EXTENSIVE DE-GAZETTEMENT OF FOREST LAND IN MAU AND ELSEWHERE BY THE COLONIAL GOVERNMENT AND THROUGHOUT POST-INDEPENDENCE GOVERNMENT REGIMES HAS CREATED A SERIES OF GENERATIONAL PROBLEMS FOR THIS MINORITY COMMUNITY.

Dispossession of their land has resulted in discrimination and marginalization of the community creating a cycle of intergenerational poverty. Displacement from their traditionally inhabited lands continues to affect their political, socio-cultural and economic way of life. With continuous evictions, the community has been scattered, their traditional lifestyle disrupted and they have been forced to alter their lifestyles in order to survive.

The absence of administrative legal recognition of Ogiek territorial land claims and rights as guaranteed by the new constitution and national land policy has left the community without legal protection and at the mercy of the dynamics of politics at the local and national levels. Also, the fact that the community has been left with differentiated and vulnerable land tenure systems, and the failure by the Kenyan government to provide a permanent solution to the land problems facing the community implies a general disregard of Ogiek rights and the continuation of human rights violations perpetuated by the Kenyan government.

INTRODUCTION

BACKGROUND AND CONTEXT

The Ogiek are an indigenous community of forest dwelling hunter-gatherers that inhabit different forest areas in Kenya, with the largest concentration of them scattered across the seven blocs of the Mau Forest Complex that is South West Mau, East Mau, Transmara, Mau Narok, Maasai Mau, Western Mau and Southern Mau. The total population of the Ogiek is estimated at 30,000 people.

The term ‘Ogiek’ literally means ‘the caretaker of all plants and wild animals’, and therefore they endeavor to preserve and safeguard the natural environment where they inhabit. They are the first inhabitants of the Mau Forest, holding land communally administered through a council of elders. The fact that the Ogiek live in forests partly explains the pressures they have been subjected to, not least because forests have since colonial times been perceived as inalienable government land. Even though they were in occupation of these lands before their gazettement as forests, and not withstanding that they were never consulted in that regard, once the forests were gazetted the Ogiek in effect became squatters on government land, and have been treated as such1.

1 Advocacy Brief Report; Strategies for Achieving Justice for the Ogiek of Mau Forest, 2012, p.4
This report, therefore, is a product of thorough analysis of the numerous HRMs reports collected for a one-and-a-half-year period, from January 2013 to July 2014. The report discusses the qualitative aspect of human rights violations discovered from the period of investigation.

From the analysis of the reports, the following rights issues featured greatly:

### AREA

**Narok County**
1. Nkaroni
2. Kuto
3. Sogoo
4. Endonyongiro
5. Olulunga

- Land dispossession and forceful evictions
- Limited access to justice by victims

**Nakuru County**
Mariashoni
1. Kapcholola
2. Kichagi

**Nessuit**
1. Ndoswa
2. Ngongongeri
3. Missipei

- Indiscriminate land grabbing
- Double allocation of land creating land disputes
- Forceful and unlawful evictions
- Limited access to justice by victims due to corruption
- Intimidation and unlawful arrest of human rights defenders

**Tinet**
- Land grabbing e.g. Kiptagich and Chemore farms

**Uasin Gishu County**
1. Kipkurere
2. Cerengonik

- Forceful evictions of Ogiek from their ancestral land.
- Socio-economic marginalization i.e. lack of access to social services such as schools and health facilities, denial of job opportunities.
- Sexual and Gender-Based violence against Ogiek women and girls. Cases of rape, incest, transactional sex, early marriages and domestic violence against women and girls.

### LAND RIGHTS VIOLATIONS

Land grabbing is endemic in all areas. Investigations conducted by Humans Rights Monitors revealed that the Ogiek are still pre disposed to the danger of losing their land and means of livelihood through coerced evictions and land grabbing perpetrated by corrupt leaders, powerful individuals and the government.

In Ngongongeri (Esingetit location), a large area of land within the territory of the Kapyecon Clan of the Ogiek community is under dispute. The land before demarcation was initially occupied by the indigenous Ogiek community and in particular Kapyecon and Kipkwonyo clans. However in the late 1990s, the land was subdivided, allocated and title deeds issued to wealthy individuals, influential members of the political elite, government officials and individuals from other
communities, with only a small number of Ogiek people being allocated land in the area.

The Ogiek continued to occupy the land oblivious of the transfer of ownership, and the illegal issuance of title deeds to non-Ogieks. Presently, with the land investments demand, most of the land grabbers are reclaiming ‘their land’ and are now seeking to evict the Ogiek from the land. With the powerful individuals working with law enforcement agencies, it has become almost impossible for some of the victims to depend on the police and the judiciary system for protection and justice.

Legally, the Ogiek from Narok North lack tenure security over the land they occupy in Sasimwani Forest. Constitutionally all forest land belongs to the Kenyan government. Ogiek from Sasimwani were evicted from the forest, which is their ancestral land in 1986 but they defied the orders and went back to their home. Since then, they have managed to settle in Sasimwani Forest as they continue to struggle to make successive governments recognize their way of life as a forest dwelling community. However the legal reality means that the government has the power to reclaim forest land, and evict the Ogiek from the forest at any given time. Presently, the community is faced with eviction threats, with the government claiming the eviction needs to happen for forest ‘preservation’.

Another challenge is that the Ogiek from Sasimwani are surrounded by the Maasai community who have greater political influence thanks to their numerical strength and closeness to the political establishment. Pressure for eviction is also coming from the majority Maasai community living outside the forest who claim that since they are not allowed to access the forest, the Ogiek who live inside the forest should also be evicted. In several occasions, they have confronted the Narok County Government with what they term as ‘unwillingness of the state to evict illegal settlers.’ In this competitive environment, the Ogiek are clearly at a disadvantage.

Another emerging problem has been the arbitrary arrest, attacks and intimidation of Ogiek land rights defenders especially in Narok, Nessuit and Mariashoni area. Land rights activists who have fearlessly responded to land grabbing and forceful evictions by staging public protests have and are still facing major security risks. Six human rights defenders have been arrested in the past six months with their cases pending in courts, and have been forced to respond to fabricated charges. They continue to receive death threats and some have been forced to go into hiding.

Some have narrowly escaped death after being attacked by unknown assailants. The human rights defenders are still at risk as the police and perpetrators of the violations continue with their efforts of silencing them. One of the human rights defender, Mr. James Rana has been in hiding for close to six months, being forced to flee his home after receiving death threats from land grabbers. Efforts to report the matter to the police have been futile since the police are conniving with the land grabbers.

**Socio-economic marginalization**

Displacement of communities often brings with it multiple violations of group rights, such as the rights to self-determination and development. For the Ogiek community, displacement and evictions continues to undermine and deny them their rights to health, education and participation in their economic and socio-cultural life as a community.

Displacement has destroyed the social organization of the community; it has affected the production and reproduction of culture as well as the construction of social identity. This is because the socio-cultural dimensions of life are influenced by the community’s relationship with land and the environment in which they inhabit. Ogiek people speak of the Mau Forest Complex as the location of their culture, history, ancestral burial sites, and spiritual temples. The shrubs, leaves, and trees found only within the Mau Forest Complex are considered sacred to the Ogiek and are a part of traditional spiritual practices.

The traditional economic system of hunting and gathering is being challenged by the adaptation of preservationist policies and laws. The Ogiek have been forced to adopt ‘more sustainable’ economic livelihoods systems such as arable cultivation and livestock keeping. Honey production, which is a primary traditional Ogiek
occupation that has historically been the basis of a sustainable income, depends entirely on the resources available in the Mau Forest Complex.

Further, those who have been evicted from the forest are not allowed to access the forest as a result the community is unable to maintain their traditional hunter-gatherer subsistence lifestyle. In Kipkurere and Londiani Forests, Tendeneo and Msaita area respectively, Ogiek are forced to pay some fees ranging from Kes 150-600 to collect firewood or medicinal herbs against customary use of their natural resources.

Those who have not been resettled since the 2006 and 2009 eviction exercise for instance the Ogiek from Cerengonik, are still living as internally displaced, bearing the brunt of the evictions to an even greater extent. Their property and their economic investments such as the beehives and farm crops were destroyed during the evictions, only serving to further marginalize the community.

The evictees live in deplorable conditions without proper housing and food. They are unable to access public services such as clean water supply and sanitation, health care and schools. 90% of the Ogiek children in this area do not attend school, a situation which threatens to create a generation of illiterate and uneducated children, men and women.

Women and children mostly girls do not enjoy the protection of the government, this coupled with the fragmentation of the community’s social and family support structures makes them vulnerable to acts of violence, including sexual and gender based violence. There have been an increased number of cases of sexual exploitation, abuse, domestic violence and early marriages amongst women and girls. This is highly attributed to unequal power relations brought about by socio-economic discrimination and poverty. Girls as young as twelve are impregnated. Cases of incest have also been reported, a situation that has been ascribed to the fact that families are being forced to share one temporary shelter.

**KEY PRIORITIES**

On this basis, the community’s priority areas as follows:

- Recognition of Ogiek peoples’ collective rights, in particular the right to land, territories and natural resources at the county and national level.
- Recognition and prioritization of the special conditions and needs of Ogiek women and children specifically, those who are internally displaced and the very marginalized.
- Recognition and respect of the community’s socio-cultural aspects on land, and protection of all these aspects.
- Provision of public services in areas of education and health to address social marginalization.

**RECOMMENDATIONS**

- Ogiek peoples’ identity and their collective rights to land should be recognized, respected and protected at national and local level.
- Exploring opportunities within the new Constitution for pursuit of Ogiek land and other claims. This involves the community employing strategies for better engagement with Constitutional commissions such as the National Land Commission and the National Gender and Equality commission in the pursuit of their claims. The Ogiek should also mobilize the national and county government to take on board their claims with a view of finding a lasting solution.
- Integrating Ogiek land claims into ongoing reform processes in particular those related to the development of the Community Land Bill and the Evictions and Resettlement Bill. This involves working closely with the Task force formulating the bills to ensure that they take on board issues of concern to the Ogiek.
- Promoting access to justice for victims of rights violations through legal empowerment and linking victims to legal aid.
- The national and county governments should address the structural causes of inequality of the minority Ogiek community.
- Specific strategies and pro-active measures, identified in consultation with the Ogiek community, should be implemented to address the vulnerable situation of displaced people as well as the needs of women, children and youth. Ogiek Participation is crucial to addressing these needs by the most efficient and effective means.