

**Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples**

REFERENCE:  
UA KEN 1/2018

10 January 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 28/11, 34/5 and 33/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged attacks against the indigenous Sengwer peoples living in the Embobut forest. The attacks allegedly started on 25 December 2017, when about 100 armed Kenya Forest Service guards burnt at least 15 homes with the aim of forcibly evicting the community. They have also threatened and fired shots against community members and leaders, destroyed property and shot dead a number of animals belonging to the community.**

Communications regarding previous forced evictions of the Sengwer peoples and attacks against their community leaders were sent to the Government of Kenya on 26 April 2017 (UA KEN 7/2017, 13 January 2017 (UA KEN 1/2017) and on 10 January 2014 (UA KEN 1/2014). We regret that we have not received any response to date.

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 dependent on the forest for its socio-cultural and economic sustenance. Despite their strong ties with their ancestral lands, Kenyan authorities have made numerous efforts to forcibly evict the Sengwer from the Embobut forest. Previous communications related to evictions which took place in 2014, 2016 and 2017.

Since 25 December 2017 up to-date, about 100 armed Kenya Forest Service (KFS) guards entered the ancestral lands of the Sengwer peoples in the Kapkok, Koropkwen and Kaptirpai glades the Embobut Forest.

The KFS guards burnt at least 15 homes with the aim of forcibly evicting the community, threatened and fired shots against community members and leaders,

destroyed property and shot dead a number of animals belonging to the community.

Allegedly, on 29 December, KFS guards took a 6 year old child from his family, later releasing him alone in the forest far from home.

Members of the community have been threatened and leaders and defenders of the rights of the Sengwer have been targeted by KFS guards in retaliation for their activism seeking to protect their traditional lands. On 9 January 2018, around 12:30pm Mr. Kiptuka one of the Sengwer leaders was shot at by KFS guards. Mr. Kiptuka managed to escape unhurt, but his house was burnt down and his property destroyed by the KFS guards.

The timing of the forced evictions, during the Christmas and the New Year holiday period, has meant that the Sengwer community struggled to mobilise support to contest the action through the media, civil society and the judiciary.

In 2013, the Sengwer secured an injunction by the Eldoret High Court against being evicted, yet numerous evictions have continued to take place

The Ministry of the Environment and Natural Resources and the KFS allegedly claim that they are evicting squatters, while at the same time they block visits by the Kenya National Human Rights Commission (KNCHR) and civil society organisations.

Earlier forced evictions of the Sengwer were exacerbated by conservation projects, which resulted in restrictions or loss of access to their traditional forest lands. The World Bank's Inspection Panel recognised 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.

The ongoing attacks and evictions are occurring in the context of a climate change mitigation and adaptation project in the Embobut forest. In June 2016, the EU and the Kenyan government launched the Water Towers Protection and Climate Change Mitigation and Adaptation (WaTER) to support the eradication of poverty through making the ecosystems of Mt Elgon and Cherangany Hills more productive. The EU has committed €31 million to the six-year programme.

The WaTER project contains funding for the KFS. This funding may constitute a motivation for the KFS to evict the Sengwer in order for money to benefit the KFS government agency rather than the indigenous community. As already expressed in our communication dating 13 January 2017 (UA KEN I/2017), the Sengwer 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, will reinforce the violations of indigenous peoples' rights and the denial of the Sengwer's access to, and ownership of, the lands, territories and resources which they have traditionally owned, occupied or otherwise used.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that forced evictions, intimidation and violations of the indigenous rights of the Sengwer peoples are escalating, despite our repeated efforts to bring these violations to the attention of the Government of Kenya. We are particularly disturbed by the KFS's targeting of community leaders, defenders of the rights of the Sengwer peoples and the violent institutional force used to evict the Sengwer from their ancestral land.

We also regret that the Water Towers Protection and Climate Change Mitigation and Adaptation (WaTER) appears to be proceeding without a human rights impact assessment being undertaken nor consultations with the Sengwer in order to seek their free, prior and informed consent. We note that the Special Rapporteur on the rights of indigenous peoples raised specific concerns over the WaTER project in her 2017 report to the Human Rights Council on climate change and climate change funds (A/HRC/36/46, paras. 110-111).

We 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 adopted by the General Assembly in 2007, elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples.

Article 7 of the Declaration provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. Article 32 states that 'indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources' and that 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources'. Article 32 furthermore affirms that 'States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact'.

In addition, Article 10 of the Declaration 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.’

We also wish to refer to Articles 1 and 2 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, which state that everyone has the right to promote and to strive for the protection and realization of human rights (...) and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Reference should also be made to Human Rights Council Resolution 31/32 which Underlines the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, social and cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

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 view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the abovementioned community and individuals in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information as to measures you have already taken to investigate these allegations, including the shooting of live bullets during the recent eviction attempts and the targeting of Sengwer community leaders. If no investigation has been performed, please explain why.
3. Please explain in detail the measures that your Excellency’s Government has taken to ensure that free, prior and informed consent is obtained by the Sengwer indigenous peoples during the planning of the Water Towers Protection and Climate Change Mitigation and Adaptation (WaTER)

project. 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.

4. Please indicate what measures have been taken to ensure that human rights defenders and environmental activists including those defending the rights of indigenous peoples are able to carry out their legitimate work in a safe and enabling environment in Kenya, without fear of threats or acts of persecution and harassment of any sort.

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 those responsible of the alleged violations.

We reserve the right to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

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

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Michel Forst

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Victoria Lucia Tauli-Corpuz

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