

BY EMAIL

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Dear Sirs

UNESCO World Heritage Designation of Lake Bogoria, Kenya / 'Kenya Lake System in the Great Rift Valley'

We refer to previous correspondence from the Endorois Welfare Council ('EWC') and Minority Rights Group International ('MRG')¹ regarding our concerns over the designation of the Lake Bogoria site as a World Heritage Site without obtaining the free, prior and informed consent of the Endorois.

Despite several requests to consult with the community, the Endorois were not included in the UNESCO inscription process (finalised in June 2011). Since the inscription the Endorois have similarly been denied the opportunity to be involved in the management of Lake Bogoria, and they do not receive any share of the benefits. We are therefore writing to request that UNESCO and the IUCN raise these concerns with the World Heritage Committee in the context of a State of Conservation report ('SOC').

The Endorois decision: status of implementation

As our previous correspondence explained, in May 2009 the African Commission on Human and Peoples' Rights (the 'ACHPR') issued a decision finding that the Endorois are the rightful owners of the land in and around Lake Bogoria, and ruled that the Government of Kenya must return such land to them. Further, the Commission found that the Endorois have the right to benefit from existing economic activities on the land (see attached copy of the decision). The decision was endorsed by the African Union Assembly of Heads of State and Government and published in February 2010.

In light of the facts established regarding the forcible removal of the Endorois, the Commission issued a series of recommendations to provide remedy for the harm suffered. Specifically the Commission ruled that the Government of Kenya:

¹ Letters dated 19 June 2009, 3 August 2009, 16 April 2010 and 17 February 2012.

- a. Recognise rights of ownership to the Endorois and restitute Endorois ancestral land;
- b. Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle;
- c. Pay adequate compensation to the community for all the loss suffered;
- d. Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve;
- e. Grant registration to the Endorois Welfare Committee;
- f. Engage in dialogue with the Complainants for the effective implementation of these recommendations; and
- g. Report on the implementation of these recommendations within three months from the date of notification.

However, three years after the ruling and despite considerable efforts by the community to progress its implementation, the Government of Kenya still has yet to take any significant steps to comply with the recommendations.² Instead the Government of Kenya has taken a number of steps that have continued and intensified the violation of the Endorois' rights and contravene the Commission's decision. One such step was the nomination of Lake Bogoria as a World Heritage site without consultation or consent, as the Commission itself has underlined.³ Of the seven recommendations of the Commission, only one has been implemented which is the registration of the Endorois Welfare Council.⁴ As a result of the failure of the Government of Kenya to implement the substantive provisions of the decision, and the marginalization of the Endorois in the nomination of the Kenya Lakes System, the Endorois are not currently able to participate within the management and decision-making processes regarding the Lake Bogoria area.

Prior to proceeding with the designation of Lake Bogoria, the free, prior and informed consent of the Endorois community should have been obtained through their representative institutions.⁵ It was not, and therefore the designation is inconsistent with international human

² See ACHPR/Res.257 (LIV) 2013: Resolution Calling on the Republic of Kenya to Implement the Endorois Decision (copy attached)

³ See ACHPR Res. 197 (5 November 2011), *Resolution on the Protection of Indigenous Peoples' Rights in the Context of the World Heritage Convention and the Designation of Lake Bogoria as a World Heritage site*, Art. 1:

"[The ACHPR] **Emphasizes** that the inscription of Lake Bogoria on the World Heritage List without involving the Endorois in the decision-making process and without obtaining their free, prior and informed consent contravenes the African Commission's Endorois Decision and constitutes a violation of the Endorois' right to development under Article 22 of the African Charter;"

⁴ See ACHPR, "Final Communiqué of the Workshop on the Status of the Implementation of the Endorois Decision of the African Commission on Human and Peoples' Rights", 18 October 2013, available at <http://www.achpr.org/news/2013/10/d96/>.

⁵ Our letters dated 19 June 2009 and 3 August 2009 were both acknowledged by UNESCO via email dated 13 August 2009. We received a letter of response from the Kenya Wildlife Service ('KWS') dated 31 August 2009. In our letter of 6 April 2010, we urged UNESCO to ensure that the Endorois are included within the consultation process via the Endorois Welfare Council. Further, during the 10th session of the UN Permanent Forum on Indigenous Issues in May 2011, EWC together with a large number of indigenous organizations and NGOs submitted a joint statement to the World Heritage Committee asking that the Committee defer the nomination of Lake Bogoria so as to provide time for consultation with the indigenous peoples affected. Further, IWGIA presented an oral statement during the World Heritage Committee's 35th session in June 2011, again calling upon the Committee to defer the nomination of 'Kenya Lake System' to ensure it was in line with international norms, including the principle of free, prior and informed consent. In May 2012, after the designation of Lake Bogoria, over 70 indigenous peoples, organisations and NGOs submitted another joint statement to the World Heritage Committee expressing concerns over the inscription of Lake Bogoria on the World Heritage List without the free, prior and informed consent of the Endorois. Unfortunately neither of the statements received substantive consideration from the Committee.

rights law, which requires that indigenous peoples' free, prior and informed consent is obtained before measures that may affect them are adopted or implemented.⁶

This violation is intensified and continued by the fact that to date, the Endorois have not been involved in any aspect of management over the designated land, nor do they receive any share of the benefits from the World Heritage site. In failing to involve the Endorois within the management of Lake Bogoria, and in the sharing of benefits, the Government is acting in contravention of the ACHPR's decision and in violation of the Endorois' right to development under Article 22 of the African Charter.⁷

In light of the above considerations, we call on UNESCO and the IUCN to raise the following concerns with the World Heritage Committee in the form of a SOC report on the Kenya Lake System:

- (a) the need for the Government of Kenya to ensure the effective participation of the Endorois in the management and decision-making of Lake Bogoria within the Kenya Lake System World Heritage area, through the Endorois' representative institutions, most notably the EWC;
- (b) the need for the Government of Kenya to fully implement the ACHPR Endorois decision with respect to Lake Bogoria without any further delay; and
- (c) the need for suitable mechanisms to be put in place by the Government of Kenya to ensure that the Endorois community receive appropriate economic benefits from the activities within the Kenya Lake System.

In support of this request we note the related recommendations of the African Commission on Human and Peoples' Rights,⁸ the 2012 World Conservation Congress,⁹ the Human Rights Committee,¹⁰ and the Committee on the Elimination of Racial Discrimination (CERD).¹¹ We

⁶ See, e.g., *UN Declaration on the Rights of Indigenous Peoples*, Arts. 19 and 32(2); Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII on Indigenous Peoples (1997)*, para. 4(d); or Committee on Economic, Social and Cultural Rights, *General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/21, 21 December 2009, paras. 36 and 37. Also see, ACHPR, 'Endorois Decision', para. 291: "the African Commission is of the view that any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions."

⁷ See ACHPR, 'Endorois Decision', para 298; and ACHPR Res. 197 (2011), Art. 1.

⁸ ACHPR Res. 197 (5 November 2011), Art. 5:

"[The ACHPR] Urges the Government of Kenya, the World Heritage Committee and UNESCO to ensure the full and effective participation of the Endorois in the decision-making regarding the "Kenya Lake System" World Heritage area, through their own representative institutions;"

⁹ Resolution WCC-2012-Res-047-EN, *Implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the UNESCO World Heritage Convention*:

"SHARING the African Commission's concerns that Lake Bogoria National Reserve was inscribed on the World Heritage List in 2011 without the free, prior and informed consent of the indigenous Endorois people [...] *The World Conservation Congress* [...] URGES the Government of Kenya to ensure the full and effective participation of the Endorois in the management and decision making of the "Kenya Lake System" World Heritage area, through their own representative institutions, and to ensure the implementation of the African Commission's Endorois Decision."

¹⁰ Human Rights Committee, *Concluding Observations: Kenya*, Doc. CCPR/C/KEN/CO/3, 31 Aug. 2012, para. 24:

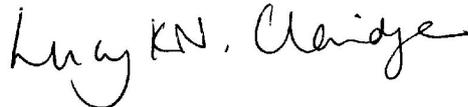
"The Committee is concerned at reports of forced evictions, interference and dispossession of ancestral land by the Government from minority communities such as the Ogiek and Endorois communities who depend on it for economic livelihood and to practice their cultures... The Committee notes that the State party has not implemented the decision of the African Commission on Human and Peoples' Rights in the case *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*. (arts. 12, 17, 26 and 27). The Committee recommends that, in planning its development and natural resource conservation projects, the State party respect the rights of minority and indigenous groups to their ancestral land and ensure that their traditional livelihood

also note the commitment of the Government of Kenya, made during the Universal Periodic Review before the UN Human Rights Council in 2010, to implement the African Commission's recommendations relating to the rights of indigenous peoples.¹²

We would be grateful for your consideration of our requests above, and look forward to hearing from you in due course. Should you require any further information, please do not hesitate to contact us.

Finally, we would be grateful if you could kindly acknowledge receipt of this request.

Yours faithfully



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that is inextricably linked to their land is fully respected. In this regard, the State party should ensure that the inventory being undertaken by the Interim Coordinating agency with a view to obtaining a clear assessment of the status and land rights of the Ogiek community be participatory and that decisions be based on free and informed consent by this community.”

¹¹ CERD, *Concluding Observations: Kenya*, Doc. CERD/C/KEN/CO/1-4, 2 Sept. 2011, para. 17:

“The Committee notes with concern that the State party has not acted upon the decisions of the African Commission on Human and Peoples’ Rights as regards forced evictions of the *Endorois* and the *Ogiek* from their lands and that people affected are still without any redress to date. (art. 5) The Committee urges the State Party to respond to the decisions made by the African Commission on Human and Peoples’ Rights and to ensure that all marginalised communities and peoples involved are redressed as ordered.”

¹² Human Rights Council, Fifteenth session, *Report of the Working Group on the Universal Periodic Review: Kenya*, UN Doc. A/HRC/15/8, 17 June 2010, para. 101:

“The recommendations formulated during the interactive dialogue listed below have been examined by Kenya and enjoy its support: [...] 101.114. Implement the recommendations and decisions of its own judicial institutions and of the African Commission on Human and Peoples’ Rights, particularly those relating to the rights of indigenous peoples (Bolivia);”