

Mandates of the Special Rapporteur on the rights of Indigenous Peoples and the Special Rapporteur on the human rights of internally displaced persons

Ref.: AL KEN 2/2025

(Please use this reference in your reply)

28 May 2025

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 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 concerning **the alleged ongoing land demarcation by the Kenyan Government of Ogiek ancestral lands in the Mau Forest, particularly in the Eastern Mau Complex without a consultation with Ogiek Peoples and in violation of the judgments of the African Court on Human and Peoples' Rights (AfCHPR) of 2017 and 2022. These ongoing Government's actions are likely to cause unrepairable damage to Ogiek Peoples' land rights upheld by the AfCHPR.**

According to the information received:

The Ogiek are an Indigenous forest-dwelling community whose ancestral rights to the Mau Forest Complex were affirmed by the AfCHPR in its landmark judgments of 2017 and 2022. These rulings recognized the Ogiek's rights to occupation, use, and enjoyment of their ancestral lands and ordered the Government of Kenya to undertake restitution, including delimitation, demarcation, and titling of Ogiek lands, and to ensure their free, prior, and informed consent in any development or conservation projects.

In November 2024, the AfCHPR held a compliance hearing to review the steps taken by the State to implement the two rulings. The hearing was adjourned at the state's request, claiming it needed more time to file a report on the measures the country has taken to comply with the Court's rulings. According to the AfCHPR 2017 judgment, that report was due to be filed some 7 years ago; the Government was required in the 2022 reparations order to submit the same report to the Court by mid-2023. To date and to our knowledge, the process of filling such report with the Court is yet to be completed. The hearing has now been rescheduled for June 2025.

In September 2024, in a case brought by non-Ogiek communities relating to ownership of Ogiek ancestral land in East Mau, Kenya's Environment and Land Court (ELC) in Nakuru dismissed the claims of the Ogiek to their rights of ownership, occupation, access and use of their ancestral lands in the Mau Forest. This judgment is in contradiction of the AfCHPR judgments recognising Ogiek ownership of their ancestral lands in the Mau Forest and the Ogiek are appealing the ruling.

From December 2024 and through April 2025, the Government convened a series of high-profile meetings purported as public participation forums, to fast-track implementation of the ELC judgment. These forums have been widely criticised for being politicised, non-inclusive, and dismissive of the Ogiek's voices. Despite persistent objections, officials proceeded with a rushed three-week demarcation timeline of over 35,000 HA of land, created for non-Ogiek settlement, sparking strong resistance from the community. The demarcation process began on 25 April 2025.

The situation escalated further on 6 May 2025, when the President of Kenya issued a 250,000-acre land title deed for sections of the Maasai Mau Forest to the County Government of Narok County. This decision stunned the Ogiek community of Sasimwani, who are still displaced following the November 2023 forced evictions of over 700 Ogiek families. These evictions have caused devastating losses to Ogiek homes, livelihoods, and access to education, with around 40 children still out of school.

These events are reportedly part of a broader pattern of evictions and violence against the Ogiek in Kenya. The Ogiek have consistently expressed their refusal to be relocated from their ancestral lands and report that they have never given their free, prior, and informed consent to such actions. They have not received compensation for the loss of their lands or for the forced relocations. The evictions were allegedly carried out in violation of Kenya's Land Act of 2012, which requires formal authorization and mandates that evictions be conducted with respect for the dignity, life, and security of affected persons, with special protections for vulnerable groups.

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 unlawful demarcation and forced evictions, and arbitrary displacement of the Ogiek Peoples from Mau Forest despite the judgment of the AfCHPR in May 2017 and the ruling on reparations of June 2022, constituting violations of the Ogiek's rights to land, housing, cultural identity, education, and security, and may further undermine Kenya's obligations under international human rights law and the binding decisions of the AfCHPR. If not immediately halted, the demarcation threatens to violate the rights of over 8,500 Ogiek People in Nessuit, Mariashoni, and Sururu.

In 2020 and 2023, we expressed concern over the evictions of Indigenous Ogiek families from the eastern Mau Forest. We have furthermore expressed concern about information received indicating a lack of progress in implementing the 2017 AfCHPR judgment recognising the Mau Forest as the ancestral land of the Ogiek Peoples (UA KEN 4/2023 and AL KEN 3/2020).

We are concerned that the new land demarcations are 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 demarcations, and for measures by the Government to implement the AfCHPR judgments 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 and to protect and fulfil their right to adequate housing in a comprehensive manner. Additionally, we are concerned about the lack of consultation and participation of Indigenous Peoples in Kenya, in planning, implementing, and managing land demarcation, as well as conservation and climate change mitigation projects. Finally, we wish to highlight our concern with the non-implementation by the Government of Kenya of 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 connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 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 merits judgment and ruling on reparations 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 Government has consulted and obtained the free, prior, and informed consent of Indigenous Peoples affected for the current ongoing land demarcations alleged to be in violation of ACtHPR ruling of 2017 and 2022. 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 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. Please provide information on any measures planned to provide reparations to the Ogiek Peoples for human rights violations perpetrated in violation of their land rights and their right to free, prior and informed consent.

5. Please, where available, 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.

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

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.

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

Albert K. Barume
Special Rapporteur on the rights of Indigenous Peoples

Paula Gaviria
Special Rapporteur on the human rights of internally displaced persons

Annex

Reference to international human rights law

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 would like to recall article 7 of the UNDRIP, which provides that Indigenous individuals have a right to life, physical and mental integrity, liberty, and security of the person. Furthermore, article 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. Article 10 further 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. Similarly, the Committee on Economic, Social and Cultural Rights (CESCR) has declared 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. 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. 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.

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 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 endeavor 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 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.

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