

Mandates of the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the human rights of internally displaced persons

REFERENCE:
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29 May 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights of indigenous peoples and Special Rapporteur on the human rights of internally displaced persons, pursuant to Human Rights Council resolutions 33/12 and 32/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged attacks and resulting displacement of more than 2000 indigenous Samburu, Maasai and Turkana peoples living in Kisiriri and Pessi, Socian Ward, Laikipia North Sub Country, Laikipia County, Kenya on 28 April 2018**. The incidence allegedly involved the burning of some 300 houses and other properties by State forces.

According to the information received:

On 28 April 2018, houses and properties of Samburu, Maasai and Turkana indigenous peoples living in Kisiriri and Pessi were razed to the ground by persons, who reportedly are members of Kenya's police force, Kenya Police Reservists and administrative police. Allegedly, some civilians were also involved in the incident.

It was reported that the perpetrators arrived to the community at 8.00 in the morning with lorries and started burning down and destroying houses, as well as other properties in the area. More than 300 homes were torched, leaving more than 2000 indigenous women, children and men homeless and without basic necessities for survival. Documents including birth certificates, title deeds, traditional ornaments, clothing, books and other materials belonging to schoolchildren were destroyed. The victims also reported that the police officers looted property and took away livestock during the incident. Leaving their belongings behind, the villagers were able to save themselves and there was no report of deaths or serious injuries, except for a minor burn in the hand suffered by one indigenous child.

Following the incident, eight indigenous persons were arrested but later released with the advice to report back to the police office on 1 May 2018. Lemoti, an elder who was among the arrested, reported that he was beaten, locked up in Rumuruti police cells for over five hours and only released after paying bribe

money. During the incident, his house and all of his property , including his motorcycle, had been destroyed.

According to the reports, many of the community members, who lost their homes, are presently staying in two temporarily constructed camps, one on the grounds of a public primary school and the other close to the land, where the houses were attacked. Others have left the area.

According to the information received, a Ms. LJ claims to privately own the land, where the Samburu, Masaai and Turkana houses were located. Ms. LJ had according to this information obtained a court order allowing her to evict the communities living on the land. It was reported that the police authorities made statements, indicating that the target of their operation were persons who illegally were living on the land. The victims on the other hand maintain that their occupation of the area was legally sanctioned by the government in 1992, as part of an agreement to settle pastoralists in the area, whereby each family was given a land plot of 35 by 100 meters. Reportedly, the victims had not received any eviction notice prior to the raid and incineration of the village.

It has been reported that the community members have brought the case to the Nanyuki Law court (civil suit No. 47 of 2018), suing the Inspector General of Police, the Officer in charge of the Police Station at Rumuruti as well as the family claiming to own the disputed land for the violation of the rights of the Samburu, Maasai and Turkana indigenous peoples in connection with the attacks. The case is presently being heard by the courts.

Previous to this incident, two county employees were shot and killed while another one was injured by armed persons within the Laikipia Nature Conservancy. The victims claim that in their pursuit operations, the State forces turned to the indigenous community and torched their homes as an act of reprisal that specifically targeted the indigenous peoples living in the Pessi and Kisiriri areas.

While we do not wish to prejudge the accuracy of these allegations, we are alarmed about the extent of human rights violations surrounding the incident, including the violent evictions and destruction of property. We urge your Excellency's government to take immediate action to provide humanitarian aid to the victims, while investigating the incident further and bringing the perpetrators to account.

Violent attacks against and displacement of indigenous peoples, including the Maasai and the Sengwer peoples, is an area of concern, which has been addressed in several previous communications to your Government by the Special Rapporteur on the rights of indigenous peoples and other mandates (KEN 7/2017, KEN 1/2017 and KEN

1/2014 related to the Sengwer people and KEN 7/2013 related to the Maasai). To date we have not received any replies to the above communications. We are deeply disturbed by what seems to reflect a pattern of local police failure to protect indigenous peoples in Kenya against attacks in the context of land disputes, despite repeated efforts to bring these violations to the attention of the Government of Kenya.

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).

In this regard, we would like to recall article 11.1 of the International Covenant on Economic, Social and Cultural, which recognizes the right of everyone to an adequate standard of living for themselves and their family. This article must be read in conjunction with article 2.2 of the Covenant, which provides for the exercise of any right under the Covenant without discrimination of any kind. Of particular relevance to the incidence in Kisiriri and Pessi, is the Committee on Economic, Social and Cultural Rights' General Comment No. 7 on forced evictions, paragraphs 15 and 16, which state that procedural protections are essential in relation to forced evictions, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. In paragraph 17, the Committee further emphasizes that where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available. Paragraph 10 of the general Comment No. 7 furthermore makes direct reference to indigenous peoples as one of the vulnerable groups that suffers disproportionately from the practice of forced eviction.

We furthermore wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007. While we are aware that Kenya abstained from voting on the United Nations Declaration on the rights of indigenous peoples, we would like to emphasize that this instrument provides an authoritative statement of international human rights standards related to indigenous peoples. The UNDRIP elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. These fundamental human rights include equality and non-discrimination, life and personal integrity, culture, health and property, all of which are recognized in the principal human rights treaties ratified by Kenya and mentioned above.

Article 7 of the UNDRIP 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 UNDRIP 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.’

We would also like to draw your Government’s attention to the Protocol on the Protection and Assistance to Internally Displaced Persons, 2006 (“the Great Lakes Protocol”), which was ratified by Kenya, and provides that Member States undertake to prevent arbitrary displacement and to eliminate the root causes of displacement (article 3).

Reference is also made to Kenya’s “Prevention, protection, and assistance to internally displaced persons Act” (2012), which gives effect to the Great Lakes Protocol and to the Guiding Principles on Internal displacement. Section 5(2), in particular, provides that the Government and any other organization, body or individual shall prevent internal displacement in situations of armed conflict, generalized violence, human rights violations, natural or human-made disasters and development projects.

Section 21(1) of the Act, in addition, upholds the principle that “the Government shall abstain from displacement and relocation due to development projects or projects to preserve the environment and protect persons from displacement by private actors”. Section 21(2) envisages exceptional circumstances, whereby displacement and relocation due to, inter alia, development projects, may lawfully be undertaken, when they are “(a) authorized and carried out in accordance with the applicable law; (b) justified by compelling and overriding public interests in the particular case; and (c) conducted when no feasible alternatives exist.”

Finally, we would also like to make reference to the Guiding Principles on Internal Displacement, in particular Guiding Principle 6 and 7. We would further wish to draw your Government’s attention to Principle 9, which provides that States are under a

particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

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 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 above-mentioned persons in compliance with international instruments.

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

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the whereabouts, number, and current situation, and needs of the individuals currently displaced, as well as any measures of assistance and protection extended to these persons, bearing in mind Kenya's obligations under the Great Lakes Protocol, and its enabling "Prevention, protection, and assistance to internally displaced persons Act" of 2012..
3. Please provide information as to measures you have already taken to investigate these allegations, including the burning of houses, looting of property, and violent acts performed by State forces during the recent eviction. If no investigation has been performed, please explain why.
4. What immediate measures has the Government done or intends to do to address the immediate needs of those, who were rendered homeless and displaced and who lost their belongings?
5. What investigations, if any, are being done by the government to look into the culpability of security forces involved in the incident? Have any penal, disciplinary or administrative sanctions been initiated or issued against members of the police?

6. Please provide details of national legislation, policies or programmes directly relevant to protection of persons facing internal displacement, including how they have been implemented.

While awaiting a reply, we urge that all necessary measures be taken to provide the necessary humanitarian assistance to the displaced communities and 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.

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

Cecilia Jimenez-Damary
Special Rapporteur on the human rights of internally displaced persons