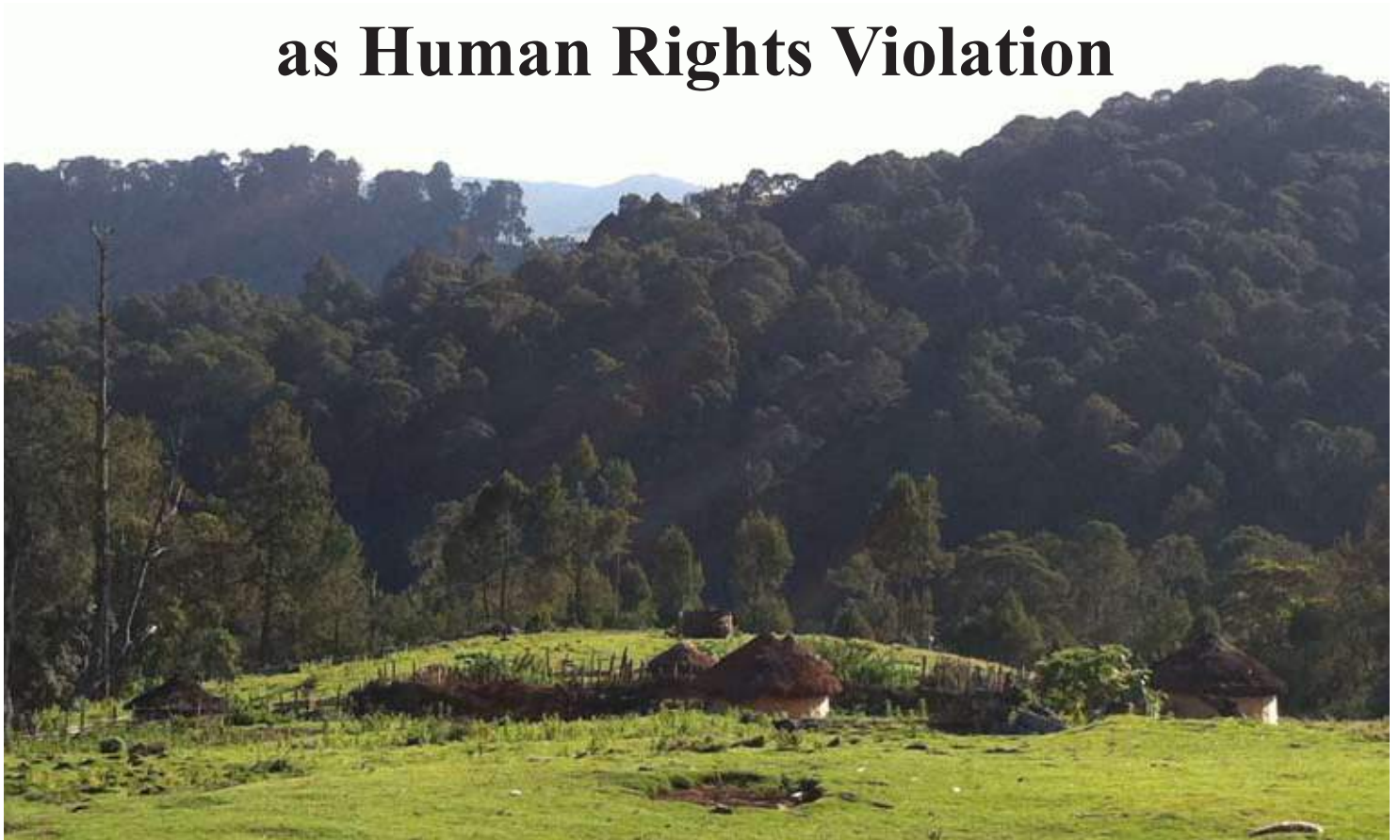




Forced Eviction of Embobut Forest Dwellers as Human Rights Violation





"For centuries, the Sengwer indigenous people, also known as the Cherangany indigenous people, have lived, hunted and gathered in the Embobut Forest area in the Rift Valley of Kenya. Today, many Sengwer still live in or near the Embobut Forest and continue to engage in cultural and subsistence practices in the area." (UN Special Rapporteur on the rights of indigenous peoples Mr. James Anaya, press release 13 January 2014, <http://www.un.org/apps/news/story.asp?NewsID=46914&Cr=indigenous&Cr1=#.UtRa1fv4K6c>)



Today, more than 600 police officers supported by riot troops armed with AK-47 machine guns are at the moment forcibly evicting thousands of indigenous Sengwer and Cherangany people from their ancestral lands and also thousands of internally displaced people in Embobut forest area of Elgeyo-Marakwet county. The police has started to burn some evicted people's homes.



This gross human rights violation by the Kenyan government takes now place inspite of many concerned notices of the UN Human Rights bodies, to prevent such forced evictions, including the recommendations given to Kenya by the CCPR, CESCER and CERD.

Kenya's attempt to forcibly evict as 'squatters' more than 15 000 vulnerable indigenous people and internally displaced victims of landslides and Kenya's electoral violence, is contempt of human rights and contempt of Kenyan court which recently prohibited the forced eviction regarding Embobut.

"Indigenous peoples shall not be forcibly relocated from their lands or territories," without their free, prior and informed consent (UNDRIP, article 10) and thus UN Special Rapporteur urged now that:

The Kenyan Government has "to ensure that the human rights of the Sengwer indigenous people are fully respected, in strict compliance with international standards protecting the rights of indigenous peoples." "Any removal of Sengwer people from their traditional lands should not take place without adequate consultations and agreement with them, under just terms that are fully protective of their rights". (UN Special Rapporteur on the rights of indigenous peoples, press release on 13 January 2014)

Sengwer and Cherangany peoples have lived in Embobut forest in Marakwet area on Cherangany hills as indigenous people of these mountain forests which are for them their ancestral land.

Sengwer know where their ancestors are buried in the forest where they lived earlier by hunting and gathering the forest produce. The government has however expansively taken over the forest areas little by little under its control making also tree plantations of alien, exotic species.



During the last few decades also others like people displaced by landslides or by recent electoral violence of 2008 have moved to live at Embobut. Last spring the government informed that it will take the area for its own purposes and evict all people who live in the area, including its indigenous inhabitants, whom it calls 'squatters' even though these are their ancestral lands.

People gathered in March 2013 to discuss the situation agreeing they do not want to leave. While the government has tried also many times earlier to evict the people, they have still continued to live there.



Claiming it evicts now 15 000 people to conserve the hill forests - which have saved water in the area through hills' ancestral biodiversity and life-heritage -, the State refuses to negotiate with area's indigenous inhabitants whom it evicts. State's forest officers are however known to arrive tomorrow to near-by city, Eldoret, to negotiate with one local stakeholder, namely a sawmill group. The ecology of the areas which the State takes under its control becomes soon degraded as areas are targeted for profits.

In Embobut and in Cherangany hills, Sengwer and Cherangany communities have lived using the forests for their many daily needs, including the gathering of edible wild vegetables, fodder, herbs, etc. They want to continue the sustainable use and management of the forest by the communities - for which the Sengwer communities have made also a documented plan and proposal.



Without listening the local communities, the Government has displaced the rich indigenous forest biodiversity by planting alien tree species to the area with the finance of the World Bank and corporations like Toyota and Coca Cola, to capture the whole area to benefit the government and corporate elite by the cost of the local communities, their ancestral lands and their indigenous biodiversity.

Such non-biodiverse plantations of alien trees have spread already throughout Kenya and now displace the indigenous forests also in Cherangany hills, where there is however still left some indigenous forest biodiversity, which could regenerate and be revived - if the areas were not captured for plantations.



In late 2013 the government started to pay money compensations for some of the people, internally displaced victims of landslides and electoral violence, to move them out from the area. As many people had been also earlier evicted and their houses burned and as many of them were given to understand the compensation was paid for the losses of the earlier displacements, they thought they received the compensation for those losses. But many of the people still have not got any compensation.



In second week of January 2014 the Kenyan government started to locate troops near Embobut to carry out the eviction.



People told to the government they are not able or ready to leave the community of their ancestral land which is their home and livelihood, but the government replied in news last week "we will move in to remove them any minute now" and sent armed police and riot troops there to remove the people.

During the last few days the armed troops started to enter the area. As troops with AK-47 machine guns were sent to the houses to evict thousands of people who do not want to leave, that is forced eviction – "removal against their will of individuals, families and/or communities from the homes and/or land which they occupy" (1) - even if the government said to the news it "will not use force". (2)





Such forced eviction in Embobut violates Kenyan Constitution, is illegal in terms of international law and has not duly secured but violates/ neglects the implementation of indigenous communities' human rights in the following respects:

I. Rights to home, privacy, adequate housing and security of tenure (articles 17 of the ICCPR and 11 of the ICESCR) of the evicted people are violated by the forced eviction.

II. Fundamental rights related to self-determination, subsistence, rights to identity and culture of people's ancestral lands are violated/neglected by forced evictions. (articles 27 of the ICCPR and 6, 11 & 15 of the ICESCR, in context of both Covenants' common article 1.2)



III. Equal realisation of the right to development is violated by forced eviction which impairs the equal progressive realisation of the rights to food, health, water, adequate living standards and other well-being of the most vulnerable, marginalised and victimised groups



Currently Kenya thus violates these human rights by the ongoing evictions in Embobut inspite of the diverse instructions the UN Human Rights organs have provided to it.

We request CCPR, CESCRR and UN Special Rapporteur on Rights of Indigenous Peoples to urge Kenya to stop the evictions and to secure the human rights demonstrated below.

I. Rights to home, privacy, adequate housing and security of tenure



Under the Kenyan Constitution "Every person has the right to privacy", "to accessible and adequate housing" and the right not to have "their person, home or property searched" or "their possessions seized" (3). By this provision Kenya provides also a basis for implementing its following commitment:

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence".

"Everyone has the right to the protection of the law against such interference or attacks" (4)

Now the people from Embobut are leaving their homes and lands (see last Friday's photos) as a result of forced eviction without legal protection from the government even though the court has just prohibited the eviction.



State is thus however also responsible to have adopted such "legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right" (5) that the adopted law itself "must comply with the provisions, aims and objectives of the Covenant" (6).



In respect to the Covenant, state's "relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted" (7) so that:

"Interference with a person's home may take place only "in strict compliance with the relevant provisions of international human rights law". (8) Also the equality of the human rights of minorities has to be respected.

Kenya's "emerging policies are not fully based upon the human rights obligations of Kenya" but have denied forest dwellers right to adequate housing according to the UN Special Rapporteur on this right.



UN agencies must help "ensuring that international human rights law is respected in [...] processes that may lead to forced evictions". (9)

The UN Human Rights Committee has also been for years "concerned about reports of the forcible eviction of thousands of inhabitants from so-called informal settlements [...] without prior consultation" as "this practice arbitrarily interferes with the Covenant rights of the victims of such evictions, especially their rights under article 17 of the Covenant". It has requested from Kenya:

"The State party should develop transparent policies and procedures for dealing with evictions and ensure that evictions from settlements do not occur unless those affected have been consulted and appropriate resettlement arrangements have been made." (10)

To be not subjected to "arbitrary" interference requires that "even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant". (11) Before any evictions, state is obliged to have made explicit who are in this respect the responsible monitoring "authorities which are entitled to exercise control over such interference with strict regard for the law, and to know in what manner and through which organs persons concerned may complain of a violation of the right provided for in article 17 of the Covenant." (12)

As limitations to people's right on adequate housing and their right to be protected from forced evictions can be imposed only as "determined by law", the State has to first make public before eviction its approved "legislation against forced evictions" providing "system of effective protection" against "arbitrary or unlawful interference" with one's home, which conforms with economic, social and cultural rights.

The Kenyan Constitution orders explicitly to the Parliament and to the National Land Commission the mandate to manage through the legislation, appropriate redress and monitoring the land use and related injustices, land categorisation, titles and investments on land use, also to secure the rights and benefits of the communities. The government is thus not authorised to by-pass these constitutional mandates and decide these matters by 'buying' people to become evicted through sending money to some bank accounts without legal agreement signed on whether such money is approved to compensate the past evictions or future ones.

The UN Human Rights Committee reminded also in 2012 that Kenyan government is responsible to "ensure that its agencies desist from carrying out any evictions until proper procedures and guidelines have been put in place" with transparent laws and policies to prevent restrict and regulate evictions - "to ensure that they are only undertaken when the affected populations have been consulted and appropriate resettlement arrangements have been made". (13)



"The Committee is concerned about the demolition of dwellings and forced evictions of [...] persons living in informal settlements" "reportedly without [...] provision of adequate alternative housing or compensation". Kenya has to "adopt legislation or guidelines strictly defining the circumstances and safeguards" so that the evictions can take place only "in accordance with the Committee's General Comment No. 7 on forced evictions (1997)." (14)

State "must ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided" based on what has been agreed through the consultation. (15)

State "must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out" to secure that "all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats".

State has to secure that the measures "are designed to control strictly the circumstances under which evictions may be carried out" and "provide the greatest possible security of tenure to occupiers of houses and land" and to "repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant". (16)



"Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must" "to the maximum of its available resources" "ensure that adequate alternative housing, resettlement or access to productive land" is available. (17).

"Practice of eviction without consultation or adequate alternatives [...] is illegal in terms of international law" as everyone has right to "security of tenure which guarantees legal protection against forced eviction, harassment and other threats" - against the "removal against their will of individuals, families and/or communities from the homes and/or land which they occupy". (18)

II. Self-determination, subsistence, identity & culture of indigenous peoples on their ancestral lands



Forced eviction can violate not only the rights to home and privacy but also the equal realisation of people's fundamental human rights to self-determination and subsistence, rights to their identity, culture, spirituality, their life-heritage, existence and survival as people, sustained by life of their ancestral lands.

UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, noted on his Mission to Kenya in 2007 that:

"the Sengwer of the Cherangany Hills" "have not only been denied access to their traditional hunting and gathering grounds" "but also their tribal identity" as the "dispossession of their land continued in the post-colonial period". Such earlier "hunter-gatherer communities constitute the most marginalized communities in Kenya" and the state needs to act "to guarantee their enjoyment of basic human rights" (19)

Such violations of fundamental human rights can be particularly severe in case when communities of indigenous peoples are forcibly evicted from their ancestral lands.

For the indigenous communities their ancestral lands and their habitats on such lands belong to their characteristic means of subsistence. People have an equal right to be not deprived of such habitats on ancestral lands which are integral to such people's own means of subsistence or to the culture of indigenous minority people's way of life:

"In no case may a people be deprived of its own means of subsistence" (20) and thus also in case of indigenous peoples, also they "have the right [...] to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional [...] economic activities". (21) As regarding the "forced removal of indigenous peoples from their ancestral territories", "in nearly all cases the loss of land meant the substantial or complete undermining of indigenous peoples' own economic foundations and means of subsistence, as well as cultural loss" (22), forced eviction violates fundamental economic, social and cultural human rights.

"Ancestral lands and lands traditionally occupied by hunter-gatherer communities" are under the Kenyan Constitution covered by rights to community lands, which "shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest". (23) Such ancestral "community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively." (24. Lands "shall be held, used and managed" in accordance with "equitable access to land", "security of land rights" "sustainable management of land resources" and "sound conservation and protection of ecologically sensitive areas". (25)

As Kenya says its new Constitution is to "recognise and protect the diversity of the people of Kenya and their right to self-determination as equal members of the Kenyan population" (26) and as the "general rules of international law" and "any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution" (27), Kenya is to implement also the internationally agreed "the economic content" and cultural equality of the fundamental equal right to self-determination, securing that "In no case may a people be deprived of its own means of subsistence".

Kenya sees that its Constitution "also protects the cultural foundations and expression of the Kenyan people as an integral part of the right to self-determination" and "promotes respect for all cultures, ethnicities, races" without discrimination "to preserve the dignity of individuals and communities" and recognising the role of "indigenous technologies" within the culture and self-determination of people's development. (28). Through such constitutional provisions Kenya is to implement also its international commitments on following human rights:

a) People of minorities "shall not be denied the right, in community with the other members of their group, to enjoy their own culture", including their "way of life associated with the use of land" (29) as their self-determined "form of subsistence and an ancestral tradition". (30)

Kenyan Constitution secures for all "the right to [...] participate in the cultural life" of one's choice and enjoy the culture of one's community "with other members of that community". (31) State has thus to protect also such indigenous communities' cultural life "which can only be expressed and enjoyed as a community" which is "indispensable to their existence, well-being and full development, and includes the right to the lands" "traditionally owned, occupied or otherwise used" by them (32) as their specific indigenous rights to their subsistence and culture.



b) State has to "respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights" like indigenous community rights to their ancestral lands, or "cultural resources [...] associated with their way of life and cultural expression" "to prevent the degradation of their particular way of life, including their means of subsistence [...] and, ultimately, their cultural identity". (33)

c) "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent". (34) States are responsible for "prevention of, and redress for [...] any action which has the aim or effect of dispossessing them of their lands, territories" or "any form of forced population transfer" "undermining any of their rights". (35) "Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress." (36) "Efficient mechanisms should be established to address historical injustices [...] resulting from dispossession of lands traditionally owned by" earlier hunter-gatherers, including "effective compensation to the affected communities" for "destruction of traditional habitats as a result of insensitive development projects" and "for any adverse environmental impact on their land, resources and traditional livelihoods resulting from development projects and other economic activities". (37)

Thus also the political and social rights of indigenous communities as well as the economic and cultural aspects of their right to self-determination imply thus that: To prevent discrimination caused by arbitrary interference, the State is responsible to publicly demonstrate that it is not the most defenceless, vulnerable or marginalised "indigenous people, ethnic and other minorities, and other vulnerable individuals and groups" who continue to "suffer disproportionately from the practice of forced evictions" as discriminatively targeted. (38) "Evictions of hunter-gatherers should be stopped" and the rights of their indigenous communities "to occupy and use the resources in gazetted forest areas should be legally recognized and respected" whereas "new titles should only be granted to original inhabitants". No new land arrangements are to "be allowed without the free, prior and informed consent of local communities" and "stronger guarantees against the dispossession of indigenous communal lands should be incorporated in the land legislation".(39)

As Kenya is responsible to prevent the violations, the UN Human Rights Committee requested Kenya in 2012 to "provide information on efforts taken to ensure that the rights of minority groups, such as the Elmololo, Yakuu, Sengwer, Maasai and Ogiek, are respected, particularly their right to access traditional lands" compliant to the article 27 of the ICCPR. (40)

Despite of Kenya's reports to the UN, it has however not yet reported the required information on Sengwer or other minority peoples' right to access traditional lands compliant to the ICCPR article 27. The reports of Kenya show on the contrary, that it neglects its commitments presented here above/ below.

Still in July 2012 the UN Human Rights Committee remained further "concerned at reports of forced evictions, interference and dispossession of ancestral land by the Government from minority communities [...] who depend on it for economic livelihood and to practice their cultures" or who get evicted from their "informal settlements without prior consultation and notification".(41)

The State has to "respect the rights of minority and indigenous groups to their ancestral land and ensure that their traditional livelihood that is inextricably linked to their land is fully respected" also "in planning its development and natural resource conservation projects". Government has to "widely disseminate" information on this "so as to increase awareness among the judicial, legislative and administrative authorities, civil society and [...] the general public".(42)



The state thus has to provide due "opportunity for genuine consultation with those affected" and truthful public "information on the proposed evictions" and "on the alternative purpose for which the land or housing is to be used" is "to be made available in reasonable time to all those affected" as well as provision, "of legal aid to persons who are in need of it to seek redress from the courts." (43)

People who were evicted from Embobut on 9th-11th January 2014 were not told for what alternative purposes will the World Bank financed project finally use their ancestral land after the eviction of 15 000 people or what would be the long term impact and aim of the exotic tree plantations prepared there by Toyota-Coca Cola financed project? (44)

How would that all impact their ancestral lands, sacred forests and their waters if they are removed from there and exotic monoculture plantations taking over the area? While their indigenous life of their ancestral land had been adapted to the local environment and water cycle, what will come to the area after their eviction and how would that impact their ancestral land and forest? If the government would have had due reasonable answers, it could have told to them but now the only consultation was AK-47 machine gun telling them to go without questions.

Such "practice of eviction without consultation or adequate alternatives [...] is illegal in terms of international law" as everyone has right to "security of tenure which guarantees legal protection against forced eviction". (45) "Financial institutions should ensure that all projects in indigenous areas respect the principle of free, prior and informed consent of the local communities". "Any negative impact caused to these communities as a result of these projects should be duly accounted for and compensated". (46)



The UN CERD Committee also required Kenya in 2013 in respect to the Sengwer of Embobut "to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories". (47)

Currently many people evicted by force from Embobut have not got any compensation, neither land nor money and many have been forced by armed troops to leave their houses and livelihoods.

When they try to leave with their sheep or cattle there are dealers on the way trying to buy their animals in a throw-away price. That the landless evictees would need to do as the price of land has increased rapidly due to the evictions.



III. Right to development and equal progressive realisation of rights to food, health, water, adequate living standards and other well-being of the marginalised people

Limitations to people's human right on adequate housing and to human right to be protected from forced evictions can be imposed "only insofar as this may be compatible with" the economic, social and cultural human rights "and solely for the purpose of promoting the general welfare in a democratic society" (48); which is "human well-being to which the international human rights instruments give legal expression." (49)

The "constant improvement of the well-being of the entire population and of all individuals" "on the basis of their active, free and meaningful participation [...] in the fair distribution of benefits" is equal human right of all. Such "right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy [...] development, through which all human rights and fundamental freedoms can be fully realized". (50)

As an universal human right, development can justify claims for securing its achievement, just to the extent it is measured as equal realisation of social, economic, cultural and political human rights for all:

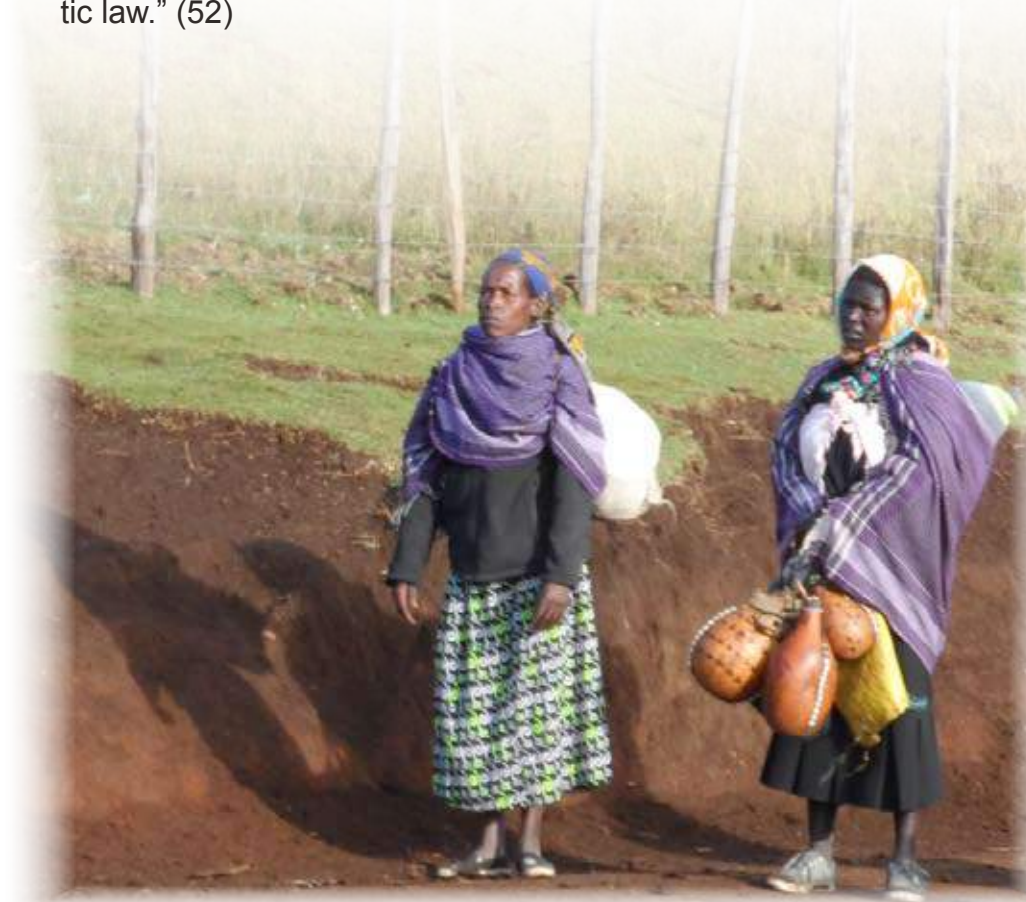
"While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights" (51). Such 'economic development' which does not realise even the fundamental economic human rights equally for all, is not in compliance with people's right to economic development.

The conditions of the legality of eviction under international law are not duly addressed in Kenya's replies to the UN agencies neither fulfilled in case of current evictions from Embobut. Even though under the new Kenyan Constitution "any treaty ratified by the State party shall form part of the law under the Constitution", still the UN Human Rights Committee is thus "concerned at the present lack of clarity in the jurisprudence of the courts on the status of the Covenant in the domestic legal order".

Kenya is responsible to "ensure legal clarity on the status and applicability of the Covenant in the legal system of the State party. In this regard, the Committee urges the State party to ensure that the draft bill on Ratification of Treaties clarifies the status of the Covenant and other human rights treaties in domestic law." (52)

Where carried out without the conditions of legality secured, forced evictions violate not only the right to adequate housing but can "constitute gross violations of a range of internationally recognized human rights" (53) - the operationalisation and national implementation of which is authorised to be monitored and guided by the UN organs, such as the CCPR and CESCR.

In respect to Kenya, the Committee on Economic, Social and Cultural Rights (CESCR) has been "concerned that disparities in the enjoyment of economic, social and cultural rights, including access to land, have led to inter-ethnic tensions and post-election violence" and recommended that:



Kenya has to “address disparities in the enjoyment of economic, social and cultural rights, including in access to land, which particularly affect poor people [...] and minority and indigenous communities in rural areas” and build measures “to address broader historical injustices” and to “foster dialogue and promote comprehensive reconciliation among its different ethnic groups.” “The Committee is concerned that the financial assistance provided to internally displaced persons [...] is inadequate” and “recommends that the State party provide adequate financial assistance for the resettlement of internally displaced persons and for their reintegration into society, and ensure that those IDPs who have not been resettled or returned to their homes following the post-election violence in 2008 have adequate access to housing and employment.” (54)

CESCR warns on human rights violations in respect to extreme poverty and lack of development in Kenya regarding the people “living in rural and deprived urban areas, landless persons [...] and internally displaced”. They are often deprived of their earlier rights or means to adequately subsist and of their way of life and their culture.



Indigenous communities however have “right to the preservation, protection and development of their cultural heritage and identity”. (55)

In its policies the State would be responsible to “ensure the full integration of economic, social and cultural rights, and specifically address the needs” of these “disadvantaged and marginalized groups” compliant “to the Committee’s Statement on “Poverty and the International Covenant on Economic, Social and Cultural Rights” (E/C.12/2001/10)” (56) according to which:

Poverty consists of “sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living” and other human rights and to duly address poverty, “human rights need to be taken into account in all relevant policy-making processes” to ensure that also development policies of globalised economy have to respect and promote human rights.(57)

Development can set limitations to people’s human right of being protected from forced evictions “only insofar as this may be compatible with” the totality of human rights and “solely for the purpose of promoting the general welfare in a democratic society” (58) as “human well-being to which the international human rights instruments give legal expression” and which also the policies of economic development, trade and investment have to serve and respect.(59)

Where vulnerable people are evicted by force in the name of ‘GDP growth-development’, such violation of their equal human right to development is not any true development, neither progress on realisation of fundamental economic (or other) human rights:

“While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights”. Development as a right which can justify claims or measures to be taken, is people’s equal universal right to development expressed in the international human rights instruments. While “the existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights”, still not GDP growth but “the promotion and protection of all human rights and fundamental freedoms must be [...] a priority objective”. (60)

Thus “the human rights approach to poverty emphasizes obligations and requires that all duty-holders, including States and international organizations, are held to account for their conduct in relation to international human rights law” also by ensuring “that those living in poverty enjoy the right to participate in key decisions affecting their lives” (not only through general elections). (61)

Poverty as "lack of basic capabilities to live in dignity" include "hunger, poor education, discrimination, vulnerability and social exclusion" (62), lack of water, health, home or viable environment, which need to be addressed (not by GDP growth but) by securing access of the poor to food, water, health, home, from which eviction alienates them.

In respect to the "chronic malnutrition in all provinces" Kenya is "to ensure physical and economic access for everyone, including children in rural and deprived urban areas, to the minimum essential food, which is sufficient, nutritionally adequate and safe, to ensure freedom from hunger, in line with the Committee's General Comment No. 12 on the right to adequate food (1999) as well as its Statement on the world food crisis (E/C.12/2008/1)." (63)

"States have particular obligations concerning the right to food of indigenous peoples", "respecting indigenous peoples' traditional ways of living, strengthening traditional food systems and protecting subsistence activities". (64) "Because of indigenous peoples' singular bond with land and their agricultural and other land-use [...] that provide means of subsistence" they have indigenous right of "feeding oneself directly from productive land". States are "to respect and protect the existing access to and use of land" as the "main means of production [...] of food for indigenous peoples" (65):

Their right to their indigenous culture of nutrition requires that such people may not be deprived of its "means of subsistence" and that people have also "adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples" by gathering etc. (66) Where people are threatened being deprived of their access to food and water, the States have to "combat the root causes of the disproportionately high level of hunger and malnutrition among indigenous peoples" also by enhancing their access to "secure land tenure" through livelihood practices of their culture. (67)



Development requires basic human rights to be equally realised also for the vulnerable minorities so that the rights and access to the sources of their realisation shall not depend on any particular cultural form, status or degree of property, such as on commercial property for example.

As land, water, forest and biodiversity are used as necessary and beneficial possessions as sources for

securing the human rights of people whose life, nutrition, habitat, health, subsistence or culture are directly dependent on such use, thus the land, water, forest and biodiversity shall not be sized to the hands of others who pay most money to control them.

As these crucial sources of the realisation of human rights may easily become captured under commercial control for other purposes which overconsume these sources to profit from them, and as "every person has the right to privacy, which includes the right not to have" "their possessions seized" (68), the States have to "effectively safeguard rights holders against infringements of their economic, social and cultural rights [...] by establishing appropriate laws and regulations, together with monitoring, investigation and accountability procedures". (69)



In applying everyone's equal human rights "to accessible and adequate housing", "adequate food", "to social security", or other rights, "if the State claims that it does not have the resources to implement the right" it has to demonstrate this in respect to the resources, which are crucial for implementation of human rights - such as land, water, forest and their biodiversity - and "in allocating resources, the State shall give priority to ensuring the widest possible enjoyment of the right" having due regard to "the vulnerability of particular groups or individuals". (70)

Thus the access to adequate housing, food, health, etc. as provided by the land, forest, water and their biodiversity, is to be secured to widest possible extent, particularly to the vulnerable indigenous groups whose access is most threatened.

Also indigenous communities' access to health gets severely affected if deprived of their access to the forest biodiversity. "The vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected" by measures which are "culturally appropriate, taking into account traditional preventive care, healing practices" and that "in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension."

"Development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, have a deleterious effect on their health." (71)

State is thus responsible to duly secure the land, water, forest and regeneration of their biodiversity to be used to fulfill the human rights, which directly depend on such use of land, water, forest and biodiversity. Indigenous and local communities have right to sustain their local land and environment as source of their subsistence, life-heritage and human rights.

"The protection and implementation of economic, social and cultural rights are crucial for a successful achievement of sustainable development goals. These rights deliver important guidance and internationally agreed assessment criteria." (72)

"Bearing in mind the unique relationship between indigenous and local communities and the environment", the "cultural, environmental, social impact assessments" "of a proposed development on the way of life" of indigenous community needs to take place with community's full involvement to address the impacts in respect to community's way of life; its "customary practices", "land use, places of cultural significance, economic valuation of cultural resources", "values, belief systems, customary laws, language, customs, economy", local environment etc. (73)

The evictions would in a discriminative way deprive just the vulnerable minorities, particularly the indigenous and already victimised communities of their access to homes, lands, forest, food, water, herbs, etc.. To secure people's right to self-determined life and subsistence, Kenya has to ensure for indigenous people their collective rights to their ancestral lands as their own means of subsistence.



"State shall enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms":

"All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including [...] members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities" (74) to secure they can develop their cultural values and practices, their tenure and habitat, their equal access to water, health and their equal opportunity of work of their choice (75), including their traditional occupations in compliance to the ILO Convention 111 and CBD article 10 c.

Also the President of Kenya shall "promote respect for the diversity of the people and communities of Kenya" and "ensure the protection of human rights and fundamental freedoms and the rule of law" and the government has to foster "unity by recognising diversity", "recognise the right of communities to manage their own affairs and to further their development" and "protect and promote the interests and rights of minorities and marginalised communities". (76)

While Kenya says it respects the rights to be secured equally also for the vulnerable minority communities, forced evictions however deprive in a discriminative way just the vulnerable minorities - particularly the indigenous communities - of their rights to home, to land, forest, food, water, health or education in their community. Where vulnerable people get forcibly evicted in the name of GDP growth being wrongly called 'development', that violates their equal human right to development and is thus not development, neither progress on realisation of fundamental economic (or other) human rights, but anti-development.

The State can not thus legally justify forced eviction by commercial growth of GDP as 'development' or 'public benefit', but State "must refrain from forced evictions" (77) as far as it has not duly and publicly demonstrated compliant to a legal procedure how the forced eviction would improve "the general welfare in a democratic society" as overall "human well-being to which the international human rights instruments give legal expression". (78)

Kenyan government is obliged thus to respect the Sengwer and Cherangany communities' rights "to their ancestral land and ensure that their traditional livelihood that is inextricably linked to their land is fully respected" in "development and natural resource conservation projects" and respect to the other population "expedite durable solutions for all internally displaced persons who were displaced by the 2007 post-election violence" or were victims of landslides through making the legislation to respect Kenya's international commitments in respect to the displacement. (79)



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