

## The Statement

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Indigenous Issues (UNPFII)

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**New 'conservation' measures threaten Kenya's Ogiek tribe with eviction from their forest home despite African Court's Order, from Arusha**

### Introduction

The Ogiek are hunter-gatherers living in Mau Forest – some in the deep forest live purely by hunting and gathering. They have traditionally hunted such animals as antelope, gazelle, and birds which is now generally illegal under the current Kenya Wildlife Act.

Ever since colonial times there have been attempts to evict the Ogiek from their ancestral land, usually on the pretext that they are degrading the forest. In 1977 to date, frequent threats, evictions and displacement has been witnessed in ogiek ancestral territories. This has resulted to increased poverty, illiteracy leading to lost of hope.

But when the Ogiek are removed, their forest is not protected but rather exploited by logging and tea plantations – some owned by government officials.

This influx of illegal settlers has been so extreme in recent years that much of the Mau forest is severely degraded that has interfered with Ogiek traditional lifestyle.

### Delayed justice

Ogiek dispossession of their ancestral lands in the Mau Forest and Mt. Elgon's environs dates back to Colonial times. The colonial government sanctioned a series of efforts to dispossess them of their land, assimilate, and impoverish them through constant evictions and disruptions of their traditional lifestyle.

Over time, the Ogiek have resorted to the courts to attempt to stop the loss and degradation of their ancestral lands. Time and again the Ogiek have sought judicial assistance to stop illegal takings, government excisions of the protected areas of Mau forest, and irregular allocations of forest lands to non-Ogiek. Time and again the justice system has failed to grant the Ogiek relief or the Kenyan Government has ignored the court's rulings protecting the Ogiek's right to their lands.

As a result of the failure of the Kenyan courts to afford justice or even a full hearing for the Ogiek's claims, the community determined to move their search for justice to the

regional level. The community alleges violations of Articles 2 (right to non-discrimination), 4 (right to life), 8 (right to religion), 14 (right to property), 17 (right to culture), 21(right to free disposition of natural resources) and 22 (right to development) of the African Charter on Human and Peoples' Rights. The community submitted a communication to the African Commission on Human and Peoples' Rights in 2009. The African Commission determined that because the Ogiek had made every attempt to seek resolution of their claims in domestic court, but that the Kenyan judicial system had failed to offer any hearing or reasonable remedy for the Ogiek situation, the Ogiek could pursue their claims through the Commission.

Another barrier to realization of Indigenous Ogiek rights is United Nation Environmental Programmes (UNEP). UNEP funding have been more of restoration of forest cover than human rights promotion and protection. This has been detrimental to the Ogiek community as no effort of consultations including observation of free prior informed consent (FPIC) has been agreed upon in safeguarding the Mau Forest, as there is lack of Indigenous People policy paper to be discussed upon.

If the Ogiek are evicted from their forest home it could spell disaster for the forest and for the Ogiek, who will become 'Conservation refugees'.

### **OPDP Appeals**

UNPFII should move faster and emphasize that Kenya government should develop its own guidelines before evictions that salutes the UN declaration on the rights of IPs.

UNPFII to write to the African Court to determine the hearing of the Ogiek Vs Republic of Kenya case in the quickest way possible as land speculators are busy acquiring title from Ministries of land, which is court contempt.

UNPFII to write to UNEP Executive Director in Nairobi, in demand for respect to UNDRIP and urge for immediate development of UNEP Indigenous Peoples Policy paper that will safeguard the rights, interest and values of forest dwelling communities

UNPFII should urge the US Embassies around the world to be flexible in issuing the Visas to the indigenous people to attend global events in the US, especially the Embassy in Nairobi.

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