



The killing of Robert Kirotych, shooting of Elias Kimaiyo, and violent evictions of the Sengwer of Embobut

On April 2, 2017, Elias Kimaiyo was taking photographs of Kenya Forest Service (KFS) guards, documenting their activities as they burned the homes of his neighbors, indigenous Sengwer people in the Embobut Forest of Western Kenya. KFS guards spotted Kimaiyo and started chasing him and shooting. As he tried to run away through the steep Cherangany Hills, he fell and broke his kneecap. Catching up with him, one of the guards hit him with the butt of a rifle, breaking his right arm. When community members heard Elias calling out in agony they raised the alarm, shouting. The KFS guards ran away, taking Elias' cameras and evidence.

The Kenya Forest Service and its parent Ministry of Environment and Natural Resources embrace an explicit strategy of forced eviction of forest communities, under the pretext of protecting the forest from deforestation.¹ The Sengwer, however, are committed to conserving their lands and natural resources, and their rights to their forest homes are protected by law.² High profile investigations of KFS, on the other hand, have revealed that the agency has been profiting off of illegal logging, resulting in investigations and firings of several senior officials, including the agency's director.³

The KFS guards who shot at Elias were implementing a project called the Water Tower Protection and Climate Change Programme (WaTER), financed by the European Union's European Development Fund (EDF) since 2016.⁴ The WaTER project aims to help eradicate poverty through improved ecosystem management in two of Kenya's five main "water towers," the forested mountainous regions from which Kenya's water flows down to the rest of the country. The project goal is laudable, but implementation required proper protections to avoid fueling human rights abuses, as the experience of previous development finance projects made clear.

Between 2007 and 2013, after receiving US\$57 million from the World Bank to carry out a Natural Resources Management Project, KFS guards engaged in a series of

Natural Resource Management Program and Water Tower Protection and Climate Change Programme



Kenya

Forest

WB, EDF

attacks on the Sengwer, arresting community members, burning their homes and destroying their property.⁵ An investigation by the World Bank's independent accountability mechanism, the Inspection Panel, found that the Bank should have anticipated the risk of violent evictions given that eviction "was a main task of this Department of the KFS before, during, and after the conclusion of the [project]."⁶



Sengwer homes torched by KFS in January 2014.

FPP/SIPP



Sengwer families fleeing Embobut Forest to escape the threat of eviction.

FPP/SIPP



Armed KFS and police support entering Embobut Forest January 2014.

World Bank president Jim Yong Kim acknowledged the Bank's responsibility and met with Kenyan President Kenyatta in late 2014, as he had promised in his response to the Inspection Panel's report.⁷ In March 2015, the Bank, together with the Ministry of Environment, Water and Natural Resources, hosted a colloquium to bring forest communities and KFS together to try to find a solution, yet little progress was achieved.⁸ The EU was well aware of this history when it approved funding for WaTER.⁹

In late 2017, the violence by KFS escalated. On Christmas day, over 100 guards converged on the forest. On December 29th, they began burning homes, destroying families food stores and personal property, and stealing their livestock. KFS guards shot at community members, targeting elders and leaders who had spoken out. UN experts and Human rights groups around the world joined the Sengwer in condemning the attacks and called for the immediate suspension of EU funding.¹⁰ The EU Ambassador to Kenya later reported that he told KFS that *"the use of force by Kenya Forest Service guards in the Embobut Forest or elsewhere against innocent locals would lead the EU to suspend its financial support..."*¹¹

The evictions continued. On January 9th, 2018, Paul Kitum Elias (aka Kiptuga), chairman of the Sengwer council at Embobut was preparing to attend a meeting with Kenyan and EU officials to discuss the crisis, when a KFS official called him on his cell phone to ascertain whether he was at his home. A few hours later, ten KFS guards arrived. As Kiptuga ran, the guards began shooting, reportedly shouting *"Kill him, kill him, kill him!"*¹²

Then on January 16, 2018 while a group of Sengwer community members were tending their cattle, guards sprayed them with bullets. Robert Kiroitch, 41-year old father of seven was killed, and David Kiptilkesi was shot through the knee. Another Sengwer man was injured.¹³ On 17th January 2018, EU officials finally announced the suspension of funding to the WaTER project.¹⁴



David Kiptilkesi was shot in the knee by KFS guards January 2018.

"This is the beginning of a first step in our land rights struggles," Elias reflected. "If they had listened to us (and we have been crying for a long time), then this would not have happened, and the funds could have been used in a constructive way to help conservation and not used in a violent way for human rights violations. It seems to have taken Robert Kiroitch being sacrificed for these people to listen."

Endnotes

- 1 Although Article 32 of the 2016 Forest Conservation and Management Act states that “All community forests shall be vested in the community, subject to any rights of user in respect thereof, which by or under this Act or other written law, have been or are granted to any other person”, the 3rd schedule annexed to the Act lists all Forest Dwellers’ forests as ‘gazetted public forests’ which KFS has the mandate to control and exclude all forest dwellers from. However this is clearly counter to the Constitution, especially Article 63.2.d.ii, and forest dwellers are hoping to challenge this in court.
- 2 Article 63.2.d.ii of Kenya’s Constitution acknowledges the right of indigenous people to control and manage of their land. The Constitution of Kenya [Kenya], August 27, 2010, available at: <https://www.refworld.org/docid/4c8508822.html>.
- 3 Stephen Rutto, “Probe KFS officers for colluding with illegal loggers, Elgeyo Marakwet reps demand,” The Star, Kenya, February 28, 2018, https://www.the-star.co.ke/news/2018/02/28/probe-kfs-officers-for-colluding-with-illegal-loggers-elgeyo-marakwet_c1721420; Elias Yaa, “KFS warns of logging at Arabuko Sokoke,” The Star, Kenya, February 28, 2018, https://www.the-star.co.ke/news/2018/02/28/kfs-warns-of-logging-at-arabuko-sokoke_c1721426; Faith Nyamai, “KFS fires several forest officers linked to logging,” Daily Nation, February 28, 2018, <https://www.nation.co.ke/news/Forest-rangers-axed-war-on-logging/1056-4322198-bqjuhh/index.html>; Nicholas Komu, “Conservationists, saw millers in row over logging in Mt Kenya,” Daily Nation, January 23, 2018, <https://www.nation.co.ke/counties/nyeri/Row-logging-Mt-Kenya-Forest/1954190-4275060-jlp47c/index.html>; Otiato Guguyu, “Exclusive: Shock of forests that exist only on paper,” The Standard – Kenya, March 31, 2018, <https://www.standardmedia.co.ke/business/article/2001275098/taskforce-unearts-rot-in-forest-management>.
- 4 “EU suspends its support for Water Towers in view of reported human rights abuses,” European External Action Service, January 17, 2018 [Press Release], https://eeas.europa.eu/headquarters/headquarters-homepage/38343/eu-suspends-its-support-water-towers-view-reported-human-rights-abuses_en; Commission Decision on the Annual Action Programme 2013 in favour of Kenya to be financed from the 10th European Development Fund, European Commission, December 3, 2013, CRIS Ref: FED/2012/024-208, €31 million, https://ec.europa.eu/europeaid/sites/devco/files/aap-water-ideas-kenya-commission-decision-20131203_en.PDF; “Protecting and increasing forest cover in Kenya,” European External Action Service (EEAS), November 10, 2016, https://eeas.europa.eu/delegations/kenya/14465/protecting-and-increasing-forest-cover-kenya_en.
- 5 Natural Resource Management Project, Project No. P095050, International Development Association (IDA), Approved: March 27, 2007, <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=89>.
- 6 Investigation Report, Kenya Natural Resource Management Project, Executive Summary, para. 27, The World Bank Inspection Panel, May 22, 2014, [http://ewebapps.worldbank.org/apps/ip/PanelCases/84%20-%20Investigation%20Report%20\(English\).pdf](http://ewebapps.worldbank.org/apps/ip/PanelCases/84%20-%20Investigation%20Report%20(English).pdf).
- 7 “Joint Statement from World Bank Management and Inspection Panel,” The World Bank, October 2, 2014 [Press Release], <http://ewebapps.worldbank.org/apps/ip/Documents/Press%20Release%20Board%20Discussion%20India%20and%20Kenya%20Investigations%2010.2.14.pdf>.
- 8 “Conserving injustice: The unnecessary ongoing eviction and displacement of Sengwer communities in Embobut,” Forest Peoples Programme, December 14, 2015, <http://www.forestpeoples.org/en/topics/rights-land-natural-resources/news/2015/12/conserving-injustice-unnecessary-ongoing- eviction>.
- 9 The EU participated in the World Bank colloquium in 2015, and were fully aware of the issues and the impacts of the NRMP. For example, Hojordis Ogendo, Head of Social Affairs and Environment at that time (and still at the EU Delegation in Nairobi) was engaged in email exchanges and meetings on the issues and provided with relevant briefings on the matter by both Forest Peoples Programme and Katiba Institute.
- 10 Anne-Marie Schryer-Roy, “Call to respond to the threats to the Sengwer,” Forest Peoples Programme, January 4, 2018, <http://www.forestpeoples.org/en/rights-based-conservation-legal-human-rights/news-article/2018/call-respond-threats-sengwer>; Poppy Kohner, “Press: Indigenous rights must be respected during Kenya climate change project, say UN experts,” Forest Peoples Programme, January 15, 2018 [Press Release], <http://www.forestpeoples.org/en/press-release/2018/press-indigenous-rights-must-be-respected-during-kenya-climate-change-project>; “Indigenous rights must be respected during Kenya climate change project, say UN experts,” Office of the United Nations High Commissioner for Human Rights, January 15, 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22584&LangID=E>.
- 11 “EU suspends its support for Water Towers in view of reported human rights abuses,” European External Action Service, January 17, 2018 [Press Release], https://eeas.europa.eu/headquarters/headquarters-homepage/38343/eu-suspends-its-support-water-towers-view-reported-human-rights-abuses_en.
- 12 Kiptuga, 16th January 2018, Proof of Evidence, taken by Tom Lomax and Justin Kenrick, FPP, at Kitale, paragraph 28, on file with Forest Peoples Programme.

13 “Indigenous Sengwer man shot and killed by EU-funded guards,” Forest Peoples Programme, January 16, 2018, <http://www.forestpeoples.org/en/rights-based-conservation/press-release/2018/indigenous-sengwer-man-shot-and-killed-eu-funded>; Jonathan Watts, “Kenya forest death: activists blame EU for ignoring human rights warnings,” The Guardian, January 19, 2018, <https://www.theguardian.com/environment/2018/jan/19/kenya-forest-death-activists-blame-eu-for-ignoring-human-rights-warnings>; “EU suspends its support for Water Towers in view of reported human rights abuses,” European External Action Service, January 17, 2018 [Press Release], https://eeas.europa.eu/headquarters/headquarters-homepage/38343/eu-suspends-its-support-water-towers-view-reported-human-rights-abuses_en.

14 “EU suspends funding to Kenya government over indigenous human rights violations,” Forest Peoples Programme, January 17, 2018 [Press Release], <http://www.forestpeoples.org/en/rights-based-conservation/press-release/2018/eu-suspends-funding-kenya-government-over-indigenous>; “EU suspends its support for Water Towers in view of reported human rights abuses,” European External Action Service, January 17, 2018 [Press Release], https://eeas.europa.eu/headquarters/headquarters-homepage/38343/eu-suspends-its-support-water-towers-view-reported-human-rights-abuses_en.