



International Network for Economic, Social & Cultural Rights
Red Internacional para los Derechos Económicos, Sociales y Culturales
Réseau international pour les droits économiques, sociaux et culturels
الشبكة العالمية للحقوق الاقتصادية والاجتماعية و الثقافية

TO:

Mr. Uhuru Kenyatta, President of Kenya

Board

Cathy Albisa
National Economic and
Social Rights Initiative,
USA

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Solidarity Movement,
Sri Lanka

Sandra Ratjen
International Commission
of Jurists, Switzerland

Francisco Rocaël
Consejo de Pueblos
Wuxhtaj, Guatemala

CC:

Mr. William Ruto, Deputy -President of Kenya

Mr. Githu Muigai, Attorney General of Kenya

Prof. Jacob Kaimenyi, Cabinet Secretary of the Ministry of Land, Housing & Urban
Development

Mr. Joseph Nkaissery, Cabinet Secretary of the Ministry of the Interior

Prof. Judi Wakhungu, Cabinet Secretary of the Ministry of Environment and Natural
Resources

Dr. Swazuri Muhammad, Commissioner of the National Land Commission

Hon. Kinuthia Mbugua, Governor of Nakuru County

Mr. Joseph Boinet, Inspector General of the Kenyan Police

Mr. Otiende Omolo P.M., Human Rights Ombudsman

Independent Policing Oversight Authority (IPOA)

UN Special Rapporteur on the rights of indigenous peoples

UN Special Rapporteur on the situation of human rights defenders

Secretary Dr Mary Maboreke, African Commission on Human and Peoples' Rights

April 19, 2016

Your Excellency,

The International Network for Economic, Social and Cultural Rights (ESCR-Net) is the largest global network of organizations and activists devoted to achieving economic, social and environmental justice through human rights, consisting of over 270 organizational and individual members in 70 countries.

Reported forced eviction, violence and intimidation against Ogiek communities and individuals

We write to express our deep concern regarding recent incidents of violence committed against members of Ogiek communities in the Ngongongeri area on the borders of Molo and Njoro, Nakuru county. Recent incidents reported include the forcible eviction and subsequent homelessness of numerous Ogiek families, loss of life and the apparent failure of the State to take action with respect to serious harassment and intimidation of human rights defenders working to promote the rights of Ogiek communities in connection with their ancestral lands. It is important to note that the Ogiek are currently the subject of an application before the African Court on Human and Peoples' Rights, requesting compensation and land restitution of contested land in this area in favor of the Ogiek people (African Court case).¹

Chris Grove
Executive Director

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ESCR-Net is a project of
the Tides Center

¹ See *African Commission on Human and Peoples' Rights v the Republic of Kenya*, application no. 6/2012.

According to credible reports received, over 100 Ogiek families were subjected to forced evictions during the first two weeks of March 2016 from their claimed ancestral land in the Ngongongeri area. Reportedly, over 300 homes and related property of many of the affected families were destroyed in recent conflicts over contested lands, allegedly by persons hired by land-grabbers and given protection by police. At present, approximately 1,000 people have been left homeless as a result of the forced evictions, requiring many to seek shelter in a nearby church and in neighbouring communities. We understand that the displaced persons face a serious humanitarian crisis due to a lack of food, clothing and blankets, and shelter.

We also denounce the killing of Mr. Stephen Munyereri, an Ogiek elder who has mobilized to defend the land rights of Ogiek communities for over 20 years. While attempting to collect his son's belongings following eviction, Mr. Munyereri was reportedly shot at close range by Dr. Kenneth Komen (a Nairobi-based doctor who claims to have legal title of part of the Ogiek ancestral lands in the Ngongongeri area). Multiple witnesses claim that Mr. Munyereri was shot in clear view of the police and the Sub County Commissioner, Mr. Paul Kinyajui. Immediately after the shooting, witnesses assert that the police removed the body of Mr. Munyereri and that accused killer was protected by police agents. We are informed that, while Dr. Komen was arrested, he has now been released on bond and allowed to return to the land where the murder took place.

ESCR-Net is particularly disturbed at accounts that allege a broader pattern of protection provided by local police to individuals who perpetrate attacks against Ogiek individuals in the context of the land disputes taking place in Ngongongeri. Further, we have been advised that the police have been instructed by the Rift Valley Regional Coordinator, Mr. Wanyama Musiambo, to demolish all structures in the area that have been deemed illegal; measures that serve to facilitate said evictions, rather than providing protection to the affected families. Further, we understand that the continued police presence in the area is intimidating to many members of the Ogiek community, who view the police as supportive to persons engaging in acquisition of traditional Ogiek lands, despite the ongoing African Court case, and active in preventing them from returning to their homelands.

Allegedly, approximately 20 Ogiek individuals have been arrested for incitement in connection with the land conflict. We also understand that several Ogiek leaders have been summoned for questioning before the Divisional Criminal Investigation Officer on 1 March, 2016, in the absence of any evidence of wrongdoing on their part.

Obligations relating to ongoing African Court case

On 15 March 2013, the African Court on Human and Peoples' Rights issued an Order of Provisional Measures in relation to application no. 6/2012, determining that the Kenyan government "refrains from any act or thing that would or might irreparably prejudice the main application before the Court," that is, the application for compensation and land restitution in favor of the Ogiek people.² We understand that this order is still current and will remain in effect until judgment is delivered.

Human rights obligations guaranteed by Kenya

We respectfully remind Your Excellency that, as a party to the International Covenant on Civil and Political Rights (ICCPR), Kenya is obligated to respect, among other rights, the right to life, which includes the procedural obligation to investigate any killings by non-State actors, the right to be free from arbitrary interference with one's property, and the right to protection against arbitrary arrest and detention. As party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Kenya is obligated to respect, among other rights, the right of everyone to an adequate standard of living, including food, clothing and housing. Further, as noted by the

² See http://www.african-court.org/en/images/documents/Orders-Files/ORDER_of_Provisional_Measures_African_Union_v_Kenya.pdf

Committee on Economic, Social and Cultural Rights, forced evictions are prima facie incompatible with the requirements of the ICESCR.

Kenya is also bound to uphold the standards detailed in the UN Declaration on Human Rights Defenders, which recognizes the right of all people to promote and to strive for the protection and realization of human rights. Specifically, the Declaration provides “protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights” of human rights defenders.

Similarly, Kenya is party to the Africa Charter on Human and Peoples’ Rights, under which it has guaranteed, among other rights, the right to life, the right not to be arbitrarily arrested or detained, the right to property, the right to education, and the protection of the family and vulnerable groups.

Requests by ESCR-Net

We greatly welcome the recent willingness of the Honourable Deputy-President, William Ruto, to meet with Ogiek representatives to listen to their concerns. However, in light of the gravity of the ongoing violence and disputes regarding the ancestral lands of the Ogiek, we collectively urge the Government of Kenya to now take constructive steps to:

1. Cease any further forced evictions of the Ogiek communities from the areas of the Mau Forest complex they inhabit and any continued interference with the community’s traditional livelihoods.
2. With respect to the Ogiek communities who have been forcibly evicted or otherwise displaced in connection with the forced evictions, take immediate steps to comply with relevant international legal standards (including but not limited to the UN Basic Principles and Guidelines on Development-Based Evictions and Displacements regarding immediate relief, relocation and remedies), which among other action should include adequate access to food, clothing and blankets, housing, and any other necessary humanitarian assistance.
3. Ensure a prompt, impartial and independent investigation into the circumstances leading up to, and following, the murder of Mr. Munyereri, and ensure an adequate remedy in relation to his murder.
4. Take all necessary steps to prevent, violence and intimidation against other Ogiek community members, and against the individuals and organizations dedicated to defending the rights of the Ogiek people, in compliance with international standards relating to human rights defenders.
5. With respect to the African Court case:
 - a. In compliance with the Order of Provisional Measures issued by the African Court on 15 March 2013, ensure that no action takes places that would or might irreparably prejudice the main application before the Court, including but not limited to forced evictions and other forms of displacement.
 - b. Participate promptly and fully in the case and take immediate steps to implement any further provisional measures and subsequent decision of the Court.
 - c. In the interests of ensuring access to justice in a timely manner and the full recognition of the human rights of the Ogiek people without a prolonged legal case, carefully consider taking immediate steps to proactively address the issues in dispute and, among other measures:
 - (i) conduct a consultative demarcation of the disputed lands;
 - (ii) offer full official recognition of the Ogiek people’s right to the lands they have historically used and occupied and issue legal title to the community recognizing their communal ownership over said lands; and
 - (iii) provide restitution to the community for all the losses that they have suffered, including the loss of property, development, natural resources and freedom to practice their religion and culture.

Finally, we respectfully request that you keep us informed about further developments in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Grove', is centered on the page. The signature is fluid and cursive, with a horizontal line extending to the right.

Chris Grove,

Executive Director