

## AMNESTY INTERNATIONAL

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# SUBMISSION TO THE STUDY ON INDIGENOUS PEOPLES BY THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING

Please note there are additional photographic materials for each case study in the annex.

The United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (hereafter the Special Rapporteur on adequate housing) has announced that her forthcoming report to the 2019 United Nations General Assembly will focus on the right to adequate housing for Indigenous Peoples.

Amnesty International welcomes the decision to focus on the rights of Indigenous peoples and has researched and campaigned on a number of situations which shed light on the issues (including inadequate housing conditions and forced evictions) outlined by the Special Rapporteur in her call for submissions. We present below four cases, two from Kenya and one each from Paraguay and Brazil. These cases show how evictions carried out without consultation and free, prior and informed consent of the affected Indigenous peoples, inadequate and culturally inappropriate compensation, the failure to ensure access to justice including appropriate remedies, and the failure to ensure adequate and culturally appropriate housing including the right to security of physical integrity and access to livelihoods, can impact on the rights of Indigenous peoples. This failure also impacts on the rights of Indigenous peoples to their ancestral lands, and to natural resources. The cases highlight the failure of States to respect Indigenous peoples' rights as well as to protect them from abuse by private individuals. The submission includes recommendations in each case for addressing the human rights violations described.

Indigenous peoples seek recognition of their rights as individuals and as peoples on their own terms, in accordance with their traditions. The UN Declaration on the Rights of Indigenous Peoples affirms the right of Indigenous Peoples to the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired, and requires that states give legal recognition and protection to these lands, territories and resources.<sup>1</sup> It is increasingly recognized that the relationship to land of Indigenous peoples is crucial to the realization of a wide range of rights.<sup>2</sup> Traditional ways of living off the land are central to providing food, medicine and housing to Indigenous families and peoples, and to maintaining the practices that nourish their spiritual and social lives. The UN Declaration states: "Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired."<sup>3</sup> and that "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."<sup>4</sup> The Declaration requires states to "consult and cooperate in good faith with the Indigenous Peoples concerned, through their own representative institutions, in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."<sup>5</sup> Various international human rights bodies have also recognized the central importance of Indigenous peoples' relationship with their lands for the realization of their other human

<sup>1</sup> UN Declaration on the Rights of Indigenous Peoples, UN GA Res 61/295, Article 26:

[http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

<sup>2</sup> for example, UN Committee on the Elimination of Racial Discrimination, General Recommendation XXIII (51) concerning indigenous peoples, UN Doc. A/52/18, annex V, 1997, <http://www.refworld.org/docid/45c30c767.html>; and Case of the Mayagna (Sumo) Community of Awas Tingni v. Nicaragua, InterAmerican Court of Human Rights, 31 August 2001, Series C, No. 79, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_79\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf)

<sup>3</sup> UN Declaration on the Rights of Indigenous Peoples. See also CERD, General Comment No. 23: Indigenous Peoples, 18 August 1997, para. 5 where the Committee called on state parties 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"

<sup>4</sup> UN Declaration on the Rights of Indigenous Peoples, Article 10

<sup>5</sup> UN Declaration on the Rights of Indigenous Peoples, Article 32

rights and affirmed the obligation of states to consult in order to obtain the free and informed consent of Indigenous Peoples before making any decision relating to their rights and interests.<sup>6</sup>

## SENGWER PEOPLE OF KENYA

The Sengwer Indigenous people live in Embobut Forest, in the Cherangany Hills, in the North Rift Valley of Kenya. While they have experienced evictions since colonial times,<sup>7</sup> the scale and frequency of evictions have increased significantly since the 1980s, and in particular since January 2014, after a significantly flawed consultation exercise resulted in a decision by government to forcibly evict them, citing the need to conserve the forest. The Sengwer challenged the eviction in court and obtained an injunction which ordered a stop to evictions while the case was being considered. The case remains before the courts, and the injunction has been periodically renewed; however, the forced evictions have continued. Since January 2014, based on community reports, an estimated 2531 houses have been burnt by the Kenya Forest Service (KFS), a government agency under the Ministry of Environment and Forestry. This wave of forced evictions has resulted in rendering over 4,400 people homeless.

On 15 January 2018, three UN Special Rapporteurs called on the European Union to suspend funding for WaTER, a water source conservation and climate change mitigation project run by the Ministry of Environment and Forestry which includes Embobut Forest, saying: "We are concerned that the project is being undertaken without a human rights impact assessment... Consultations have not been held with the Sengwer to seek their free, prior and informed consent".<sup>8</sup> On 16 January 2018, community representatives reported that KFS guards shot and killed Robert Kirotych Kibor and seriously injured David Kosgei Kiptilkesi in Embobut forest during an eviction exercise. On 17 January, the European Union announced the suspension of funding for the WaTER project in light of concerns about human rights violations in Embobut forest. On 18 January, a government spokesman announced an investigation into the killing of Robert Kirotych. To date, no prosecutions have been announced.<sup>9</sup>

An interim report of the government task force, which carried out the consultation with Embobut Forest residents, recommended the provision of alternative land to which the residents could settle collectively.<sup>10</sup> Sengwer representatives were willing to consider moving to alternative land. However, after proposing land that was culturally inappropriate and unable to support the traditional livelihoods of the Sengwer, the government reversed this decision and imposed individual cash compensation. 2,874 people received payments of KES 400,000 (USD 4,585 in 2014); 78% of the beneficiaries were men.<sup>11</sup>

Cash compensation has resulted in the dispersal of many members of the community, who are thus unable to maintain their traditions and language.<sup>12</sup> In addition, community representatives stated that significant numbers of Sengwer did not receive compensation, due to inadequacies in the registration process. They also alleged that some members of the task force that was set-up to resolve issues around the eviction of the Sengwer and compensation demanded bribes that many were unable to pay. Community members also stated that the amount allocated to each household was not sufficient to buy alternative land.<sup>13</sup> Amnesty International interviewed 39 Sengwer who had been forcibly evicted and had not received compensation; the organization witnessed the living conditions of many of these, which in some cases were extremely inadequate (see photos in annex). One woman was living in a one-room former potato store on the edge of the forest, with her mother and her six children. There were no beds, the family had to sleep on potato sacks, and had to endure flooding in the house when it rained.<sup>14</sup> Another woman interviewed by the organization, also living in a converted potato store, with four family members, has had to move six times since leaving the forest, because she was unable to pay the rent.<sup>15</sup> A number of community members interviewed,

<sup>6</sup> CERD, General Comment No. 23: Indigenous Peoples, 18 August 1997, para. 5 where the Committee called on state parties 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"; CESCR, General Comment No. 21: Right of everyone to take part in cultural life (Article 15. 1 (a)), para. 36.

<sup>7</sup> P.M. Shilaro, 'Colonial Land Policies: the Kenya Land Commission and the Kakamega Gold Rush, 1932-4', in W.R. Ochieng, ed., *Historical Studies and Social Change in Western Kenya: Essays in Memory of Professor Gideon S. Were*, East African Educational Publishers, Nairobi, 2002.

<sup>8</sup> Office of the High Commissioner for Human Rights: 'Indigenous rights must be respected during Kenya climate change project, say UN experts', 15 January 2018

<sup>9</sup> Amnesty International, 'Families Torn Apart: Forced Eviction of Indigenous People in Embobut Forest, Kenya', May 2018, AFR 32/8340/2018, pp 5-10; UN Office of the High Commissioner for Human Rights, 'Indigenous rights must be respected during Kenya climate change project, say UN experts', 15 January 2018.

<sup>10</sup> Marakwet East District, 'Embobut Forest Task Force Report', 2010.

<sup>11</sup> 'Families Torn Apart', p 7; Ministry of Devolution and Planning, "Cash Payments – Embobut Forest Evictees", 3 March 2014.

<sup>12</sup> 'Families Torn Apart', p 56.

<sup>13</sup> 'Families Torn Apart', p 36.

<sup>14</sup> 'Families Torn Apart', p 50.

<sup>15</sup> 'Families Torn Apart', p 51.

reported that they were unable to engage in traditional activities such as bee-keeping, and collecting medicinal herbs, and that their children were forgetting the Sengwer language.<sup>16</sup> The evictions have not only resulted in the loss of their ancestral lands and homes but have also had an impact on traditional practices. Due to the evictions, traditional doctors practicing herbal medicines, called *chepsakitia*, are unable to access the forest to find medicinal plants; women who would call on the services of a *chepsakitia* to help with childbirth told Amnesty International that they often cannot find one close enough because of the dispersal of the community over a wide area.<sup>17</sup>

Many Sengwer, however, are continuing to live in Embobut Forest, defying the evictions. Amnesty International interviewed one Sengwer man who was living with his wife and nine of their 12 children in four tree trunks in the forest.<sup>18</sup> Because their houses are repeatedly burnt by Kenya Forest Service guards, they build temporary makeshift structures (see photos in annex).<sup>19</sup> Some families were living separately, the father living in the forest looking after livestock, and the mother with the children living outside the forest.

## OGIEK PEOPLE OF KENYA

The Mau Forest is the ancestral home of the Ogiek Indigenous people, and a place of great significance for their cultural, spiritual and religious identity. The state and private companies have viewed the forest as an economic resource; however, evictions have also been driven, in particular more recently, by a stated intention to conserve the forest.<sup>20</sup> The history of the Ogiek's evictions stem back to the years of British colonial administration in Kenya (1895-1963), during which time the colonial authorities repeatedly evicted the Ogiek people.<sup>21</sup> Notable episodes occurred in 1920 (North Narok), 1936 (Kipkurere), 1941 (Saino/Kiptororo), mid-1950s (Kipkurere, Koibatek, Sorget, Saino/Kiptororo), and 1961 (North Narok).<sup>22</sup> During Independence, evictions took place in 1963 (Sururu), 1970 (Tinet), 1971-75 (Western Mau), 1977 (Olenguruone), 1982-88 (Tindiret Forest), 1986 (Kipkurere and Ol Pusimoru), 1988 (Koibatek), 1991 (Kipsangany), 1992 (Lari, Eastern Mau), 2005 (Maasai Mau), 2006 (Serengonik).<sup>23</sup> Most evictions are ordered by the District Commissioner (a local government official) and carried out by the Kenya Forest Service, but in some cases Ogiek were driven out by other communities who settled on their land.<sup>24</sup> Most recently, in 2009 the Kenya Forest Service issued an eviction notice of 30 days for the Ogiek from an area that according to the government was part of a reserved water catchment zone on government land.<sup>25</sup> These evictions were temporarily suspended due to advocacy campaigns carried out by the Ogiek and NGOs. Today the state has failed to take adequate measures to rectify the fact that the Ogiek people are still discriminated against and many have either already been forcibly evicted, or continue to be susceptible to evictions (see photos in annex).

Housing conditions of the Ogiek who were evicted in 2009, or in earlier evictions, remain inadequate and are a violation of their right to an adequate standard of living. Ogiek have been forced into temporary forms of shelter in desolate areas, away from their ancestral lands and livelihoods, which lead to violations of other rights, for example the right to practice cultural rituals and ceremonies.<sup>26</sup> The government of Kenya failed to provide any alternative housing to the Ogiek who were affected by the 2009 evictions. As a result, the Ogiek have had on occasion to seek shelter in the homes of people living outside the forest. Vulnerable members (particularly the elderly and children) have been exposed to diseases such as malaria, sleeping disease and chicken pox, which, in some cases, have resulted in deaths.<sup>27</sup>

The Ogiek of Ol Pusimoru were given no alternative shelter after their evictions in April 1986, and had to take cover in the bush. Grace Chepkemoi Lemisi, an Ogiek of Ol Pusimoru, recalls that women, men, and children spent the night after the eviction of 1986, in the rain, without food or blankets.<sup>28</sup> After the evictions of March 2006 in Ngatipkong, Ogiek people were left homeless and had to sleep beneath trees for shelter, outside their burned village. The Ogiek Peoples' Development Program, a non-governmental organization which campaigns for the rights of the Ogiek,

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<sup>16</sup> 'Families Torn Apart', p 56.

<sup>17</sup> 'Families Torn Apart', p 53.

<sup>18</sup> 'Families Torn Apart', p 8.

<sup>19</sup> 'Families Torn Apart', p 16.

<sup>20</sup> Judgment in African Commission on Human and Peoples' Rights v. Republic of Kenya (Application no. 006/2012), African Court on Human and Peoples' Rights, 2017, p 37 (available at <http://bit.ly/2silSZX>, accessed 11 June 2019).

<sup>21</sup> Minority Rights Group International, *Complainant's Submissions on the Merits*, In *The African Court On Human & Peoples' Rights Communication No. 006/2012, African Commission On Human And Peoples' Rights v Republic Of Kenya*, 2015, available at: <https://minorityrights.org/wp-content/uploads/2015/03/Final-MRG-merits-submissions-pdf.pdf> [accessed 7 June 2019], p 62.

<sup>22</sup> Minority Rights Group International, *Complainant's Submissions on the Merits*, pp 63-69.

<sup>23</sup> Minority Rights Group International, *Complainant's Submissions on the Merits*, pp 82-112.

<sup>24</sup> Minority Rights Group International, *Complainant's Submissions on the Merits*, p 105.

<sup>25</sup> Minority Rights Group International, *Complainant's Submissions on the Merits*, p 81.

<sup>26</sup> Minority Rights Group International, *Complainant's Submissions on the Merits*, p 15.

<sup>27</sup> Minority Rights Group International, *Complainant's Submissions on the Merits*, p 66.

<sup>28</sup> Minority Rights Group International, *Complainant's Submissions on the Merits*, p 96.

estimates that more than 85% of Ogiek houses are without essential services e.g. toilets and running water (roughly 99% do not have running water). People who have been subjected to evictions have been forced to live along the roadside, forest edges or to squat on other people's farms without access to adequate housing, water, medical services or education, for example during the 1986 evictions in Northern Tinderet (the Ogiek of Kipkurere, Northern Tinderet, were evicted without notice and forced to live in a small village, Ngatipkong. They were not compensated for the eviction. The community petitioned the District Commissioner of Uasin Gishu County for redress, and a settlement scheme was introduced, but came to nothing).<sup>29</sup>

In the Maasai Mau, in 2005, after an eviction order was issued, the Ogiek community obtained an injunction from the Nairobi High Court restraining the local council from "harassing, intimidating, threatening, provoking, inciting, detaining, arresting, trespassing into, demolishing and burning" their property.<sup>30</sup>

Ogiek homes have been destroyed during the process of forced evictions. In August 1981, forest wardens bearing guns forcibly evicted Ogiek from Kipsangany (now living along the roadside in Serengonik), destroying their homes with power saws and fire.<sup>31</sup> In June and August 2005, armed forest rangers burnt houses in the Ogiek areas of Maasai Mau, including six primary schools and several churches.<sup>32</sup> A community member reported that, during the mid-1950s eviction of Ogiek of Kipkurere, Koibatek and Sorget, "[i]n the process of the eviction, we were scattered and some of us died. We had to survive on the trek from the milk of animals. We were moving with the children and sleeping in the cold. I lost my brother-in-law. While the rest were en route to Olunguruone, he died."<sup>33</sup> The destruction of Ogiek homes are an on-going violation. According to Minority Rights Group, in early 2016 "...the Ogiek of Ngongongeri area in Nakuru county have recently been subjected to the destruction of their homes, and violence – including one killing – by individuals, who appear to be protected by the local police. Members of the Ogiek community have also been arrested and the Executive Director of Ogiek Peoples' Development Programme has been questioned by police and intimidated. These actions are in clear contravention of the Provisional Measures Order" (given by the African Court on Human and Peoples' Rights in March 2013 in the case of the African Commission on Human and Peoples' Rights v. Kenya, ordering the government to reinstate restrictions on land transactions put in place to safeguard the rights of the Ogiek community).<sup>34</sup>

In 2016, The Special Rapporteur on the rights of Indigenous Peoples expressed concerns about allegations of land grabber violence by unidentified persons against the indigenous Ogiek in the Ngongongeri area in Nakuru county.<sup>35</sup> The allegations concerned the burning and demolition of homes, intimidation of Indigenous persons, the forced eviction of 500 people and the killing of a community elder, in contravention of the Provisional Measures Order.<sup>36</sup>

Taking place over the 13<sup>th</sup>-14<sup>th</sup> of September 2018, incidents of cattle rustling and torching of houses by unidentified persons were documented by human rights monitors collecting data for the Ogiek Peoples' Development Program in the areas of Nessuit, Mariashoni, Sururu and Mauche, home to mainly Ogiek communities.<sup>37</sup> This follows reports by Minority Rights Group that evictions, harassment and intimidation of Ogiek continued, including a violent eviction of approximately 1,000 Ogiek and police intimidation.<sup>38</sup> In September 2018, the Ogiek Peoples' Development Program reported that unidentified persons forcibly evicted Ogiek members from 131 houses, which were torched.<sup>39</sup>

In 2016, a letter sent to the President of Kenya by the International Network for Economic, Social and Cultural Rights reported that "... 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,

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<sup>29</sup> Minority Rights Group International, *Complainant's Submissions on the Merits*, p 82.

<sup>30</sup> Minority Rights Group International, *Complainant's Submissions on the Merits* (Annex 42, Order of Ransley J, 2.6.2005 in Kalyaso Farmers Cooperative Society and others v County Council of Narok 664 of 2005)

<sup>31</sup> Minority Rights Group International, *Complainant's Submissions on the Merits* (Affidavit of Samuel Kipkorir Sungura)

<sup>32</sup> Minority Rights Group International, *Complainant's Submissions on the Merits* (Affidavit of Kimetto Mapelu)

<sup>33</sup> Minority Rights Group International, *Complainant's Submissions on the Merits* (Statement given by Tapkili Chepkirui of Koibatek), p 68.

<sup>34</sup> Glenn Payot, 'MRG Calls The Attention Of The UN Human Rights Council On Minorities In Yemen And Ogiek In Kenya - Minority Rights Group' (Minority Rights Group, 2016) <<https://minorityrights.org/advocacy-statements/mrg-calls-the-attention-of-the-un-human-rights-council-on-minorities-in-yemen-and-ogiek-in-kenya/>> accessed 22 May 2019.

<sup>35</sup> Letter, Mandate of the Special Rapporteur on the rights of indigenous peoples, to the Permanent Mission of the Republic of Kenya to the U.N. Office in Geneva, Switzerland (UA KEN 2/2016), 4 May 2016 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=16640>)

<sup>36</sup> African Court on Human and Peoples' Rights, Order of Provisional Measures, 15 March 2013, in the case of African Commission on Human and Peoples' Rights v. Republic of Kenya (Application no. 006/2012) < [http://en.african-court.org/images/Cases/Orders/006-2012-ORDER\\_of\\_Provisional\\_Measures- African\\_Union\\_v. Kenya.pdf](http://en.african-court.org/images/Cases/Orders/006-2012-ORDER_of_Provisional_Measures- African_Union_v. Kenya.pdf)> accessed 8 June 2019.

<sup>37</sup> Data collected between 15-30 September 2018.

<sup>38</sup> Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples* (Kenya : Hunter-gatherers), January 2018, available at: <https://www.refworld.org/docid/49749cf84a.html> [accessed 22 May 2019]

<sup>39</sup> Ogiek Peoples' Development Program, 2018 Housing Report

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.”<sup>40</sup>

In May 2017, in a case brought by Ogiek Peoples’ Development Program, Minority Rights Group International and Centre for Minority Rights Development, the African Court on Human and Peoples’ Rights ruled that, by forcibly evicting the Ogiek, Kenya violated their rights to property, natural resources, development, religion and culture.<sup>41</sup>

## YAKYE AXA COMMUNITY OF PARAGUAY

The Yakye Axa community in Paraguay is part of the Enxet-Lengua Indigenous people. They have been fighting for their traditional lands since at least the 1980s, their land having been occupied by a private land owner who ran an agricultural estate there. Initially, the members of the community worked as poorly paid employees on the land. Many left, however, when conditions for the community worsened.<sup>42</sup> Without access to their land, the Yakye Axa were unable to sustain their traditional activities such as hunting, fishing and gathering honey, or their cultural and spiritual practices, which are vital to their way of life. In 2005, the Inter-American Court of Human Rights ruled that Paraguay had violated the rights of the Yakye Axa and ordered the return of their ancestral land within three years. In similar cases in Paraguay, the Court ruled in favour of the Sawhoyamaya Indigenous community in 2006 and the Xákmok Kásek in 2010. The Yakye Axa, with the support of national and international civil society organizations, including Amnesty International, have campaigned extensively for the full implementation of the Court’s orders. Despite some positive developments, Paraguay has yet to fully comply with the Court’s ruling.<sup>43</sup> In January 2012, an agreement between the Paraguayan authorities and a landowner in the country’s central region opened the door for the Yakye Axa to move to 12,000 hectares of land within the ancestral territory of the Enxet ethnic group in the Chaco region. However, by early 2014 the community was still living in temporary homes on a narrow strip of land beside a busy highway, with limited access to basic services, because access to their land had not yet been cleared. The government has committed to building an all-weather road, but this has still not been done. The community has lived there for more than 20 years.<sup>44</sup>

In the 2005 Inter-American Court case, a witness testified that ‘In 2004, the children were only vaccinated once. The physician who visits the Community does not take the medicine they require. Since the Community settled alongside the route, three children have died due to lack of medical care. The children died from vomiting with diarrhea or with sore throats. Those children were buried alongside the road. When a member of the Community dies, there is no option other than burying their remains in someone else’s pasture, “because they are not from that place.”’ Due to the location of the community by a busy highway, two children have been killed by speeding motor vehicles.<sup>45</sup> Starting in 1993 the community began legal proceedings before the *Instituto Paraguayo del Indígena* (Paraguayan Institute of the Indigenous Person) and the *Instituto de Bienestar Rural* (Institute for Rural Well-being) to reclaim their land. In 2005, they won a landmark judgment at the Inter-American Court of Human Rights, requiring the government to return their land.<sup>46</sup>

The Bajo Chaco region, and in particular in Presidente Hayes Department, where the Yakye Axa are living, is prone to flooding each year from around the middle of March. This year has seen very serious flooding.<sup>47</sup> The land on which the community has been living by the side of the highway has very poor draining, and as of March 2019, was flooded (see photos in annex). The flooding has affected the community’s latrines and fields, where crops are grown, causing a lack of food and health risks. On 18 March 2019, this situation led to a state of emergency being declared in Presidente Hayes Department; however it took a week for food aid to reach the community, and this aid was reportedly nutritionally inadequate.<sup>48</sup>

In its judgment of 2005, the Inter-American Court ordered that “as long as the Community remains landless, given its special state of vulnerability and the impossibility of resorting to its traditional subsistence mechanisms, the State

<sup>40</sup> ESCR-Net, ‘Kenya: Stop Forced Evictions Of The Ogiek Communities’ (2016) <<https://www.escr-net.org/news/2016/kenya-stop-forced-evictions-ogiek-communities>> accessed 22 May 2019.

<sup>41</sup> See footnote 19.

<sup>42</sup> Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs, Judgment of June 17, 2005. Series C No. 125, p 16.

<sup>43</sup> Amnesty International, “We’re only asking for what is ours”: *Indigenous Peoples in Paraguay* (Index: AFR 45/005/2009).

<sup>44</sup> UN Human Rights Committee, Fourth periodic report submitted by Paraguay under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2017, CCPR/C/PRY/4, p 35; Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz (Addendum - The situation of indigenous peoples in Paraguay), A/HRC/30/41/Add.1, 2015, p 10; Amnesty International, Paraguay: Submission to the United Nations Human Rights Committee for the 107th Session of the Human Rights Committee (11-28 March 2013) (Index: AMR 45/001/2013).

<sup>45</sup> Yakye Axa Indigenous Community v. Paraguay, p 17.

<sup>46</sup> Yakye Axa Indigenous Community v. Paraguay, pp 18-19.

<sup>47</sup> CEJIL, Tierra Viva, letter to the Inter-American Court of Human Rights, “Ref.: Caso Comunidad Indígena Yakye Axa del pueblo Enxet. Situación de emergencia y cumplimiento de reparaciones”, 28 March 2019.

<sup>48</sup> CEJIL, Tierra Viva, letter to the Inter-American Court of Human Rights.

must supply, immediately and on a regular basis, sufficient drinking water for consumption and personal hygiene of the members of the Community; it must provide regular medical care and appropriate medicine to protect the health of all persons, especially children, the elderly and pregnant women, including medicine and adequate treatment for worming of all members of the Community; it must supply food in quantities, variety and quality that are sufficient for the members of the Community to have the minimum conditions for a decent life; it must provide latrines or any other type of appropriate toilets for effective and healthy management of the biological waste of the Community; and it must supply sufficient bilingual material for appropriate education of the students at the school in the current settlement of the Community."<sup>49</sup>

The human rights advocacy NGOs CEJIL and Tierra Viva have reported a number of failings in compliance with this order: non-delivery of two water tanks (promised during a visit in November 2017 by the Inter-American Court); lack of a functioning vehicle for transporting medication and persons needing medical assistance; lack of infrastructure providing medical dispensary services; over-flowing latrines due to flooding; irregular and insufficient provision of food aid (the kits that the community does receive are not appropriate to their diet); while a temporary school building was provided by the state, it did not contain furniture, including desks and a whiteboard (these were eventually provided by civil society); part of a fund for community development, which was intended to develop their ancestral lands when access becomes possible, has been used to improve living conditions in their current location, given the difficulty of their situation there.<sup>50</sup>

## INDIGENOUS PEOPLES IN NORTHERN BRAZIL

In April 2019, Amnesty International interviewed 23 Indigenous people in three territories in northern Brazil: Karipuna and Uru-Eu-Wau-Wau in Rondônia state, and Arara in Pará state, regarding illegal seizures of their ancestral lands.<sup>51</sup>

Indigenous peoples from all three territories told Amnesty International that illegal intruders had recently cut new paths into the forest near their villages and roads. In some territories they also described frequently hearing sounds of tractors and chainsaws inside the territories. In all three sites, Indigenous leaders have repeatedly denounced recent illegal land seizures and logging to government authorities. However there have been only limited responses from government authorities, and illegal land seizures and logging have continued. An intrusion by some 40 illegal intruders into Uru-Eu-Wau-Wau territory in January 2019 resulted in a government surveillance operation in the area a few days later in which one person was arrested and later released. A much larger intrusion into Uru-Eu-Wau-Wau territory followed, in April 2019, estimated to involve many hundreds of illegal intruders. A government surveillance operation led to two people being arrested a week after the April intrusion.

Members of the Arara Indigenous people told Amnesty International in December 2018 illegal intruders began opening new paths into their territory from along the highway and marking plots of land with their names. The plots were separated by a few hundred metres. Confronted by agents of the National Indian Foundation (FUNAI) in an operation in late December 2018, they reportedly told the agents that the President of Brazil, Jair Bolsonaro, will authorize the sub-division of the land and logging.

After reports made by FUNAI, in January 2019 agents of the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) and Federal Police (Polícia Federal) flew over the Arara territory and identified three new sites of deforestation. Another attempt of illegal land seizure was identified in a more remote location of the territory in February 2019. At that time, Arara people submitted a letter to the Public Prosecutor's Office denouncing the invasions and requesting government support to avoid a conflict. According to Arara people and authorities, illegal land seizure has been temporarily halted by government intervention, while illegal logging remains a problem.

The government's response to these illegal land seizures and logging remains inadequate. The surveillance of Indigenous territories depends in large part on coordination among different governmental bodies. FUNAI lacks police powers and relies on the support from other institutions, such as IBAMA and the Federal Police. Experts told Amnesty International that surveillance operations have been reduced because of budget constraints over recent months.

Between January and April 2019, the Federal Public Prosecutor's office (Ministério Público Federal) sent at least four letters to the Ministries of Justice and Women, Family and Human Rights – the Ministry responsible for FUNAI since

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<sup>49</sup> Yakye Axa Indigenous Community v. Paraguay, p 99.

<sup>50</sup> CEJIL, Tierra Viva, letter to the Inter-American Court of Human Rights.

<sup>51</sup> Amnesty International, '[Brazil: Risk of bloodshed in the Amazon unless government protects Indigenous peoples from illegal land seizures and logging](#)', 7 May 2019, and '[Photo gallery: Risk of bloodshed in the Brazilian Amazon](#)', 8 May 2019.

January 2019 – describing a deterioration of the security situation in the Karipuna and Uru-Eu-Wau-Wau territories and warning of a risk of conflict. The office requested the immediate support from the National Security Force (Força Nacional) while authorities develop a long-term protection plan for the territories. To date, the Ministries of Justice and Women, Family and Human Rights have not coordinated with the National Security Force to protect the Karipuna and Uru-Eu-Wau-Wau territories and the long-term protection plan remains unresolved.

According to the UN Committee on Economic, Social and Cultural Rights, “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity [...] An adequate house must contain certain facilities essential for health, security, comfort and nutrition”.<sup>52</sup> These incidents have led to a situation of insecurity for the communities, denial of access to parts of their traditional lands and have also impacted on their ability to provide for their nutrition needs: A 22-year-old Uru-Eu-Wau-Wau woman described how she felt in the days after the intrusion in January 2019: “When I heard about the invasion, I was scared because it is very close to the village. I had never seen one so close. I was afraid they would come here. I couldn’t sleep anymore. There were gunshots during the night for several nights. I was scared. I put the children to sleep, but I couldn’t sleep.” Members of the Karipuna community reported that the presence of intruders, even during the rainy season, coupled with death threats they have received, limit their activities such as hunting and collection of cashews. They fear the risk of conflict as illegal intruders get even closer.

All three Indigenous territories have been demarcated and titled, under the process of land titling mandated by the 1988 Constitution. Other ancestral territories of Indigenous peoples in Brazil have less formal legal security, either being at an intermediate stage of demarcation and titling, or not having begun the process. The illegal land seizures which have resulted in denying Indigenous people access to all or part of their traditional land are effectively forced evictions.<sup>53</sup> It is the duty of the state to ensure that the rights of Indigenous peoples to their ancestral lands are respected, protected and fulfilled. Structural and budgetary changes to FUNAI are likely to mean that the agency will no longer have the capacity to monitor land invasions on Indigenous territories.<sup>54</sup> Responsibility for the process of demarcation of Indigenous lands has been taken from FUNAI and handed to the Ministry of Agriculture, in a move described by critics as creating a conflict of interest, given this ministry’s mandate to promote commercial agriculture.<sup>55</sup>

## RECOMMENDATIONS

Amnesty International presents the following recommendations to the Special Rapporteur for consideration to be included in the upcoming report on access to justice in the context of the right to adequate housing:

- States must ensure, when implementing measures to conserve forests, water sources and other fragile ecosystems, that Indigenous peoples who live in those ecosystems are fully consulted, their free, prior and informed consent is obtained, and they are able to participate fully in the management and conservation of those ecosystems, in a way that does not negatively impact on their right to culture, identity or adequate and culturally appropriate housing;
- Ensure that all conservation and climate change mitigation and adaptation measures and projects, including those funded through international cooperation, do not result in human rights violations including the rights of Indigenous peoples;
- When proposing initiatives that affect the lands of Indigenous peoples, including the resettlement of those peoples from their lands, states must carry out comprehensive social, economic and human rights impact assessments, before proceeding, and share the results with affected communities in a form that is accessible to them sufficiently in advance of consultations;
- Consultations regarding such initiatives must take place in accordance with international standards, ensuring the effective participation of all sections of the community concerned, and guaranteeing that their free, prior and informed consent is obtained, including for all proposals relating to alternative land or other forms of compensation;
- In resettlement cases where communities need access to alternative land for livelihoods, states should avoid financial compensation;

<sup>52</sup> General comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant), paras 7 and 8(b).

<sup>53</sup> General comment No. 7: The right to adequate housing: forced evictions (art 11(1) of the Covenant) para 3

<sup>54</sup> Japan Times, ‘Bolsonaro’s first order of business: Strip FUNAI agency of right to decide Brazil’s native lands’, 3 January 2019.

<sup>55</sup> Mongabay, ‘Bolsonaro hands over indigenous land demarcation to agriculture ministry’, 2 January 2019.

- States must ensure that communities who are subject to resettlement processes or other processes that affect their right to land or adequate housing, have access to effective and transparent legal remedies;
- States must fully implement, with the least possible delay, judgments of national courts and international judicial and quasi-judicial bodies which require respect for Indigenous peoples' rights to land and adequate housing;
- States must protect Indigenous peoples from encroachment on their land of third parties;
- States must ensure that Indigenous peoples have access to land and housing that provides for their security, nutrition, education, health and livelihoods needs;
- States should implement Article 27 of the UN Declaration on the Rights of Indigenous Peoples, which requires that "States shall establish and implement, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process."



# ANNEX: PHOTOGRAPHIC MATERIAL

## SENGWER, KENYA



A traditional Sengwer hut in Embobut Forest © Amnesty International



A makeshift dwelling in Embobut forest, December 2016 © Elias Kimaiyo

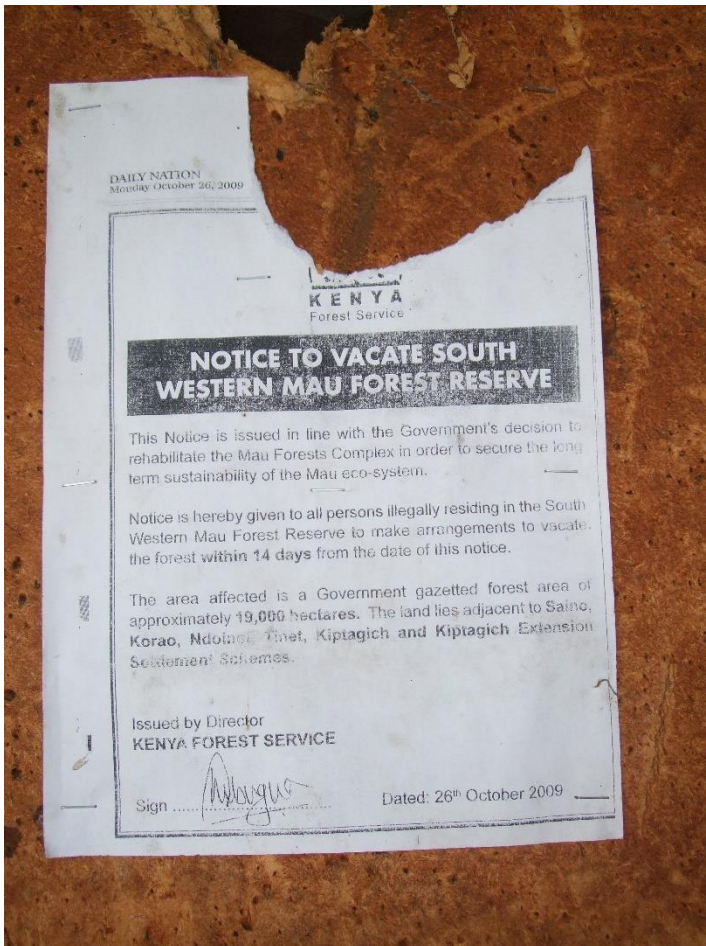


Former potato store, now housing evicted Sengwer family of 5, outside forest, 2017. © Amnesty International

## OGIEK, KENYA



An Ogiek family's house inside the Mau Forest Complex. Police officers and civilians allegedly destroyed it during evictions of Ogiek from the forest. © Ogiek Peoples' Development Program



Eviction Notice, Mau Forest, 2009 © Minority Rights Group International

## INDIGENOUS PEOPLES OF THE AMAZON, BRAZIL



A sign from Brazil's National Indian Foundation (FUNAI) declaring the Uru-Eu-Wau-Wau territory (in Rondônia state, Brazil) "Protected Land" was shot following an intrusion in January 2019. © Gabriel Uchida



Illegally logged timber in Uru-Eu-Wau-Wau territory in Rondônia state, Brazil, 2019. © Gabriel Uchida



An Indigenous man observes cattle near Uru-Eu-Wau-Wau territory in Rondônia state, Brazil, 2019. Cattle ranching is one of the major drivers of deforestation in Brazil's Amazon. © Gabriel Uchida



A boundary of Uru-Eu-Wau-Wau territory in Rondônia state, Brazil. The legal recognition of Indigenous territories can play a protective role against deforestation. © Gabriel Uchida

## YAKYE AXA, PARAGUAY



*Photos: Yakya Axa community after floods, March 2019 © CEJIL / Tierra Viva*