

On Forced Evictions of Sengwer and other Indigenous Peoples in Kenya

Forced evictions in Kenya is one of the issues which CCPR will address in its follow up of Kenya's implementation of the CCPR recommendations in CCPR 141 session starting 01 July 2024.

CCPR has been "concerned about continued reports of forced, and sometimes violent, evictions, including amongst indigenous populations in forest areas, such as the Embobut and Mau forests".

(1) Kenya submitted its follow-up response to the CCPR's concerns a year ago in 14 June 2023. (2)

As Kenya replied a year ago to the CCPR on forced evictions of indigenous Sengwer and Ogiek peoples that Kenya would follow legal "procedures on how to humanly evict unlawful occupiers from public, private and community lands" (3), we want to bring to the CCPR's attention that Kenya has after that however continued their forced evictions in ways which violate their human rights.

On forced evictions of Sengwer in Embobut in 2024 we want to bring to the CCPR's attention that:

1. While deadline for the CSO submissions for this Kenya follow-up was 8 April 2024, **on the very next day after the deadline for CSO reporting (including also on forced evictions), 9 April Kenya Forest Service began a process for new forced eviction** of indigenous Sengwer people in violation of their rights, based on colonial 1954 gazettement of their land as colonial state's 'public land'.
2. While Kenya informed the CCPR that its legal eviction "**process begins with the National Land Commission making a decision to evict** the occupant(s) of that property" (4) which would be then informed to the affected people, **Sengwer have however not been informed on any such decision taken by the National Land Commission as legal basis of the forced eviction** or burning of houses.
3. As Kenya officially informed to the CCPR follow-up in 2023 that if it would evict people from such 'public land', it follows such legal "procedures on how to humanly evict unlawful occupiers from public" land that "**all parties affected should be served with an eviction notice of not less than 3 months" before evictions also "in writing** published on the Kenya Gazette and in a newspaper of nationwide circulation as well as on radio" preferably "in a local language" (5), **in reality however: That the Kenya Forest Service (KFS) was to forcibly evict the Sengwer was informed to them only by the KFS itself only orally** on 16 April 2024 - **only 13 days before the armed KFS guards started to burn the houses of Sengwer on 29 April to evict them from Embobut forest glades.**

A document of the forced evictions Operation Order 'Imarisha Msitu' Embobut was issued by KFS Forest Manager on 16 April 2024 but Sengwer did not receive information on their forced eviction in time by any written notice, from the Kenya Gazette, newspaper of nationwide circulation or from radio. The KFS informed only orally only those Sengwer who happened to be on 16 April meeting.

4. So, while the written notices on evictions should have been given 3 months in advance based on public decisions of the National Land Commission which should have been transparently informed to all affected people also "in writing published on the Kenya Gazette and in a newspaper of nationwide circulation as well as on radio [...] in a local language" of the people (6), now instead:

The legal requirements of written notice 3 months before the eviction were not complied with but the forced evictions were carried out unlawfully so that the **armed KFS guards have from 29 April onwards till mid June 2024 burned and razed some 1200 houses to the ground, destroying properties of community members and leaving in Embobut ca. 3 200 families (= ca. 16 000**

people) **destitute** in harsh and in many cases rainy conditions. "The affected families are now **enduring severe hardship, living in the cold without basic necessities**". (7)

5. So Kenya carried out the evictions unlawfully and neglected also the CCPR recommendation that it needs to be "strictly upholding the moratorium [...] and all judicial decisions on evictions". (8)

Instead of upholding "all judicial decisions on evictions" (9), Kenya violated the conservatory order of the Court of Appeal at Kisumu, 19 March 2021 on how "those who are in occupation of forest land as of today should not be evicted, but no new persons should be allowed to occupy forest land". (10)

In violation of the court order the KFS had allowed other new people - such as Marakwet - to the Embobut forest area even though Sengwer had requested KFS to respect the court order and prevent such other new people from settling there. And then KFS said that as the amount of the people in the area had increased, it assumed it had to forcefully evict all people from there - including area's indigenous Sengwer inhabitants in violation of the court order.

6. As KFS says to Sengwer that the administration can not differentiate who is Sengwer and who Marakwet, this shows that in order to duly respect human rights of its indigenous peoples like Sengwer, Kenya needs human rights competence based identification of Sengwer compliant to their indigenous lineages' life-heritages to ensure they are not evicted from their ancestral lands.

Kenya would need such identification lists of Sengwer provided by the Sengwer themselves and guidance from the African Commission of Human and Peoples' Rights or by the UN human rights mandate holders to guide Kenya on how **to identify the members of indigenous peoples based on indigenous self-identification**.

This would help Kenya also to fulfil the following recommendations which the CCPR gave to Kenya:

- to secure that forced or violent evictions "among indigenous populations in forest areas, such as the Embobut and Mau forests" are not "undertaken without full regard for due process requirements, such as adequate notice and prior and meaningful consultation with those affected" (11) and "**the provision of adequate compensation and/or resettlement of those affected**". (12)

- to "develop and enact dedicated **legislation to expand specific protection for indigenous peoples**" with "**safeguards against forced evictions**" and "**free, informed and prior consent before any developmental or other activities [...] on lands traditionally used, occupied or owned by indigenous communities**". (13)

7. Now forced evictions have been carried out unlawfully in all these respects and Kenya had not secured adequate legislation and "**sustainable system of equitable land tenure to prevent forced evictions**" (14) in compliance with the international standards as the CCPR had requested. Kenya also has not enacted "Evictions and Resettlement Bill of 2012 [...] into law without delay" to prevent forced evictions (15) but has neglected these its legislative responsibilities.

Kenya continues to present the ways how indigenous peoples use and live in the lands and forests which they have traditionally occupied and used as if they were 'unlawful occupants', 'encroachers' or 'squatters' of their ancestral lands - as Kenya has not registered or titled the areas in their name.

This violates indigenous peoples' rights to the lands, territories and resources which they have traditionally occupied or used and to which they are internationally recognised to have rights also without land title deeds or registrations - as shown more in detail in the attached Annex.

8. CCPR asked Kenya to secure "effective protections [...] and prior and meaningful consultation with and [...] adequate compensation and/or resettlement of those affected" and also to "effectively implement the Land Laws (Amendment) Act" and "the safeguards contained in section 152G". (16)

But even though Kenya had just in June 2023 informed the CCPR that on evictions it would follow requirements of the Sections 152B-152I (including also section 152G) of that Act (17), still Kenya's forced evictions of Sengwer in 2024 did not comply with or implement these safeguards, because:

a) Evictions were not "preceded by the presentation of the formal authorizations for" the eviction by Land Commission decision and written notice 3 months in advance and were not "preceded by the proper identification of those taking part in the eviction or demolitions" and burning of homes.

b) Evicted people were not informed any such "government officials or their representatives to be present during an eviction" (18) who would "give the affected persons the first priority to demolish and salvage their property" (19) and "ensure that there is no arbitrary deprivation of property or possessions" (20) or protect these from destruction when these get "left behind involuntarily". (21)

c) In the evictions Kenya also did not "ensure effective protection to groups and people who are vulnerable such as women, children, the elderly, and persons with disabilities" (22) and did not follow the "principles of necessity and proportionality during the use of force". (23)

Instead, all Sengwer had to just run away when the armed KFS guards came to burn their houses and to arrest those who try to claim their rights to their home and belongings not to be burned, looted or destroyed - because if Sengwer do not run away they may get killed like a Sengwer man Robert Kirokich was shot dead by the KFS guards earlier in 2018 in such forced eviction.

d) So the evictions have not been "carried out in a manner that respects the dignity, right to life and security of those affected" (24) and KFS violated human rights also by harassing and arresting Sengwer just for being in their ancestral land and by jailing them if they can not pay big fines.

CCPR had requested Kenya to ensure "the investigation, prosecution, conviction and punishment of all individuals who breach the law during evictions" (25) but thousand houses were burned and human rights violated through unlawful procedure with continuing impunity and no investigations.

9. The forced evictions of Sengwer since spring 2024 and of Ogiek since autumn 2023 have been carried out without any legally specified public purpose - other than just removal of assumed 'unlawful occupants' - so as to get their traditional lands away from them to be freely available for whichever other purpose for which most money would be offered by financiers or investors.

As Kenya first forcibly evicts its indigenous peoples and takes their ancestral lands/forests for other aims, it can then advertise to lease them for foreign investors or financiers who pay most, so that:

- Investors and funders can profit/benefit more safely - as less responsible - from the forced eviction and violations when these take place already before the financier responsibility in the area starts

- Also the state can present the lease of the area as more beneficial when the forced eviction, violations and damages which were required to make the lease profitable have already happened before the lease. Such illusory beneficial character of the lease the state can then present as if it could justify the investment or project in the area - as worth of keeping people evicted.

But no matter if they get agreed and financed to the area before or after the forced eviction, all investments or projects which set or keep indigenous people evicted without their free, prior and informed consent, contribute to violate indigenous peoples' rights to their traditional land.

It is thus important that the UN Human Rights Committee can make it clear that such investments or projects - which the corporations, development banks, financial institutions, the US, EU, China, etc. may agree to finance in indigenous peoples' ancestral or traditional lands after people get forcefully evicted - can not justify that forced eviction or related human rights violations.

Otherwise Kenya can afterwards label such projects or investments as if they would serve public aims of development or protect forests as water towers, biodiverse ecosystems or carbon reserves for climate change mitigation - even though such forests have survived for these purposes better in indigenous communities' habitats than in habitats of others or in areas managed for others.

10. Biodiverse forest ecosystems have got preserved more equitably and efficiently with less costs as self-regenerating water and carbon sources when held and used by indigenous peoples, who must not be displaced from these areas whose life's diversity their cultural diversity helps to sustain.

Still the Kenyan government continues to claim falsely that it would be obliged/responsible to carry out forced evictions for public purposes of national development and environmental protection of forests, water towers, biodiversity or climate and searches investments in name of these purposes.

But how Kenya has carried out forced evictions violates also its international obligations on forest biodiversity, climate, environment or development in respect to the indigenous communities and their human rights under the UN treaties and African treaties. It is absurd that Kenya burns thousands of houses in name of reducing carbon emissions and expands logging while claiming the protection of forests to be so crucial that it must forcibly evict indigenous peoples. (26)

11. By such forced evictions of its indigenous peoples Kenya discriminates against quite sustainable indigenous African ways of holding African land and forest and treats them to be 'unlawful' due to their indigenous African character of not being titled in ways which colonial rule brought to Africa.

By this Kenya continues the colonial inheritance of the takeover of all indigenous African lands and forests by titling them to be held under types of possession derived from the European heritage.

The Kenyan government assumes that justice on rights to land requires such titling and that lands can not be titled to be held by indigenous African ways as titles do not fit to "the character" of "hunter and gatherer communities who do not have possession based land tenure systems". (27)

So Kenya evicts its indigenous peoples as if forced evictions would fit to their 'character' better than rights to land.

12. Kenya also publicly mis-presents and mis-interprets its international and regional treaty obligations to be something else than what is confirmed by the UN treaty bodies, African Court on Human and Peoples Rights, by other respective mandate holders or by the UNDRIP.

The Kenyan government claims falsely that it can leave non-applied such obligations of treaties that it has ratified if it or its domestic courts may interpret them as being inconsistent with Kenya's constitution even though Kenya can not have authority by its domestic law, justice or governance to re-determine Kenya's international or regional treaty obligations for its own national interests.

In the attached Annex we demonstrate more in detail how Kenya has carried out the forced evictions with false justifications.

Notes and references

1. CCPR/C/KEN/CO/4, CCPR, Concluding observations on Kenya, paragraph 40
2. CCPR/C/KEN/FCO/4 "Information received from Kenya on follow-up to the concluding observations on its fourth periodic report ", paragraphs 25-26
3. CCPR/C/KEN/FCO/4,, paragraph 26
4. CCPR/C/KEN/FCO/4,, paragraph 26 a
5. CCPR/C/KEN/FCO/4,, paragraph 26 a
6. CCPR/C/KEN/FCO/4, paragraph 26 a
7. <https://minorityrights.org/protecting-ancestral-lands-mrgrs-plea-for-sengwer-and-ogiek-rights-at-achpr/> - but after that still more people have got displaced. See also <https://www.youtube.com/watch?v=9kxC3GXC7nY>
8. CCPR/C/KEN/CO/4, CCPR, Concluding observations on Kenya, paragraph 41 c
9. *ibid*
10. The conservatory order of the Court of Appeal at Kisumu on 19th March 2021
11. CCPR/C/KEN/CO/4, CCPR, Concluding observations on Kenya, paragraph 40
12. CCPR/C/KEN/CO/4, CCPR, Concluding observations on Kenya, paragraph 41 b
13. CCPR/C/KEN/CO/4, CCPR, Concluding observations on Kenya, paragraphs 51 a-b
14. CCPR/C/KEN/CO/4, CCPR, Concluding observations on Kenya, paragraph 41 a
15. CCPR/C/KEN/CO/4, CCPR, Concluding observations on Kenya, paragraph 41 d
16. CCPR/C/KEN/CO/4, CCPR, Concluding observations on Kenya, paragraph 41 b
17. CCPR/C/KEN/FCO/4, paragraph 26
18. Kenya's Land Laws (Amendment) Act section 152 G (1), paragraphs a, b & c
19. Kenya's Land Laws (Amendment) Act section 152 G (1), paragraph i
20. Kenya's Land Laws (Amendment) Act section 152 G (1), paragraph f
21. Kenya's Land Laws (Amendment) Act section 152 G (1), paragraph g
22. Kenya's Land Laws (Amendment) Act section 152 G (1), paragraph e
23. Kenya's Land Laws (Amendment) Act section 152 G (1), paragraph h
24. Kenya's Land Laws (Amendment) Act section 152 G (1), paragraph d
25. CCPR/C/KEN/CO/4, CCPR, Concluding observations on Kenya, paragraph 41 e
26. <https://www.climatechangenews.com/2023/08/29/kenya-ruto-logging-ban-africa-climate-summit/> and <https://www.citizen.digital/news/ruto-tells-those-who-have-encroached-mau-forest-to-leave-immediately-n328462>
27. African Court on Human and Peoples Rights, Ogiek case "The Matter of African Commission on Human and Peoples' Rights v. Republic of Kenya, Application no. 006/2012 Judgment (Reparations), June 2022", paragraph 106