



6TH SESSION OF THE INTERNATIONAL TRIBUNAL ON EVICTIONS

Venice, Italy, 28-30 September 2017

Verdict and Recommendations:

Case of Wildlife Conservation evictions

Laikipia County, Kenya

Verdict

The Jury of the 6th Session of the International Tribunal on Evictions (ITE), held in Venice, Italy from 28 to 30 September 2017, listened to the testimonies and reports of inhabitants, communities and international networks about the case of Laikipia County, Kenya.

The case highlights historical inequalities resulting from the colonial period and the subsequent failure of the Kenyan government to address these in favour of those who were dispossessed under the ¹ colonial regime. In Laikipia County, much of the land is owned by non-Kenyan individuals and is utilised for activities that only benefit the Kenyan peoples indirectly.

The Kenyan government has aggressively protected the commercial tourist interests of a few property owners through military violence against herders, belonging to the Maasai people who historically lived on the land, while activists in the community and other Kenyans speaking out on their behalf have been murdered, arrested or intimidated.

The Jury has examined evidence that, on the case of Laikipia County, tourism development, under the "wildlife conservation" banner, prioritises profits over the well-being of local communities, leading to clear violations of both national laws and International Covenants on human rights that have been ratified by Kenya. Analysis of the case shows that the loss of local residents' shelter, housing and land, as well as loss of access to resources upon which their livelihood depends upon, triggers additional human rights violations.

Furthermore, the Jury advises that the threats, attacks and murders, carried out by private militias run by ranch owners², as well as the criminal prosecutions of human rights advocates and defenders, constitute violations of human rights legally recognized, since human rights defenders also contribute through their work to the fulfilment of Covenant rights.

The 6th Session of International Tribunal on Evictions therefore issues the following specific Recommendations grounded on the legal regulations that establishes specific obligations that local and national governments of Kenya have to respect, to protect and to fulfil.

The ITE is committed to implementing these Recommendations, through the mobilisation of social organisations and international networks, involving the UN system, and carrying out monitoring in October 2018.

¹International Crisis Group (July 2017) Violence, Land, and the Upcoming Vote in Kenya's Laikipia Region <https://www.crisisgroup.org/africa/horn-africa/kenya/violence-land-and-upcoming-vote-kenyas-laikipia-region>

² Sebastian Mwanza, (2017) The untold story of the conflict in Laikipia, Kenya <http://www.animals24-7.org/2017/03/17/the-untold-story-of-the-conflict-in-laikipia-kenya/>

Recommendations to National and Local Authorities

GENERAL FRAMEWORK OF LEGAL REFERENCE TO BE RESPECTED, PROTECTED AND FULFILLED

We urge the Kenyan authorities respect the Constitution of Kenya 2010 especially:

- Art. 19. (1) The Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. (2) The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.
- Art. 24. (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including (a) the nature of the right or fundamental freedom; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
- Art. 25. Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited (a) freedom from torture and cruel, inhuman or degrading treatment or punishment; (b) freedom from slavery or servitude; (c) the right to a fair trial;
- Art. 27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
- Art. 29. Every person has the right to freedom and security of the person, which includes the right not to be—(a) subjected to any form of violence from either public or private sources; (b) subjected to torture in any manner, whether physical or psychological; (c) subjected to corporal punishment; or (d) treated or punished in a cruel, inhuman or degrading manner.
- Art. 31. Every person has the right to privacy, which includes the right not to have (a) their possessions seized;
- Art. 60. (1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles— (a) equitable access to land; (b) security of land rights; (c) sustainable and productive management of land resources; (d) transparent and cost effective administration of land; (e) sound conservation and protection of ecologically sensitive areas;
- Art. 61. (1) All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.

We urge national and local authorities to respect, protect and fulfil the Human Rights framework of the International Covenant on Economic, Social and Cultural Rights, ratified by Kenya on 1 May 1972, including the General Comments and Statements of the UN Committee on Economic, Social and Cultural Rights especially,

- No. 24 (2017) (on State obligations in the context of business activities): The Committee (para. 12) stressed "The obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights. This may occur for instance when forced evictions are ordered in the context of investment projects. Indigenous peoples' cultural values and rights associated with their ancestral lands are particularly at risk. States parties and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired."
- Statement E/C.12/2016/2 (2016) (on Human rights defenders and economic, social and cultural rights) (para. 6): "The Committee reminds States parties of their responsibility to ensure that human rights defenders are effectively protected against any and all forms of abuse, violence and reprisal that they might experience while carrying out their work to promote the realization of those rights." Therefore we urge the national and local authorities to take all measures necessary to protect human rights advocates and their work, refraining from resorting to criminal prosecution to hinder their work, or from otherwise obstructing their work.

Furthermore we urge Kenyan authorities to respect the United Nations Declaration on the Rights of Indigenous Peoples which states that:

- Art. 8. 2 (b) "States shall provide effective mechanisms for prevention of, and redress for, ... any action which has the aim or effect of dispossessing them of their lands, territories or resources."
- Art. 10 : "Indigenous peoples shall not be forcibly removed from their lands or territories..."
- Art. 26:
"1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. 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.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned."

Kenya is also a signatory to the African Charter on Human and Peoples' Rights which acknowledges the duty of national governments to "achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence."

We therefore call upon the Kenyan government to reaffirm its commitment to upholding the rights of Kenya's indigenous peoples, ahead of private, commercial and foreign interests and implement it.

Concrete measures to be implemented

We urge the national Government of Kenya and the local government of Laikipia County

1. To suspend all military activities in the area immediately and to end the violence against, surveillance, intimidation and harassment of the local population, human rights defenders and activists, civil society, and journalists;
2. To refrain from taking any steps to evict the people who have returned to their lands, and from preventing the people from returning to their lands;
3. The establishment of a dialogue process that engages all parties, especially the representatives of Maasai people, to work constructively towards an equitable resolution of the issue respectful of all human rights;
4. To compensate fairly the communities for the losses they experienced through the destruction of their houses, belonging and crops, by being forcibly evicted and cut off from their sources of livelihood, income and food, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups.
5. To establish an independent Truth Commission in order to investigate the threats, attacks and murders, carried out by private militias run by ranch owners, as well as the criminal prosecutions of human rights advocates and defenders, to be punished by the Tribunal.
6. To keep communities informed regarding regional development plans, such as tourism development zones, respecting their right to information and allow for their meaningful participation and consultation in the process of developing and implementation such regional strategies.

Recommendations to local and international civil social organisations and social movements

Local organisations should continue to work together in solidarity and strengthen their efforts through the creation of a network of local organizations and social movements:

1. To support the struggles of the affected community and to provide legal and social assistance to human rights defenders at risk;
2. To utilize the various provisions in the Constitution of Kenya 2010 like Art. 22 and Art. 23 which allows any Kenyan to institute Public Interest Litigation in court to contest abuse of rights of communities
3. To prepare two semi-annual reports on the implementation of Recommendations;

4. To organize an activity, together with the International Tribunal on Evictions, on the occasion of the World Zero Evictions Days on October 2018.
 - International organizations should work together with local organizations to amplify local voices in international fora and institutions.
 - Environmental organizations and local organisations, together with their international networks, should open a true dialogue in order to consider that the human rights of communities established in the territories are a priority, and not endorse an alleged conservatism behind which the interests of the tourism industry are hidden.

Recommendations to Tourism Business and Investors

1. To recognise the historical dynamics of the situation and support attempts to resolve past inequities;
2. To engage in socially responsible tourism that elevates people to a central position rather than as extras in a performance for the benefit of rich foreigners;
3. We expect national and international tourism businesses to take the necessary due diligence measures in order to avoid human rights violations through their direct and indirect business activity along the supply chain in line with the UN CESCR General comment N. 24 (2017) and UN Guiding Principles on Business and Human Rights;
4. Tour operators must be alerted to the conflict situation in Laikipia county, and pay special attention to the vulnerability of local communities and their land rights in their human right impact assessments. They must ensure that the hotels and resorts are not built on illegally acquired land and that the local population has access to land and resources, such as water, food, and respect human rights, including labour rights, throughout all business activities and the entire supply chain;
5. Investors must make sure that prior to the construction of hotels and tourism infrastructure the local population is consulted on an equal footing, has given its approval and that a binding agreement has been negotiated with the affected parties concerning mutual obligations.
6. We call upon tourists visiting the area to avoid those sites in Laikipia County that violate the human rights of the local communities.

Mechanism

The International Tribunal on Evictions reiterates that the International Covenants, in particular the ICESCR, have pre-eminence over other regulations, and the General Comments are authoritative interpretations. Therefore, all institutions in Kenya are obliged to respect, protect, promote and guarantee these rights for the entire population.

To this end, the International Tribunal of Evictions will send these Recommendations to:

- The County Government of Laikipia
- The County Assembly of Laikipia
- The National Government of Kenya
- The East African Community
- The East African Legislative Assembly,
- The East African Court of Justice,
- The African Court of Human and Peoples Rights
- The African Union
- The UN Special Rapporteur on the Right to Adequate Housing
- The UN Special Rapporteur on the Rights of Indigenous Peoples
- The UN Special Rapporteur on the Situation of the Human Rights defenders

in order to take action and to monitor compliance with legal obligations.

The International Tribunal of Evictions invites all interested parties:

1. To immediately implement these Recommendations by establishing a Roundtable with the participation of all the institutions and representative social organizations To send a report concerning their application, before the 30/09/2018, in order to provide the elements necessary to monitor the relevant jurisdictions and ground all the actions needed.

The Jury of the International Tribunal of Evictions

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Venice, June 14th 2018