identified, addressed or mitigated by the NRMP.<sup>1</sup>

The intensification of forced evictions and the threats to the Sengwer's indigenous rights to land and livelihood are currently again a concern in the context of the Water Towers Protection and Climate Change Mitigation and Adaptation Programme (the WaTER programme), a €31 million project supported by the European Union. The allegations received suggest that this project risks perpetrating a culture of evictions and violations. Indigenous peoples are particularly concerned that the Water Programme pursues a model of conservation which excludes indigenous communities, fails to consult with them and omits adequate assessment of the human rights impact of the project. Ultimately, their concern is that the project, analogously to the NRMP, contributes to reinforce the violations of their indigenous rights and the denial of the Sengwer's access to, and

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<sup>1</sup> The World Bank's Inspection Panel. Kenya: Natural Resource Management Project, Investigation Report. 22 May 2014, Executive Summary, par. 26-27, and par. 124-127, available at [http://ewebapps.worldbank.org/apps/ip/PanelCases/84%20-%20Investigation%20Report%20\(English\).pdf](http://ewebapps.worldbank.org/apps/ip/PanelCases/84%20-%20Investigation%20Report%20(English).pdf). The Inspection Panel also found that the project was developed without prior consultations with the Sengwer (par. 222; 226).

ownership of the lands, territories and resources which they have traditionally owned, occupied or otherwise used.

While I do not wish to prejudge the accuracy of these allegations, I am concerned that forced evictions, intimidation and violations of the indigenous rights of the Sengwer peoples continue to take place, despite repeated efforts to bring these violations to the attention of the Government of Kenya. I am particularly disturbed by the accounts of broad patterns of institutional use of force to evict the Sengwer from their ancestral land, and by the continuation of conservation and climate change mitigation projects that may pose significant and irreversible damage to indigenous peoples.

The displacement of the Sengwer from the Embobut forest has been a long-standing concern for my mandate and was addressed by my predecessors in previous reports and communications. The violations of the Sengwer's rights to their ancestral land, access to livelihood and spiritual grounds were the subject of the mission report following the country visit to Kenya made by the former Special Rapporteur Rodolfo Stavenhagen in 2006 (A/HRC/4/32/Add.3). Former Special Rapporteur James Anaya also expressed deep concerns regarding the imminent threat of forced evictions faced by the Sengwer living in the Embobut forest, in the communication dated 10 January 2014 (KEN 1/2014) and the statement issued on 13 January 2014, in which Mr. Anaya urged the Government of Kenya "*to ensure that the human rights of the Sengwer indigenous peoples are fully respected, in strict compliance with international standards protecting the rights of indigenous peoples.*"<sup>2</sup>

The situation was also the concern of the Committee on the Elimination on Racial Discrimination (CERD), whose 2011 Concluding Observations recommended that "*the State party take measures without delay to operationalize the machinery and mechanisms for addressing land problems fairly, taking into account the historical contexts of land ownership and acquisition*"<sup>3</sup>. A letter under CERD's Early Warning Procedure was sent to the Government of Kenya on 30 August 2013, addressing KFS's repeated attempts to "*evict the Sengwer people using force, including by burning their houses, possessions and food*"<sup>4</sup>. This was followed by a second letter by CERD on 7 March 2014, requesting the Government to provide information related to "*allegations that the Kenya Forest*

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<sup>2</sup> "Kenya/Embobut Forest: UN rights expert calls for the protection of indigenous people facing eviction", available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14163#sthash.qKELd9r6.dpuf>.

<sup>3</sup> CERD. Concluding Observations, 2011, par. 18, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fKEN%2fCO%2f1-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fKEN%2fCO%2f1-4&Lang=en).

<sup>4</sup> Letter sent to the Government of Kenya under CERD's Early Warning Procedure, 30 August 2013, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/KEN/INT\\_CERD\\_ALE\\_KEN\\_7099\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/KEN/INT_CERD_ALE_KEN_7099_E.pdf).

*Services (KFS) have burned the houses and possessions in the Embobut forest affecting an estimated number of 2,500 households”<sup>5</sup>.*

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](http://www.ohchr.org) or can be provided upon request.

In addition, I wish to draw attention to the Constitution of Kenya of 2010 which in Article 63(2)(d)(ii) recognizes community land as the “*ancestral lands and lands*

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<sup>5</sup> Letter sent to the Government of Kenya under CERD’s Early Warning Procedure, 7 March 2014, available at <http://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Kenya7April2014.pdf>.

*traditionally occupied by hunter-gatherer communities*”, providing for a wide scope of land rights based on customary occupation.

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 Sengwer peoples in compliance with international instruments and in particular the following details:

1. Are the facts as summarised above accurate? Please provide any necessary information or clarifications.
2. Please provide information on whether investigations have been carried out in relation to the forced evictions of members of Sengwer community since early December 2016. In this regard, 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. Please provide information on whether humanitarian assistance and other measures were adopted towards the members of the Sengwer community who suffered losses and damages during the events of December 2016.
4. Please provide information on the ongoing judicial proceedings aimed at clarifying the right of the Sengwer community to inhabit the forest.
5. Please provide details of the dialogue process conducted by the National Land Commission and its aim.
6. Provide information on the measures taken by the Government to secure the tenure rights of the Sengwer indigenous peoples to the lands, territories and resources which they have traditionally owned, occupied or otherwise used and, specifically to ensure the legal recognition of those rights with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.
7. Please provide information on the measures that have been taken to protect the rights of the Sengwer in the context of the Water Towers Protection and Climate Change Mitigation and Adaptation Programme (WaTER), including the obligation to consult and obtain the free and informed consent of indigenous peoples prior to the approval of any project affecting their lands or territories and other resources. Please also indicate whether a human rights impact assessment of the project has been carried out and if so kindly provide details of the results.

While awaiting a reply, I 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.

I further wish to inform you that I reserve the right to publicly express my concerns in the near future, as I am of the view that the information upon which a press release would be based is sufficiently reliable to indicate a matter warranting immediate attention.

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