

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 situation of human rights defenders; and the Special Rapporteur on the rights of indigenous peoples

REFERENCE:
UA KEN 7/2017

26 April 2017

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 situation of human rights defenders; and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 28/11, 31/9, 25/18 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 attack against **Mr. Elias Kimaiyo, human rights defender, as well as escalated threats and violence against the Sengwer people perpetrated by the Kenya Forest Service (KFS) guards in an attempt to forcibly remove the people from their homes in the Embobut forest.**

Mr. **Elias Kimaiyo** is an indigenous Sengwer youth and community leader, human rights defender advocating for the rights of indigenous people and a photographer.

A communication regarding the forced eviction of the Sengwer people was sent to the Government of Kenya on 13 January 2017 (UA KEN 1/2017). We have not received a response to date.

According to the information received:

The hunter-gatherer Sengwer people, who number over 33,000, have been living in and safeguarding the Embobut forest, located in the Cherangani Hills since the late 18th century. Intense forced evictions appear to have started in 2007 when the Government introduced Natural Resource Management. Since 2009, there have been at least 20 mass evictions in the Embobut forest, accompanied by frequent small-scale evictions. Reports suggest that KFS guards have been systematically setting fire to houses owned by the Sengwer and destroying their livestock pens, cooking utensils and household possessions over the past several years.

Reportedly, the KFS has routinely been arbitrarily arresting Sengwer individuals for being present on their traditional lands. Allegedly, since 2014, 17 Sengwer individuals have been arrested and taken into police custody; 35 others have been arrested informally and then released, allegedly upon payment of bribes. Those who are charged with an offence are taken to court, where their bail is set at an unreasonably high amount and their trials are exceedingly prolonged. They are often asked to pay bribes for their release from custody.

The violence used by the KFS has reached seriously worrying levels. During the first half of December 2016, thirteen Sengwer families were violently evicted from the Embobut forest and their homes burnt. The KFS and other governmental agencies intimidated and threatened some 1,200 Sengwer families stating that further forced evictions would take place.

On 31 March 2017, the KFS guards allegedly fired live bullets while carrying out evictions of the Sengwer people. Mr. Paul Kitum, the chairperson of all the three glades in Embobut forest, confronted the KFS officials to complain about the guards' burning down the houses, destroying properties of the Sengwer people and shooting live bullets. The KFS official allegedly responded that the KFS will continue with its operations, keep moving into the forest with full force and they will even shoot if the people do not comply with evictions. The evictions and shootings lasted for three days from 31 March until 2 April 2017.

On 2 April 2017, Mr. Elias Kimaiyo was confronted by KFS guards while he was taking pictures of burnt houses. Mr. Kimaiyo was chased by the guards while live bullets were being fired at him. Mr. Kimaiyo fell and was captured by the guards. The KFS guards broke Mr. Kimaiyo's right hand and his knee cap. The guards then ran away with Mr. Kimaiyo's belongings (e.g., two cameras, I-pad and laptop). This reportedly was observed by community members. Mr. Kimaiyo is now being treated at Eldoret Moi Teaching and Referral Hospital.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about the continued and escalated violence used against the Sengwer people who are resisting the forced eviction and safeguarding the forest, despite repeated efforts to bring these violations to the attention of the Government of Kenya. For instance, the situation has been the concern of the Special Rapporteur on indigenous peoples (e.g., A/HRC/4/32/Add.3, KEN 1/2014, KEN 1/2017) as well as the Committee on the Elimination on Racial Discrimination (e.g., CERD/C/KEN/CO/1-4, para. 18). We are also gravely concerned about the violence and physical attack perpetrated against Mr. Kimaiyo, which seem to be directly linked to his activities aimed at protecting the rights of Sengwer people in Kenya.

We welcome the efforts of your Excellency's Government to preserve the forest and its natural resources. Yet we wish to convey that protecting the environment and protecting human rights are interdependent priorities as opposed to competing goals. While the environment must be protected to ensure the enjoyment of human rights, the environment itself depends on the exercise of human rights. Thus, it is crucial that conservation policies integrate these rights, to prevent environmental activities from undermining the enjoyment of human rights.

We would like to refer your Excellency's Government to the international principles and norms applicable to the present case.

We would like to recall articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his or her life. In its General Comment No. 31, the Human Rights Committee states that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by its agents. A failure to investigate violations of the Covenant and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR. (CCPR / C / 21 / Rev.1 / Add.13, paras. 15). Kenya acceded to the ICCPR in May 1972.

We wish to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded by Kenya on 1 May 1972, which states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." In addition, we would like to stress that there is a strong presumption against retrogressive measures under the ICESCR.

We further recall general comments No. 4 and 7 of the Committee on Economic Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, as well as to guarantee due process, alternative accommodation, and access to an effective remedy of those that may be affected by eviction orders. According to these general comments, Kenya must have further explored all feasible alternatives to forced eviction in consultation with the affected persons.

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. The Declaration provides that indigenous peoples have the rights to life, physical and mental integrity, liberty and security of person (article 7) as well as the rights to

redress for actions that have affected the use and enjoyment of their traditional lands and resources (article 28).

Additionally, we wish to bring to the attention of your Excellency's Government the fundamental principles set forth in 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, in particular articles 1, 2, 6 and 12.

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 persons 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 shooting live bullets during the recent eviction attempts and assaulting Mr. Elias Kimaiyo, and the results of any such investigations. 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 environmental conservation projects, policies and programs.
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 any person 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 a 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

Leilani Farha

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

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