

## Kenya's Castaways: The Ogiek and National Development Processes

By Nyang'ori Ohenjo

The Ogiek, who number around 20,000, are arguably the largest hunter-gatherer community in Kenya. They have identified themselves as an indigenous peoples, as defined in Article 1b of the International Labour Organization Convention No. 169.<sup>1</sup> The Ogiek have also engaged in indigenous peoples' fora within the United Nations (UN) and the African Commission on Human and Peoples' Rights in defence of their rights as indigenous peoples.

It seems likely that the Ogiek are aboriginal people of present-day East Africa and that originally they occupied the whole central highlands region. Nagol, an Ogiek elder recounts: 'Our forefathers told us that we occupied areas around forests in this country, before other tribes started coming in.'<sup>2</sup> This is supported by other sources: 'They are a hunting and gathering people of antiquity greater than the people among whom they now live...'<sup>3</sup>

Today, the Ogiek occupy the Mau Escarpment and Aberdare around the Rift Valley, as well as part of the Mt Elgon Forest in western Kenya. The clan (*Oret*), constituted by several local groups, is the land holding unit, and the most important unit socially. The Ogiek do not have centralized leadership institutions like chieftaincies or political councils.<sup>4</sup>

This report focuses on the displacement of the Ogiek people from their land, their underdevelopment and the threat to their culture. It also assesses the impact on the Ogiek of the loss of their land.

### Indigenous peoples' rights and development

*'These Dorobo [i.e. Ogiek] ... have been "driven like chaff before a wind of progression" ... we should now recommend a definite reserve for them.'*<sup>5</sup>

This conclusion of the Carter Land Commission<sup>6</sup> (1932–8) gives a picture of what the Ogiek have undergone over the years. The Commission recommended that the Ogiek be allocated land near communities with whom they had affinity, to enable assimilation. However, the Ogiek wanted development on their own terms. According to Kaliasoi Chesimet, an Ogiek elder in Tinnet: 'The newcomers came and ... cut down the forest for tea and flower farms... the Ogiek should be allowed to elect their own leaders and



Ogiek at court over a government eviction order Photo: Khalil Senosi/AP

choose their own way of life on their land.'

From colonial times onwards, Ogiek groups have been displaced from their ancestral lands without consultation, consent or compensation. They have been excluded from development plans and pushed onto land that is not suitable for their way of life. Joseph Towett sums it up: 'We are not only being dispossessed of our ancestral lands, our livelihoods are being killed. They say ... that we must develop: but tell me, where or what is this development?'<sup>7</sup> Human rights scholars have warned that development can be a catalyst for ethnocide.<sup>8</sup>

Culture is the fabric that holds the Ogiek together. According to Mrs Rael Kibilo from Tinnet forest: 'Before our forests were cut down, we had our culture and traditions ... anyone who is destroying our forest is destroying our culture.' Displacement from the forests that are their cultural and spiritual temples erodes Ogiek culture and violates international human rights standards, some of which Kenya is party to (e.g. Article 15 of the International Covenant on Economic Social and Cultural Rights, which Kenya has ratified).<sup>9</sup>

The Kenyan government controls Ogiek ancestral lands through three Acts of Parliament: the Government Lands Act (1970, revised 1986), the Forests Act (1957, revised 1964) and the Wildlife (Conservation and Management) Act (1977, revised 1985). Ogiek ancestral lands are gazetted as government forests or national game parks/reserves. The government is not required to consult the Ogiek with regard to development plans.

Logging has been a major cause of the destruction of the forests in Ogiek-inhabited areas, especially from the 1990s onwards.<sup>10</sup> Three giant logging companies – Pan African Paper Mills, Raiply Timber and its sister firm, Timsales Limited – are exempted from the general government ban on the grounds that Raiply and Timsales ‘employ over 30,000 Kenyans’, while the government itself has shares in Pan African Paper Mills.<sup>11</sup>

Ogiek land has also been lost through government excision. Such land has sometimes been allocated to politically influential individuals under the pretext of resettling squatters or environmental conservation.<sup>12</sup> Excisions have been ongoing since 1932 with 48,000 ha of forestland converted to settlements under the Forests Act between 1963 and 1971.

Development projects have also contributed to the loss of Ogiek lands, for example the establishment of Mt Elgon Game Reserve in western Kenya in the 1980s – which became Mt Elgon National Park in 1992.

Ogiek ancestral land has also been taken by private individuals under the existing land laws for cultivation of export crops such as tea, pyrethrum (a plant used to make insecticides) and flower farming. Pyrethrum cultivation is bad for the traditional Ogiek activity of honey production – also a viable foreign exchange earner – because the poisonous pyrethrin kills bees.

The UN Committee on Economic, Social and Cultural Rights stated that poverty arises when people have no access to resources because of who they are, what they believe or where they live.<sup>13</sup> This is clearly relevant to the Ogiek and explains why more than 95 per cent of the Ogiek are poor.

## The impact of loss of land

The result of the loss of ancestral lands among the Ogiek is poverty, illiteracy and poor health; women are more disadvantaged because they lack property ownership rights and thus tend to be poorer. This study established that more than 90 per cent of the Ogiek could barely afford one proper meal a day.<sup>14</sup>

The Ogiek, having lost their traditional occupations,<sup>15</sup> have been forced into cultivation farming. They lack cultivation skills and are exploited by middlemen when they seek to sell their produce.

One traditional Ogiek occupation, honey production, could provide communities with a sustainable income, especially if the honey was processed locally, instead of being sold raw to middlemen.<sup>16</sup> This would empower the community economically.<sup>17</sup> Currently, bee-keeping is compromised by charcoal burning as well as pyrethrum cultivation. Charcoal burning destroys the forest and the fumes from the burning kill the bees.

Poverty among the Ogiek has resulted in high levels of illiteracy (more than 80 per cent), since parents cannot afford the cost of education. Girls are most affected by this. Most girls marry very young. Recently, prostitution has emerged as many single-parent girls and women seek to



fend for themselves – leading to the spread of sexually transmitted diseases, including HIV/AIDS.

Primary schools in Ogiek areas are scattered and there is no single secondary school specifically serving Ogiek children. Those who pass their primary school examinations have to go to boarding schools far away. Dropout rates are very high, especially at the secondary school level.<sup>18</sup>

Locked out of their pharmacies (the forests), and without money to access health facilities, which are in any case inadequate (there is only one doctor for the 6,000 people living in Mau), the health standards of the Ogiek have plummeted. Kaliasoi Chesinet, an Ogiek elder from Tinnet in Nakuru District explains: ‘The forest ... is our hospital, where the herbs are.’

The combination of poverty and inability to access their traditional medicine has resulted in low life expectancy for Ogiek people of about 46 years. Five out of ten children die before the age of 5.

## Environmental concerns

The process of forest exploitation not only affects the Ogiek, it also spells disaster for Kenya as a whole. Kenya requires 10 per cent forest cover for regular water supply; today it has only 1.7 per cent. Kenya largely depends on waters that flow from a handful of wooded catchments, the Mau and Mt Elgon forested areas accounting for over 50 per cent of these.<sup>19</sup>

Today, indigenous peoples have been recognized as conservators of their environments by the international com-

munity.<sup>20</sup> ‘These communities are the repositories of vast accumulations of traditional knowledge... Their disappearance is a loss for a larger society which could learn a great deal from their traditional skills in sustainably managing very complex ecological systems’, noted the 1987 report, *Our Common Future* by the UN Committee on Environment and Development (the Brundtland Report).<sup>21</sup> By allowing unhindered logging and excision of forests, the Kenyan government transgresses the principles of sustainable development.

The continued use and management of the Mau, Aberdare and Mt Elgon ecosystems in Kenya by the Ogiek is of vital importance. Their traditional economic system has a very low impact on biological diversity. Says Kaliasoi Chesinet: ‘When we wanted an animal, we took just one, not all at once.’ Moreover, through a totem, each clan was allocated an animal to protect and no member of that clan would hunt that animal. Also, bee-keeping helped pollinate and regenerate the forests. Finally, with the forests acting as their pharmacies, the Ogiek knew better than to destroy them.

Indigenous knowledge of the ecosystems is learned and updated through observation, so removing the Ogiek from their ancestral land will break the generational cycle of learning. Gathering the wild fruits, berries, roots and herbal barks for food and medicines was the task of Ogiek women and children; the women transmitted their knowledge to the next generation. Maintaining the richness of traditional knowledge depends largely upon the Ogiek continuing to use their land as a classroom and laboratory.

## The Ogiek struggle

The response of the Ogiek to the violation of their land rights is well documented.<sup>22</sup> From the international to the local level, the Ogiek have fought further alienation of their lands, and attempted to regain ownership of the lost lands.

They have been represented by their organizations at forums like the World Summit on Sustainable Development in 2002, the World Conference Against Racism in 2001 and the UN Working Group on Indigenous Populations. Other NGOs and civil society organizations have argued their case at these forums, and at the UN Working Group on Minorities.

At the local level, the Ogiek struggle has focused on demonstrations, court cases and participation in the Land Reform and Constitution of Kenya Review Processes. The legal process has been frustrating. Cases have been deliberately delayed or have attracted hostile judgments. In a ruling of 15 March 2000, two High Court judges found that the Ogiek had renounced their ancient traditions and hence forfeited their land rights.

The Ogiek now believe that it is only through a proper constitutional dispensation that their rights can be protected. Commenting on the constitutional review process, Kilisha Lekwenan (102 years) called upon Kenyans to come up with a Constitution that will embrace unity in diversity. ‘This Constitution comes at the right time’, he said.

## Notes

- 1 Article 1(b) identifies indigenous peoples as: ‘People in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country ... at the time of conquest or colonisation ... and who ... retain some or all of their own social, economic, cultural and political institutions.’
- 2 All quotes from Ogiek people are from research by CEMIRIDE for the Minority Rights and Development Programme during 2002 and Survival International (V. Luling, interviews in Tinet, 2002).
- 3 See Yeoman, G., ‘High Altitude Forest Conservation in Relation to the Dorobo’, *Kenya Past and Present*, vol. 3, 1933.
- 4 See Ogot, B.A. (ed.) *Economic and Social History of East Africa*, Nairobi, Kenya Literature Bureau, 1976.
- 5 Dorobo is a derogatory name given to the Ogiek by Maasai. It means ‘very poor men’, as the Ogiek did not own any livestock.
- 6 The Carter Land Commission was set up in 1932 by the Secretary of State for Colonies, to consider the land requirements of the African population.
- 7 Joseph Towett is the Chairman of the Ogiek Welfare Council (OWC), a community-based NGO. Other Ogiek organizations are the Ogiek Integrated Rural Project, Ogiek Peoples’ Development Program, ODECECO and the Chepkitala Indigenous Peoples Trust.
- 8 See Stavenhagen, R., *The Ethnic Question*, Tokyo, United Nations University Press, 1990. He argues that ethnocide is a process in which a culturally distinct people loses its identity; it encompasses both economic and cultural dimensions which are embedded in the theories and practices of development and nation building.
- 9 Kenya has also ratified the International Covenant on Civil and Political Rights (see esp. Articles 1, 27); the International Convention on the Elimination of All Forms of Discrimination (see esp. Articles 1, 2); the Convention on the Rights of the Child (see esp. Article 30).
- 10 See [www.ogiek.org/report/ogiek](http://www.ogiek.org/report/ogiek), esp. Ch. 4.
- 11 See Astill, J., ‘Tribal trials’, *The Guardian* 13 March 2002, p. 8.
- 12 ‘Church queries state over forests’, *Sunday Nation*, 15 July 2001, [www.nationaudio.com](http://www.nationaudio.com).
- 13 UN Doc. E/C.12/2001/10; 10 May 2001, para. 11.
- 14 Minority Rights and Development Programme research by CEMIRIDE in 2002.
- 15 See *Traditional Occupations of Indigenous and Tribal Peoples: Emerging Trends*, Geneva, ILO, 2000, p. 80.
- 16 The Ogiek are known as ‘the honey-hunters of Kenya’. The Ogiek Peoples’ Development Project (OPDP) runs a small-scale bee-keeping project.
- 17 Government bee-keeping projects initiated in the 1970s in Busia and Luo Nyanza in western Kenya and in Ukambani in eastern Kenya failed. Unlike the Ogiek, however, these communities had no knowledge of bee-keeping.
- 18 Out of a population of about 20,000 people, the Ogiek community has fewer than five university graduates. Unemployment is common even among those who have gone to school, because their level of educational attainment is inferior to that of children from communities well-served with educational facilities.
- 19 The *Daily Nation* quoted UN consultants as saying that the forest excisions will negatively impact on the Aberdare circuit and the Mau Hills catchment areas. They warned that, ultimately, communities in Nyanza Province and the planned Sondu-Miriu hydroelectric power project would be affected. The targeted forests were Mau complex, Nakuru, Nabkoi, Mt Kenya, Marmanet, North Tinderet, Londiani, South Nandi, Molo and Kapsabet, a total of 167,000 ha (see *Daily Nation*, 10 March 2001, [www.nationaudio.com](http://www.nationaudio.com)).
- 20 The World Summit on Sustainable Development (2002) reaffirmed the vital role of indigenous peoples in ensuring sustainable development. The UNDP *Human Development Report* of 2000 reaffirms the link between cultural diversity and biological diversity.
- 21 World Commission on Environment and Development, *Our Common Future*, Oxford, Oxford University Press, 1987; [www.doc.mmu.ac.uk/eric/eae/Sustainability/Older/Brundtland\\_Report.html](http://www.doc.mmu.ac.uk/eric/eae/Sustainability/Older/Brundtland_Report.html)
- 22 See [www.ogiek.org/report](http://www.ogiek.org/report).

# working to secure the rights of minorities and indigenous peoples

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## Recommendations

### To the Kenyan government:

- The Kenyan government should ensure that a new Constitution is drafted and implemented as soon as possible. This Constitution should recognize the existence of indigenous peoples in Kenya, their right to have their identity protected and their right to possession of land, with full compensation if this right is interfered with.
- The Kenyan government should implement its international obligations that apply to indigenous peoples. In addition, it should ratify and implement ILO Convention 169 on Indigenous and Tribal Peoples.
- Consideration for the rights of indigenous peoples should be mainstreamed into all development policies and programmes. The Ogiek should be consulted about all future development that could affect them or their land.
- All exemptions from the logging ban in Ogiek-inhabited areas should be ended.
- The Kenyan government should establish disaggregated data on indigenous communities in Kenya in relation

to all socio-economic indicators, to ascertain the levels of development of these communities and establish their needs.

### To the international community:

- International community organizations (donors, development actors, international NGOs and UN agencies) working in Kenya should mainstream indigenous peoples' rights into their development activities when they work in areas inhabited by these communities. In particular, they should ensure that the Ogiek people are consulted before any activity is undertaken that could affect them.
- A particular focus should be made on the education of the Ogiek people, in particular women, to enable them to effectively advocate for their rights at the national, regional and international levels.
- The international community and the Kenyan government should set up an inquiry into past breaches of the rights of the Ogiek, particularly the seizure of their land. This inquiry should, within a reasonable time, publish its findings, including its recommended compensation and/or restitution for any breaches.

**Minority Rights and Development** is a research and advocacy programme, established by MRG and its partners, to address the development-related exclusion and marginalization of minority and indigenous communities, and to work towards the elimination of poverty.

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**CEMIRIDE** Dam Estate, Suite 132, off Langata Road, PO Box 14692, 00100 Nairobi **Tel** +254 2 500 521

**Fax** +254 2 248 214 **Email** [cemiride@hotmail.com](mailto:cemiride@hotmail.com)

**Website** [www.cemiride.org](http://www.cemiride.org)

**Minority Rights Group International** 379 Brixton Road, London SW9 7DE, UK **Tel** +44 (0)20 7978 9498

**Fax** +44 (0)20 7738 6265 **Email** [minority.rights@mrgmail.org](mailto:minority.rights@mrgmail.org)

**Website** [www.minorityrights.org](http://www.minorityrights.org)