

UN Permanent Forum on Indigenous Issues, Eleventh Session
New York, 24 April – 5 May 2017

Agenda Item 4:
*Implementation of the six mandated areas of the Permanent Forum
with reference to the United Nations Declaration on the Rights of
Indigenous Peoples*

Thursday 27 April 2017

**Joint Submission on the
Lack of implementation of the UN Declaration on the Rights of Indigenous
Peoples in the context of conservation policies and practices**

Jointly submitted by: Forest Peoples Programme (UK), Natural Justice (South Africa), Sengwer Indigenous Peoples Programme (Kenya), Forest Indigenous Peoples Network (Kenya), International Work Group on Indigenous Affairs (IWGIA), Rakhaing Women Union (Myanmar), National KhoiSan Council (South Africa), Marine Ecosystems Protected Area Trust (MEPA Trust - Antigua and Barbuda), Universidad Intercultural Maya de Quintana Roo (Mexico), Abibiman Foundation (Ghana), Ogiek Peoples' Development Program (Kenya), Centro de Estudios Multidisciplinarios - Aymara (Bolivia), Coalition against Land Grabbing (Philippines), Ecoropa (Europe), Taiwan Indigenous Conserved Territories Union (TICTU), Indigenous Peoples Africa Hub (regional Africa), Amerindian Peoples Association (APA, Guyana), Indigenous Peoples of Africa Coordinating Committee (IPACC, regional Africa), Minority Rights Group (UK), and Indigenous Livelihoods Enhancement Partners (ILEPA, Kenya).

RECOMMENDATIONS:

We call on the Permanent Forum to:

- a) Take the lead in convening an Expert Group Meeting on Conservation and Human Rights in 2018, in collaboration with the UN Expert Mechanism on the Rights of Indigenous Peoples and the UN Special Rapporteur on the Rights of Indigenous Peoples, to further explore options for UN action to promote and protect the rights of indigenous peoples in the context of conservation activities, recognising that conservation science makes very clear that securing indigenous peoples' collective tenure rights is the surest basis for effective, as well as just, conservation;
- b) Develop an Expert Report on Conservation and the Rights of Indigenous Peoples to follow-up the recommendations and reports of the UN Special Rapporteur on the Rights of Indigenous Peoples and the UN Special Rapporteur on Environment and Human Rights and to inform the work of relevant UN agencies and conventions;
- c) Pursue its recommendations to key global conservation organisations, with a focus on the members of the Conservation Initiative on Human Rights, and to request CIHR members to report in 2018 to the Forum on the implementation of the Initiative;
- d) Urge the International Union for the Conservation of Nature (IUCN) to establish a joint Task Force on Conservation and Human Rights to work with indigenous peoples' organisations to clearly articulate the rights of indigenous peoples in the context of conservation initiatives, and to continue to promote grievance mechanisms and avenues to redress in the context of

conservation action, including the Whakatane Mechanism (in turn, contributing to implementation of IUCN Resolution 6.072)¹;

- e) Urge International Financial Institutions, the European Commission, the Global Environment Facility and other donors to apply the strongest possible safeguards in the financing of conservation programmes and projects, including climate change mitigation and adaptation actions, and to recognise collective tenure as the most effective basis for effective conservation and sustainable use of natural resources;

We also call the attention of the Permanent Forum to the following specific case and associated recommendation:

- f) Recommend to the European Union and the Government of Kenya that financing and planned actions in the Cherangany Hills in western Kenya be contingent on the recognition and formal protection of the rights of the forest indigenous peoples, including the Ogiek and the Sengwer, to their lands, as provided for under the Community Land Act, 2016, and the 2010 Constitution, especially Article 63 (2) d ii;

Introduction

1. The UN Permanent Forum on Indigenous Issues has made a number of recommendations on the issue of conservation and human rights which to date remain largely unimplemented.² Particular attention has been given by the Forum to the critical issue of free, prior and informed consent of the relevant indigenous peoples “before the declaration or in the management of any protected area which may affect them”.³
2. At its 9th session, the Permanent Forum welcomed the Conservation Initiative on Human Rights of nine of the large conservation organisations, while recommending that these conservation organisations ensure the full participation of indigenous peoples in the implementation of the Initiative and provide redress and restitution for indigenous peoples who have been evicted as a result of conservation projects.
3. Members of the UN Permanent Forum on Indigenous Issues have also participated in, and taken the concerns of indigenous peoples, directly to relevant UN agencies and to conservation agencies themselves.^{4 5}

¹ <https://portals.iucn.org/library/node/46489>

² See database of UNPFII recommendations – state of implementation, e.g. Session 7 #91 and Session 9 #158) (https://esa.un.org/unpfiidata/UNPFII_Recommendations_Database_list.asp)

³ See for instance at the 9th Session of the UNPFII: “The Permanent Forum welcomes the announcement during this session of the Conservation Initiative on Human Rights by eight global conservation organizations ... which aims to promote the integration of human rights in conservation policy and practice, based on their common interest in promoting positive links between conservation and rights of people to secure their livelihoods, enjoy healthy and productive environments and live with dignity. The Forum recommends that these conservation organizations ensure the full participation of indigenous peoples in the implementation of the Initiative. The Forum further recommends that conservation organizations that have projects that have led to the eviction of indigenous peoples from their forests provide redress and restitution to such victims.”

⁴ See for instance: “The Permanent Forum reiterates its concern about conservation efforts, including the designation of national parks, biosphere reserves and world heritage sites, which frequently lead to the displacement of indigenous peoples from their traditional lands and territories. In this regard, the Permanent

4. These recommendations need to be followed up with some urgency, in the light of continued infliction of gross human rights violations on indigenous peoples, alongside conservation measures, for example, on the Sengwer from the Cherangany Hills in Kenya.

Cherangany Hills in Kenya

5. Although they have suffered annual evictions, on conservation grounds, since the 1970s, the Sengwer were always able to return and rebuild their homes, and were generally left alone for the rest of the year. However, in January 2014 the Kenyan government sent the Kenya Forest Service (KFS), with police support, to the Cherangany Hills to forcibly and illegally evict thousands of Sengwer indigenous people from their ancestral forest lands, burning their homes and belongings, and then seeking to stop them returning, again arguing the Sengwer should not be on conserved areas.
6. There is now concern that the EU's (WaTER) Project is repeating the mistakes of the World Bank's Natural Resource Management Project (NRMP), as identified by the World Bank's own Inspection Panel, by failing to secure the customary land rights of the Sengwer at Embobut and the Chepkitale Ogiek at Mt Elgon, and instead strengthening the KFS's commitment and capacity to evict these peoples from their ancestral lands.
7. Immediately after a visit from the EU delegation to the Sengwer on the 29th and 30th March 2017 to assess the human rights implications of the WaTER Project, the KFS guards based at Tangul, Kipsitono and Maron KFS camps carried out intensive evictions, with KFS allegedly burning down over 90 Sengwer homes and destroying or looting their property. Elias Kimaiyo, a Sengwer community member who was filming this, was chased and shot at by KFS guards, who used a rifle butt to break his arm and take his evidence.
8. By carrying out these evictions and burnings, KFS has been acting against the orders of the courts, the Kenyan Constitution, and its international legal commitments.

UN context and action

9. In addition to the serious situations that are continuing to arise in the lands and territories of indigenous peoples, and the long-outstanding and continuing violations that mar the establishment of too many of the world's protected areas, action on the human rights implications of conservation action is made urgent also by current UN global processes and actions.

Forum requests that a member of the Forum attend the thirty-fourth session of the UNESCO World Heritage Committee, to be held in Brasilia, Brazil, in August 2010." (9th Session)

⁵ This is a concern that has been raised with the Permanent Forum on many occasions, by Indigenous peoples and organizations from many different parts of the world. See the **Statement of the UNPFII at the 34th Session of the UNESCO World Heritage Committee, Brasilia, 2010** (delivered by UNPFII member Victoria Tauli-Corpuz),

<http://xa.yimg.com/kq/groups/20674633/27593986/name/UNPFII+Statement+WHC+Final.docx>:

"I am here to raise with the WHC the concerns of indigenous peoples raised before us... There is a list of indigenous sites inscribed in the World Heritage List without the adequate participation and involvement of indigenous peoples which the Permanent Forum has received since its first session in 2002."

10. Achievement of the UN Sustainable Development Goals (SDGs) requires attention to this issue, not only to achieve key gains in Targets 14 and 15 on biodiversity and ecosystem sustainability, both on land and under the oceans, but on ensuring that the vision of human survival and sustainability that addresses poverty (Target 1), hunger (Target 2), reducing inequalities (Target 11), climate action (Target 13) and peace and justice (Target 16) is met.⁶ Indeed securing the protection and promotion of human rights in the actions taken to protect and conserve lands and resources is critical to ensuring sustained protection of both people and planet.
11. Recent reports by the UN Special Rapporteur on the Rights of Indigenous Peoples Ms Victoria Tauli-Corpuz and by the Special Rapporteur on Human Rights and Environment Prof John Knox have also highlighted the need for further action on conservation and human rights.
12. In particular, Ms. Tauli-Corpuz called on States to “...respect, protect and fulfil human rights, including in all actions undertaken to address environmental challenges...” and to “...adopt and implement strong laws ensuring, among other things, the rights to participation, to access to information and to justice, including to an effective remedy...”⁷ Ms. Tauli-Corpuz also recommends that conservation organisations support indigenous peoples to develop and sustain their own conservation initiatives and traditional conservation measures (para. 81) and that donors provide direct funding to support indigenous peoples’ own conservation initiatives (para. 84).⁸
13. John Knox additionally highlighted that “...These [human rights] obligations apply not only to measures aimed at exploitation of resources, but also to those aimed at conservation.” He specifically noted that: “...While States should do more to protect biodiversity, they must act in accordance with the human rights of those who have longstanding, close relationships with their ancestral territories.” Arguing for the inextricable link between Human Rights and Environmental Protection, he highlights that ... “respect for human rights should be seen as complementary, rather than contradictory, to environmental protection.”⁹ He also underscores: “States must do more to respect and protect the rights of those who are most vulnerable to the degradation and loss of biodiversity ... States should support indigenous and local efforts to protect biodiversity, including through ICCAs, recognizing that the traditional knowledge and commitment of indigenous peoples and local communities often make them uniquely qualified to do so” (para. 71).¹⁰

⁶ <https://sustainabledevelopment.un.org/sdgs>

⁷ Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz 29 July 2016, A/71/229, see <http://unsr.vtaulicorpuz.org/site/images/docs/annual/2016-annual-ga-a-71-229-en.pdf>

⁸ Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz 29 July 2016, A/71/229, see <http://unsr.vtaulicorpuz.org/site/images/docs/annual/2016-annual-ga-a-71-229-en.pdf>

⁹ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 19 January 2017, A/HRC/34/49, see: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement>

¹⁰ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 19 January 2017, A/HRC/34/49, see: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement>

