

Appeal to protect the rights of all the indigenous Sengwer / Cherangany people who are threatened with eviction from Embobut Forest, Kenya

We are deeply concerned by the forced eviction, and consequent other human rights violations, that threaten the forest life and forest homes of the 6000-7000 indigenous people and other communities in Embobut Forest in the Cherangany Hills (Elgeyo Marakwet County, Kenya).

We appeal to the Government and Parliament of Kenya and to the UN organs responsible for guarding and securing the fundamental rights of such communities, to prevent this threatened forced eviction of the indigenous communities and other people at Embobut, which would violate their human rights and international law. The "Report of the Parliamentary Select Committee on the Resettlement of the Internally Displaced Persons in Kenya" has recognised that:

"The Sengwer also referred to as Kimala are the indigenous people of Embobut [...] scattered all over Embobut forest" and "there are one thousand five hundred and forty six (1546) households of the Sengwer people in Embobut forest." "The Embobut community had lived in the forest since the 18th century and the land they occupied was their ancestral land and even after the coming of the colonial government, they were issued with permits to continue living in the land." (1)

These people as well as other indigenous communities of the Cherangany Hills who identify themselves as Cherangany have the right to their ancestral territories there compliant with the international commitments of Kenya and the Kenyan constitution article 63.

It would violate the human rights of the indigenous Sengwer / Cherangany peoples, and their right to the customary sustainable use and conservation of biodiversity, if they are forcibly evicted from their ancestral lands and deprived of their own indigenous means of subsistence integral to their forest life, identity, their characteristic sources of food, water, health and shelter and to their cultural survival as a people. (2) Indigenous communities of Embobut who are former hunter-gatherers, who still depend on gathering medicinal and other forest products, keeping cattle in the forest glades - having their high forestlands as their ancestral lands since time immemorial. This has enabled them to keep their cultural way of life from being assimilated by other neighbouring peoples. They have their cultural sites and spirits within the forest and to be forced to leave the forest would mean abandoning their ancestral spirits' home. Their life is identified with and integral to their high-forested hills as it has shaped their way of life, and sustained them for generations.

Also compliant to its commitments on management and conservation of forest and mountain biodiversity and protected areas, Kenya is responsible in respect to indigenous communities to:

- "protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with the sustainable use" (3) as adapted to local forest regeneration through their traditional occupations and practices of customary tenure and sacred sites

- "respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use" and "encourage the equitable sharing of the benefits arising" from biodiversity thus sustained - by their adapted "access to genetic resources for environmentally sound uses". (4)

Where "communities depend directly on biodiversity and its customary sustainable use and management for their livelihoods, resilience and cultures", they are "well placed to efficiently and economically manage ecosystems using the ecosystem approach" - as "decentralized" to locally adapted level of less consumptive indigenous uses of biodiversity for sustaining life and subsistence of the community. (5)

To fulfil its commitments, the State needs to protect and secure "cultural, social, economic and ecological elements associated with the traditional management systems of lands, waters and territories of indigenous and local communities and their involvement in the management of these areas". (6) Forest management or conservation does not thus justify forced eviction of such forest communities but on the contrary the State has to "promote and strengthen community-based initiatives" that "incorporate customary sustainable use practices", "bio cultural values" and "full and effective participation of indigenous and local communities" to the forest management - and require "their prior and informed consent to or approval of, and involvement in, the establishment, expansion, governance and management of protected areas" that may affect them. (7)

It is thus a crucial responsibility of the state to secure the protection of the above-mentioned rights of the indigenous minorities and vulnerable Embobut forest communities. Where this has been neglected, the way their life has been adapted to maintaining the local forest has been destroyed and their fundamental rights to life, subsistence, home/habitat and culture have been violated. They have been displaced and their houses burned by the government but they have returned to sustain the life of their sacred ancestral lands in the Cherangany Hills. The Kenya Forest Service (KFS) and police force has been used to forcefully evict them as recently as May 2013, and despite an interim injunction granted at Eldoret High Court on 26th March 2013, and served on the relevant authorities on April 2nd 2013. Then in November 2013 the new President of Kenya, his Deputy President and the Senator for the area, Senator Kipchumba Murkomen, came and told all those living in Embobut Forest to leave and offered 400,000 Kenyan shillings to each of 2,784 families to help them in their relocation. (8) On 12th December 2013 the Elgeyo Marakwet County Commissioner, Mr. Arthur Osiya, said "The Evictees were given the cash and have no reason to continue staying in the forest. By January 3rd 2014, we expect all squatters out of that forest" (9).

People were not even consulted to secure their free prior and informed consent to such a process but were simply told this will happen while the concerned amount is completely inadequate for enabling families to secure their livelihoods, their physical, social and cultural existence. The Embobut forest communities are thus now threatened with being completely evicted from their indigenous home, identity, life and culture and exposed to landlessness in the name of forest management, violating their fundamental rights.

The indigenous communities object to the Government treating all residents of Embobut Forest as if they are internally displaced people who need to be moved. Some are recent arrivals in the forest and appear willing to accept support to relocate, but the indigenous inhabitants are clear that they want to live in their ancestral forestlands. We support them in calling on the Kenyan Government to end these threats, and to recognise their right to remain and their willingness to continue living in a way that protects the forests and glades. (10)

We appeal thus to the government of Kenya, to the Kenyan parliament and to the concerned UN authorities on human rights and biodiversity to secure:

1. Due implementation of Kenya's obligations and commitments on human rights of these communities and on their rights to customary sustainable use of biodiversity presented in the attached Annex 1.
2. Due independent investigation and impact assessment on:
 - a) How the plans and measures of eviction would affect the human rights and Kenya's ability to fulfil its international obligations and commitments on the rights of indigenous communities, also regarding their customary sustainable use and conservation of the biodiversity and their ancestral land's bio cultural heritage
 - b) How Kenya could best secure in its law and policy such communities' human rights and their rights on customary sustainable use and conservation of forest biodiversity. See a proposal in the attached Annex 2.
3. That the government of Kenya allows the concerned UN authorities on human rights and biodiversity to nominate for this independent assessment a task force which would report its findings and recommendations to Kenya and to the concerned UN agencies.
4. That the representatives of the Kenyan parliament participate in these efforts to ensure such due development of the legislation of Kenya that secures the proper implementation of Kenya's responsibilities under the international law and commitments on human rights and biodiversity as presented here in Annex 1.
5. That the Government of Kenya and representatives of the parliament enter into dialogue with the Sengwer / Cherangany communities to secure their free prior and informed consent (FPIC) to a solution that:
 - a) Addresses the need to protect the forest and the need to secure sustainable livelihoods while respecting peoples' fundamental rights
 - b) Recognises Sengwer / Cherangany rights to their ancestral lands in line with the 2010 Constitution and regional and international law, and guarantees that they and other Embobut Forest inhabitants will not be re-settled without their due consent (FPIC) to any such process. Thus the Government shall not use the promise of inducements or the threat of burning homes, to evict families from Embobut, but shall enter into dialogue to establish a fair and just way forward based on FPIC. (such as outlined on page 7 of Annex 2);

c) Ensures an urgent and fully participatory demarcation, restitution and legal recognition of Sengwer / Cherangany lands, territories and natural resources in and around the Cherangany Hills, and provides compensation and other suitable redress for past violations, in conjunction with culturally appropriate development assistance in the form of health-care, education and other services.

d) Ensures a coherent reform of laws and policies, notably in the current reform of the 2005 Forests Act, the development of a Community Land Bill and an Evictions and Resettlement Bill, as well as the reform of Wildlife Conservation and Management law and policy, in a way that will guarantee respect and protection for the rights of indigenous peoples to own, use and control their lands, territories and resources and appropriately addresses the discrimination and marginalisation currently being experienced by them.

Signatures 13.1.2014:

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Notes and references:

1. Report of the Parliamentary Select Committee on the Resettlement of the Internally Displaced Persons in Kenya to the Republic of Kenya, Kenya National Assembly Tenth Parliament– Fourth Session – 2012, pages 40-41
2. See for example ICCPR 1.2 and 27, ICESCR articles 1.2, 11, 15.1 a, UNDRIP, articles 7- 8.2, 9-10 and 20, CCPR General Comment 23, CCPR/C/21/Rev.1/Add.5 , 26 April 1994, paragraphs 3.2 and 7 and CESCR, General comment No. 21 E/C.12/GC/21, 21 December 2009, paragraph 32-33, A/HRC/21/47/Add.1, 30 August 2012, paragraph 39
3. Convention on Biological Diversity (CBD), article 10 c
4. CBD, articles 8j and 15.7
5. UNEP/CBD/WG8J/8/L.3, 10 October 2013, Draft Plan of Action on Customary Sustainable Use of Biological Diversity, paragraphs 4, 6b-c & 9 and CBD Addis Ababa Principles and Guidelines, Operational guidelines of the principle 12
6. UNEP/CBD/WG8J/8/L.3, 10 October 2013, Draft Plan of Action on Customary Sustainable Use of Biological Diversity, paragraph 6f
7. CBD Hyderabad Conference of Parties (CoP) decision XI/14. Article 8(j) and related provisions, section "F. Article 10, with a focus on Article 10(c), as a major component of the programme of work on Article 8(j) and related provisions", paragraph 10 and UNEP/CBD/WG8J/8/L.3, 10 October 2013, Draft Plan of Action on Customary Sustainable Use of Biological Diversity; V. Elements of the first phase of the draft Plan of Action on Customary Sustainable Use of Biological Diversity, Tasks 1, 2 and 3 (i)
8. While financial compensation may be an appropriate way of helping the victims of landslide and of electoral violence to restart their lives, it is completely wrong to seek to evict the indigenous Sengwer/ Cherangany from their ancestral lands in the high forests of Embobut on which they depend for their cultural, social and physical existence. 400,000 Kenyan shillings would buy the equivalent of 4 cows or one acre of land in Trans Nzoia District.
9. Saturday Nation, December 14, 2013 (page 22)
10. See Page 7 of Annex 2 for a proposed solution to the crisis, a solution that addresses both the need to protect the forest and the need to recognise the rights of the indigenous inhabitants of the forest, and the needs of all.