

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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the human rights of internally displaced persons

Ref.: UA KEN 4/2023
(Please use this reference in your reply)

23 November 2023

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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; 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 46/7, 52/10, 51/16 and 50/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding **the alleged forced eviction and displacement of at least 1000 Ogiek Indigenous Peoples in Sasimwani, Mau Forest Complex, in contravention of judgments of the African Court on Human and Peoples Rights. There is also information about the risk of imminent evictions of Ogiek community members in the Nkareta region and in parts of Eastern Mau Forest Block (Kiptunga).**

Communications regarding previous forced evictions of the Ogiek People have been sent to the Government of Kenya in 2016 and 2020 (AL KEN 3/2020; UA KEN 2/2016). We regret that we have not received a response from the Government.

According to the information received:

¹ Kenya Forest Service, Kenya Wildlife Service, Kenya Water Tower Agency, Kenya Police, Forest Scouts, and the Rift Valley Regional Commissioner
² <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1174/HALT-THE-ONGOING-FORCED-EVICTIONS-OF-THE-OGIEK-COMMUNITY>

The Ogiek are an Indigenous forest community of hunter-gatherers who have historically used and occupied the Mau Forest Complex. On 2 November 2023, the Government of Kenya, through a multi-agency security team,¹ began forcefully evicting and displacing at least 1000 Ogiek, among them women and children, in Sasimwani, Mau Forest Complex. Kenya Forest Service (KFS) and Kenya Wildlife Service (KWS) reportedly violently destroyed and burned Ogiek homes, schools, and places of worship. Allegedly, some rangers forced Ogiek Peoples to tear down their homes in an attempt to claim that the communities were leaving voluntarily. Several victims of the eviction have been displaced and left in situations of homelessness in the cold and rainy weather conditions and with no source of livelihood.²

The Ogiek Peoples have expressed on several occasions that they would not consent to their relocation from ancestral lands, including by filing a case before the African Court on Human and Peoples Rights. They report that they have never provided their free prior and informed consent and have not been offered compensation for the loss of their lands and forced relocation. Allegedly, the evictions were carried out in violation of Kenya law. The Land Act of 2012 requires the presentation of formal authorizations before proceeding with evictions. Evictions must be carried out in a manner that respects the dignity, right to life, and security of those affected. The Government must take special measures to ensure adequate protection for groups and people who are vulnerable, such as women, children, the elderly, and persons with disabilities. Finally, special measures must be adopted to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction and to protect property and possessions left behind involuntarily from destruction.

In a statement issued on 6 November 2023, the Kenya National Commission on Human Rights (KNCHR) expressed concern about “the increasing and prevalent forced evictions and an unprecedented trend occasioned mostly by the State, occasioning gross human rights violations.” The KNCHR worries that “despite clear procedural safeguards under Section 152G of the Land Act, 2012 - evictions continue to occur under unclear circumstances, without due process, and with the absence of appropriate measures to mitigate the suffering among the affected persons.”³ We note that KNCHR subsequently took the matter to court, and conservatory orders were issued and served on the Government.

After learning of the impending evictions on 26 October 2023, members of the Ogiek Council of Elders and Ogiek Peoples’ Development Program immediately contacted Government authorities, including a County Commissioner, the Commission on Administrative Justice (CAJ), Kenya

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Forest Service (KFS), and Ministry of Environment, Climate Change, and Forestry to engage in dialogue to find a solution. However, they were unable to reach some of these institutions and, only in a few cases, were able to obtain meetings with some officials.

The current evictions are in direct contravention of rulings from the African Court of Human and Peoples Rights (ACHPR), recognizing the Mau Forest as the ancestral lands of the Ogiek and finding that the expulsion of the Ogiek from the Mau Forest against their will and with no consultation violated their human rights.⁴ The Court has ordered monetary compensation and non-monetary reparations, including the restitution of Ogiek ancestral lands and full recognition of the Ogiek as Indigenous Peoples. Specifically, the Court required the Government of Kenya to undertake delimitation, demarcation, and titling to protect Ogiek rights to property revolving around occupation, use, and enjoyment of the Mau Forest and its resources. In addition, the Court ordered Kenya to take necessary legislative, administrative or other measures to recognise, respect and protect the right of the Ogiek to be consulted with regard to development, conservation or investment projects in their ancestral lands.⁵

The events of 2 November 2023 are the continuation of a series of past evictions and arbitrary displacements that negatively impact upon the rights of the Ogiek Peoples. We have previously expressed concern over allegations of violence against Ogiek Peoples 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 (UA KEN 2/2016). In 2020, we expressed concern over the evictions of some 100 Indigenous Ogiek families from the eastern Mau Forest by the KFS. We have furthermore expressed concern about information received indicating a lack of progress in implementing the 2017 African Court on Human and Peoples Rights judgement recognising the Mau Forest as the ancestral land of the Ogiek Peoples (AL KEN 3/2020).

According to the information received, the Government has indicated that the current evictions are intended to restore and regenerate forest cover in the Mau Forest Complex. It announced that it will delineate forest boundaries and fence off the Mau Forest Complex and all other forest ecosystems in the country. It has been alleged that the Government's actions are fuelled by climate-related funds and projects and that the fencing is to protect a key water tower from encroachment.

As the Special Rapporteur on the rights of Indigenous Peoples noted in his 2022 report to the UN General Assembly on Protected Areas and the Impact on Indigenous Peoples' Rights, ensuring that Indigenous Peoples have security of land tenure is the most effective way to conserve lands and resources.

⁴ App No. 006/212, Judgement of 26 May 2017, ACHPR, Para. 128-130.

⁵ <https://www.african-court.org/cpmt/storage/app/uploads/public/62b/aba/fd8/62babafd8d467689318212.pdf>

Studies have found that despite making up just five percent of the world's population, Indigenous Peoples protect 80 percent of the global biodiversity.⁶ Furthermore, the ACHPR found that the eviction of the Ogiek could not be justified by the need for biodiversity conservation.⁷

While we do not wish to prejudge the accuracy of these allegations, we are expressing our grave concern, should they be confirmed, at what may constitute forced evictions, and arbitrary displacement of the Ogiek Peoples from Mau Forest despite the judgment of the African Court in May 2017 and the ruling on reparations of June 2022.

We express our grave concern about the destruction of the Ogiek Peoples' homes, property, livestock, schools and places of worship. We are concerned that the evictions were carried out without good faith consultation and without obtaining free, prior, and informed consent of the Indigenous Peoples affected as required under international human rights law and without special measures to ensure adequate protection of women, children, elderly, and persons with disabilities. We are calling to halt the planned evictions, and for measures by the Government to implement the ACHPR judgements and protect the rights of the Ogiek Peoples. We are also calling for an immediate, impartial and effective investigation compliant with international standards into all allegations of human rights violations and abuses raised.

We express particular concern with regard to the failure of the government of Kenya to guarantee the property rights of the Ogiek Peoples through land delimitation, demarcation, and titling and to end the forced evictions, to protect and fulfil their right to adequate housing in a comprehensive manner. Deep concern is also expressed over plans to fence off the Mau Forest Complex before Ogiek land ownership and access to the Mau Forest is determined and settled. Additionally, we are concerned about the lack of consultation and participation of Indigenous Peoples in Kenya, including Sengwer and Ogiek, in planning, implementing, and managing conservation and climate change mitigation projects.

Finally, we wish to highlight our concern with the delay by the government of Kenya in implementing the judgements of the African Court of Human and Peoples Rights within the stipulated time including measures to remedy the historical injustices suffered by the Ogiek in relation to the violation of their land rights.

In relation to the above-mentioned facts and concerns, we wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the General Assembly in 2007, that elaborates upon existing binding rights in the specific cultural, historical, and social economic circumstances of Indigenous Peoples. The fundamental rights include equality and non-discrimination, life and personal security and integrity, culture, and health, all recognized by the principal international treaties ratified by Kenya. We like to recall Art 7 of the UNDRIP, which provides that Indigenous individuals have a right to life, physical and mental integrity, liberty, and security of the person.

⁶ Statista, Indigenous Communities Protect 80% Of All Biodiversity, 2022-07-20, <https://www.statista.com/chart/27805/indigenous-communities-protect-biodiversity/>

Concerning the rights to property in relation to lands and natural resources, Art 26 of UNDRIP provides that Indigenous Peoples have a right to lands and territories, and resources which they have traditionally owned and occupied or otherwise used and acquired and for the legal recognition of those rights with due respect to the customs and traditions and land tenure systems of the Indigenous Peoples concerned. Art 10 provides that the Indigenous Peoples shall not be removed from their indigenous land and territories. No relocation shall occur without free, prior, and informed consent and after a just and fair compensation and with an option to return.

We would also like to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. The right to adequate housing, enshrined in article 25(1) of the UDHR, as well as in article 11(1) of the International Covenant on Economic, Social and Cultural rights (ICESCR), ratified by the Government of Kenya in 1972, guarantees the right to live somewhere in security, peace and dignity, and to possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.⁸ Similarly, the Committee on Economic, Social and Cultural Rights (CESCR) has declared⁹ that forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.¹⁰ Furthermore, a number of procedural protections apply in relation to forced evictions, including an opportunity for genuine consultation with those affected; adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; and provision of legal remedies.¹¹

In relation to Art 11 (1) of the ICESCR, the Committee stated in General Comment No. 7 that Indigenous Peoples suffer disproportionately from the practices of forced evictions. Therefore, state parties must ensure that legislative and other measures to the present and past forced evictions are carried out without appropriate safeguards by private bodies. State parties must also see that the affected individuals have a right to adequate compensation for any affected property.

In a report to the General Assembly (A/74/183), the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in the context called member states to declare a moratorium on forced evictions affecting Indigenous Peoples until national legislation governing eviction and resettlement has been adopted and fully compliant with international human rights standards that allow for the recourse before a competent and independent judicial institution or tribunal.

We would also wish to draw the attention of your Excellency's government to the 1998 Guiding Principles on Internal Displacement, which establishes that all

⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 4

⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 4.

¹⁰ UN Commission on Human Rights, E/CN.4/RES/1993/77 (10 March 1993) para. 1.

¹¹ Committee on Economic, Social and Cultural Rights, General Comment No. 7

authorities shall respect their obligation to international law, including human rights and humanitarian law, to prevent and avoid conditions that might lead to displacement. We moreover stress the Guiding principles provision that every human being shall have the right to be protected against being arbitrarily displaced from their home, including when it is based on policies of apartheid, “ethnic cleansing”, or similar practices aimed at/or resulting in altering the ethnic, religious, or racial composition of the affected population and in cases of large-scale development projects which are not justified by compelling and overriding public interests (Principle 6). Prior to any decision requiring the displacement of persons, all feasible alternatives to displacement should be evaluated, measures should be taken to minimize displacement where unavoidable, proper accommodation should be provided to displaced persons, and displacements should be carried out in satisfactory conditions of safety, nutrition, health and hygiene; displacement that occurs in situations other than during the emergency stages of armed conflict and disasters should include adequate measures to provide full information on the reasons and procedures for displacement and on compensation and relocation, the free and informed consent of those to be displaced should be sought, and the authorities should involve those affected in the planning and management of their relocation (Principle 7). Displacement should not be carried out in a manner that violates the rights to life, dignity, liberty, and security of those affected (Principle 8). Principle 9 highlights that states are under a particular obligation to indigenous peoples, minorities, pastoralists, peasants, and any other group with a dependency or particular attachment to the land. Internally displaced persons have the right to life and should be protected against murder and summary or arbitrary executions (Principle 10), have the right to an adequate standard of living including essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services (Principle 18), and their property and possessions shall be protected *inter alia* against pillage, being destroyed or appropriated as a form of collective punishment (Principle 21).

We would also wish to refer to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). States Parties should refrain from, prohibit, and prevent arbitrary displacement of populations; respect and ensure respect for the principles of humanity and human dignity of internally displaced persons, ensure individual responsibility for acts of arbitrary displacement, ensure accountability of non-State actors concerned, including multinational companies and those involved in the exploration and exploitation of economic and natural resources leading to displacement (Article III). States parties shall endeavour to protect communities with special attachment to and dependency on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests (Article IV). States Parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors, ensure that stakeholders concerned will explore feasible alternative, with full information and consultation of persons likely to be displaced by projects, and carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project (Article X).

We would also wish to draw the attention of your Excellency's government to the 2007 Basic Principles and Guidelines on Development-based Evictions and Displacement, which reiterates the obligation of States to refrain from, and protect against, forced evictions from home(s) and land. Development-based evictions refer to evictions planned or conducted under the pretext of serving the "public good" such as those linked to development projects, and include activities supported by international development assistance (Principle 8). Principle 6 reemphasizes that forced evictions constitute gross violations of a series of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement.¹²

We also wish to refer to Human Rights Council resolution 48/13 of 8 October 2021 and General Assembly resolution 76/300 of 29 July 2022, which recognize the right to a clean, healthy and sustainable environment as a human right.

We would also like to bring to the attention of your Excellency's Government the Framework Principles on Human Rights and the Environment as detailed in the 2018 report of the Special Rapporteur on human rights and the environment (A/HRC/37/59). The Principles state that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Principle 1); States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2).

The full texts of the human rights instruments and standards recalled 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 person(s) 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 or any comments you may have on the above-mentioned allegations.
2. Please explain the measures that your Excellency's Government has taken or will take to implement, in cooperation with the Ogiek Peoples, the African Court's judgment and ruling on reparation of 26 May 2017 and 23 June 2022, respectively. In particular, please explain the steps taken by your Excellency's Government to demarcate and title the communal lands of the Ogiek Peoples in accordance with the ruling.
3. Please provide information on whether your Excellency's

¹² Annex 1 of the report of the Special Rapporteur on adequate housing, A/HRC/4/18 (05 February 2007)

Government has consulted and obtained the free, prior, and informed consent of Indigenous Peoples affected by eviction. If yes, please give the details, date, and outcome of these consultations, and the criteria for the identification of the affected Indigenous Peoples, and where appropriate, information on the measures of compensation put in place for all concerned persons, with a due assessment of the loss of their housing and property.

4. Please specify the steps taken by your Excellency's Government to involve the Ogiek in the conservation of Mau Forest Complex in appreciation of their indigenous knowledge and with respect for their land tenure rights. Please provide information on steps taken by your Excellency's Government to ensure the participation of and consultation with the Ogiek and other Indigenous Peoples in the planned fencing of all water towers in Kenya.
5. Please indicate your Excellency's Government's plans to ensure that Indigenous Ogiek whose homes have been deliberately destroyed or damaged have their immediate shelter needs met near the site of their former homes, receive adequate compensation, and the materials and resources necessary to rebuild their homes as soon as possible.
6. Please provide information on any measures planned to provide reparations to the Ogiek Peoples for human rights violations perpetrated, including by the members of KFS and KWS during previous forced evictions. Where available, please provide the results of investigations and judicial or other official inquiries carried out in relation to the raised allegations. If no investigation has been initiated, please explain why.
7. Please provide information on any measures taken to prevent, minimize, and mitigate, arbitrary displacement in Kenya in the Mau Forest.
8. Please provide an update on measures undertaken or envisaged to assess the standard of living for persons displaced from the Mau Forest Complex, and to ensure they enjoy an adequate standard of living, including access to essential food and safe water and sanitation, basic shelter and housing, appropriate clothing, and essential medical services, ensure their property and possessions are protected from pillage or destruction, and facilitate access to remedy and durable solutions.
9. Please provide information on any steps taken by your Excellency's Government to ensure that the affected Ogiek Peoples have access to effective, adequate and timely remedies.

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.

We may 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 issue/s in question.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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