

Reference: B1883

28 May 2018

Dear High Representative Mogherini,

EU MUST ACT TO UPHOLD INDIGENOUS PEOPLES' RIGHTS IN KENYA: FORCED EVICTIONS OF THE SENGWER COMMUNITY FROM EMBOBUT FOREST

We are writing to share with you Amnesty International's recently issued report *Families Torn Apart: Forced Eviction Of Indigenous People In Embobut Forest, Kenya* that sheds light on the forced eviction of the Sengwer Indigenous community from their ancestral homes and land in the Embobut Forest, Kenya. The government has stated that the forest must be cleared in order to implement a project funded by the European Union (EU).

On 29 December 2017, the Kenya Forest Service (KFS) began the most recent wave of forced evictions against the Sengwer. On 21 January 2018, Elgeyo Marakwet County Commissioner, in charge of administration in Elgeyo Marakwet County, where Embobut is located, announced that operations to evict the Sengwer would intensify.

Amnesty International found that the forced evictions violate the human rights of the Sengwer, including their rights to housing and to their ancestral lands, under international law, the African Charter on Human and People's Rights, and the Constitution of Kenya.

The Kenya Forest Service is also targeting individuals in the Sengwer community including community leaders and human rights defenders (HRDs). On 16 January, KFS officers reportedly shot and killed 45-year-old Robert Kirolich and seriously injured 35 year old David Kipkosgei Kiptikesi, as they were both grazing cattle with other herders. KFS guards shot at and beat Sengwer community leader Elias Kimaiyo in April 2017 when they found him filming them while they were burning Sengwer houses in Embobut. On 24 March 2018, a day after the conclusion of a fact-finding mission by the Kenya National Commission on Human Rights to establish human rights violations in Embobut forest, the house of Paul Kiptuka, a Sengwer leader, was burned down by the KFS.

The Embobut Forest is part of an area included in the Water Tower Protection and Climate Change Mitigation and Adaptation (WaTER) conservation programme financed by the European Development Fund. On 17 January, the European Union announced a temporary suspension of funding for the WaTER project citing concerns about human rights violations.¹

Amnesty International is calling for the project to remain suspended until conditions that fully guarantee that the human rights of all affected communities will be respected, protected and fulfilled are in place. Government donors, such as the EU and its member states, have a duty to mitigate risks of human rights violations being perpetrated by carrying out robust human rights due diligence processes. A borrower government's failure to uphold its human right obligations does not absolve international donors of their responsibility for negative human rights impacts of projects or policies they support. Donors and institutions providing project funding should ensure that they undertake robust human rights due diligence in order to identify and prevent, or mitigate any risks to human rights that may result from the project.

¹ "EU suspends its support for Water Towers in view of reported human rights abuses," 17 January 2018.

https://eeas.europa.eu/delegations/kenya/38343/eu-suspends-its-support-water-towers-view-reported-human-rights-abuses_en;

"Why the EU's support for conservation of Kenya's "Water Towers" remains suspended," 13 March 2018.

https://eeas.europa.eu/headquarters/headquarters-homepage/41231/why-eus-support-conservation-kenyas-water-towers-remains-suspended_en

We urge you to make sure that the EU and its member states work with Kenya to guarantee a human-rights compliant approach to the issue of forest-dwelling Indigenous peoples, land rights and conservation, and set clear benchmarks for what is expected in this regard. To this end, please see our recommendations in the annex below.

We recognise the positive human rights potential of the WaTER project, including in Embobut, and believe it represents an important opportunity for the EU to promote good practice in bringing together human rights and conservation goals. The sole way forward for this project will be to ensure comprehensive human rights due diligence is put in place. If any modifications are to be made to the project, the EU must conduct genuine consultation with all affected communities, and to obtain the free, prior and informed consent of Indigenous peoples with regard to any impacts on their ancestral lands and cultural heritage.

Thank you in advance for your engagement to ensure that human rights remain at the centre of the EU's development programming and its relations with Kenya more broadly, now and in future. We remain available should you have further questions or require additional information.

Sincerely,



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Head of European Institutions Office and Advocacy Director
Amnesty International

ANNEX: RECOMMENDATIONS TO THE EU AND ITS MEMBER STATES

Amnesty International is calling on the EU and its member states to:

- Engage with the government of Kenya to ensure that any resumption of the WaTER project only takes place under guarantees that there will be no further forced evictions, or arrests of Sengwer on the basis of their presence in Embobut, or harassment or violence towards community leaders/human rights defenders, or any other human rights violations.
- Engage with the government of Kenya to ensure that genuine consultations are held with the affected communities regarding the status of the forest and its management, allowing for a new approach to conservation which recognises their role as co-managers, co-conservators and owners of the land, and ensures their free, prior and informed consent is obtained for any agreements made;
- Prepare and publishes human rights / socio-economic impact assessments, resettlement action plans, protocols for guaranteeing the rights of Indigenous peoples including free, prior and informed consent. and the mid-term review relating to the WaTER project;
- Ensure that in future all impact assessments effectively assess human rights impacts and risks of future projects through a robust human rights due diligence process, incorporate lessons learnt from similar projects in the past, including those not funded by the European Union, are carried out with full participation of affected communities, and ensure that effective mitigation measures are taken to address such risks/impacts; Where national legislation is not in compliance with the country's human rights obligations, assess the commitment and capacity of the borrower to guarantee that the project complies with international human rights standards.
- Promote a process that will ensure that affected communities are provided with all necessary documents related to the project and that the documents are presented in a form and language that they can understand.
- Ensure affected individuals and communities are aware and can easily access accountability and grievance redressal mechanisms in order to have their complaints with regard to project implementation considered and have access to effective remedies.
- Engage with the Government of Kenya, if appropriate using the political dialogue under Article 8 of the Cotonou Agreement, to guarantee a human-rights compliant approach to the issue of forest-dwelling Indigenous peoples, land rights and conservation, setting clear benchmarks for what is expected in this regard;
- Provide Sengwer and other Indigenous HRDs with full political backing and capacity-building support, and proactively engage with the government of Kenya to address any cases of harassment, ill-treatment or other human rights violations towards Indigenous HRDs. At the same time, the EU and its member states must promote and protect the work of HRDs working on indigenous peoples' rights and land rights in the Embobut context and throughout Kenya, in line with the EU Human Rights Defender Guidelines, commitments in the EU Action Plan on Human Rights and Democracy and the Council conclusions on Indigenous Peoples of 15 May 2017.