

## **ACCESS TO JUSTICE AMONG THE OGIEK PEOPLE OF KENYA**

### **Introduction**

Chairman ,

Thank you very much for the opportunity.

I am Daniel Mpoiko Kobei an indigenous person from the Ogiek community in Kenya with a population of about 30,000 people as per 2010 Ogiek people profiling draft report conducted by the Ogiek community. I also represent Ogiek Peoples' Development Program (OPDP) an organization dealing with Ogiek community issues and working with other like-minded organization across the globe.

I am indeed pleased and privileged to inform 6<sup>th</sup> session of EMRIP that I acknowledge the support accorded to me to participate by UN Voluntary Fund for Indigenous People and I wish to thank EMRIP for considering World Conference on Indigenous Peoples (WCIP) a substantive agenda in this session which follows the Alta outcome document of the global Indigenous preparatory conference in Alta, Norway. The four themes have specific recommendations that are intended to be included in the High Level Plenary Meeting (HLPM) to be held in New York. I presume therefore that EMRIP will enrich the Alta outcome document for inclusion to be part of HLPM/WCIP

The Ogiek people and other indigenous hunter-gatherer communities have a long history of resistance and struggle that has sustained their unity, identity and cultural distinction. Lately, however, more than at any other time in their history, the very existence of the Ogiek as a distinct people has come under concerted threat. The threat took the form of excision of large chunks of their ancestral land from our forest, displacement and evictions of Ogiek and finally settlement of purported squatters (land speculators) thereon in total disregard of our identity, culture and way of life.

Our concern is specifically on the fate of our indigenous minority people of the Mau Forest Complex in Kenya. We Ogiek have occupied this forest from time immemorial i.e over 200

years and are customarily entitled to it. To settle non-Ogiek who are well connected to the government has deprive us of our only ancestral land and home lead to our domination and marginalisation in areas of Eastern Mau, North Tinderet, Mt. Elgon, South Western Mau and Maasai Mau. In view of the grave ramifications that the intended forest excisions and illegal settlement of non-Ogiek will have for the Ogiek people, the community through the leadership Ogiek People Development Program (OPDP) has raised objection through local courts and later regional court at the African Court based in Arusha, Tanzania. The Court issued the injunction as an ORDER of Provisional Measures, African Union vs Kenya.

Ogiek people has added her voices to the local and international protests against land and natural resources historical injustices none of the past independent regimes have respected the Free Prior informed Consent (FPIC) and UNDRIP to shield the Ogiek community

#### **Ogiek Cases Locally and Regionally**

From field and observational survey, Ogiek people have identified the key problems affecting our justice system in Kenya include delays in the court systems, its accessibility and corruptions which is so systemic with collusion with some of land officials to deny Ogiek justice. In many ways, our courts are not functioning as efficiently and effectively as we would wish despite judicial reforms and this has an adverse impact on the delivery of justice, particularly in respect of the poor and vulnerable status in our society.

#### **Recommendations to EMRIP**

The Organisations feels that it's important for indigenous people rights, values and interest to be safeguarded through creation of experts on Legal Aid to advise on the many indigenous cases in both local and regional courts over land and natural resources to improve access to justice which will:

- i. Ensure that indigenous peoples as complainants have adequate representation to secure the right to a fair cases over their ancestral land and natural resources
- ii. Enable EMRIP to mobilise resources and support initiatives that provide adequate, appropriate, efficient and cost-effective mechanisms for resolving legal disputes, whether by action in the courts or otherwise by tribunal approach

- iii. Enable EMRIP to advise states parties and UN agencies to develop an efficient and cost - effective system of policy that support access to justice among indigenous minorities
- iv. Strengthening media systems for their role in highlighting indigenous peoples violations
- v. Support training of IP paralegal training, Human rights Monitors and establishment of Biocultural protocols to protect IPs land and Natural resources
- vi. Enable EMRIP and UN agencies to call upon Kenyan Government implement the Ndung'u commission report on illegal and irregular allocation of public/ community lands.
- vii. Enable EMRIP and UN agencies to call upon Kenyan Government to revoke and nullify all title deeds issued after the Mau forest Complex excision.
- viii. Enable EMRIP and UN agencies to call upon Kenyan Government to implement the Truth Justice and Reconciliation Commission report (TJRC, 2013) that has recommended tough measures on the individuals who acquired land illegally and also advises on avenues to address land historical injustices.
- ix. Enable EMRIP and UN agencies to call upon Kenyan Government to stop the intention of gazetting Mau forest blocks and issuing titles to Kenya Forest Services for its management. e.g. In Kipkurere forest

**In Conclusion,** Chairperson, EMRIP should play an important part in sharing best practices and lesson/information on how to access justice among the indigenous people in the world and in securing justice for all, especially in Kenya where the Constitution is being implemented. In this worth nothing that despite of Ogiek participation in Kenya electoral systems they were not considered in political representation in the Kenya's devolved government. I also look forward to the day UN Special Rapptour on Indigenous Issues and fundamental freedom to visit Kenya and assess the indigenous people situation

Thank you

Daniel M. Kobei

Executive Director, Ogiek Peoples Development Program (OPDP)

[dkobei@yahoo.com](mailto:dkobei@yahoo.com), [www.ogiekpeoples.org](http://www.ogiekpeoples.org) +254 722 433 757