OGIEK PEOPLES DEVELOPMENT PROGRAM (OPDP)

Kesenta op Ogiek

Ogiek Community - Mau forest is Our Ancestral Home

Ogiek Memo to Hon. Members

BY OGIEK COMMUNITY

6/3/2009

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OGIEK MEMORANDUM

TO: HONOURABLE:

A) His Excellency the President Mwai Kibaki
B) Right Honorable, Prime Minister, Raila Odinga
C) National Assembly Speaker, Kenneth Marende
D) Grand Coalition’s Cabinet Ministers
E) Attorney General, Amos Wako
F) Honorable Members of the 10th Parliament

Our Ancestral Home has no value for compensation

Facts at Glance

Mau Forest Complex remains our home and there is no price or compensation which can please or appease our ancestors. It is in the interest of all us to protect our mother earth and moreso the remains of our great grandfathers and the generations to come. Exchanging it for compensation is calling a curse for us all.

This day is for Kenyans and the world at large to know that we are not about to leave our ancestral home. Mau is our home and we shall resist any move to get us out of our home. From time immemorial, we have coexisted with our forest. We love and adore our livelihood and therefore we are conservators of this forest. We did not come from any other district and those who came found us enjoying the blessings of fauna and flora i.e the trees and the animals thereof.

The taskforce which was set by the Rt.Hon.Raila Odinga, the Prime Minister of Republic of Kenya had strong terms of reference to take into consideration the interests of forest dwellers like Ogiek. It is unfortunate that the taskforce did not take the Ogiek issues into consideration. Threats have been looming in the air that all the people in Mau forest must leave for conservation to take place.

We love the forest hence we cannot be conduit of destruction. Those who destroyed the forest had other motives and for the Ogiek our agenda is known by all to be part...
and parcel of this great forest. We are determined to save Mau forest, since we are environmentalist by birth.

We hereby wish to let His Excellency President Mwai Kibaki and the Rt.Hon.Prime Minister Raila Odinga understand that as the Mau Forest inhabitants, and the descendants of our ancestors whose remains are laid to rest therein, we cannot leave them alone and unattended. Indisputably, their graves and bones are there. In a nutshell we wish to underscore the following:

1. Ogiek people welcome the conservation and restoration of Mau as one of Water Towers feeding Lake Victoria, Lake Nakuru, Lake Natron and their home too.
2. That Ogiek living in Mau have not destroyed the forest since they coexisted as an ecosystem with it from the time of yore.
3. That Ogiek home should be defined and boundaries set around the forest
4. We should be allowed to be co-managers with government so that our livelihood can be achieved i.e hunting and gathering, more especially honey harvesting in the forest.
5. That we are a minority community hence vulnerable to all sorts of threats from all angles. This is because we have no political representation in Parliament hence our issues are not understood or even acknowledged.
6. That our issues are distinct and unique hence we should not be taken on board with other communities who migrated to Mau for extra land for agriculture.
7. That Ogiek be allowed to participate in setting clear boundaries in Mau forest.
8. That Ogiek will resist any form of eviction for compensation since the ancestral land cannot be compensated. No one can value a birthright.
9. Removing or evicting Ogiek from their environment is a sure end of their existence hence they will be a forgotten community only to be read in the books of history. It means death to their culture, language and negative transformation of their livelihood.
10. That the Ogiek Community is not interested with compensation, neither do they seek an alternative land elsewhere apart from Mau. The recognition of Ogiek ancestral lands in greater Narok and greater Nakuru Districts within the Mau forest complex is paramount.

**OUR APPEAL**

We appeal to our government through you Member of Parliament to resist any attempt to evict Ogiek from their ancestral land. The Ogiek have a keen interest in traditional environmental knowledge which has helped them coexist with the forest over the years. With due respect to our fellow Kenyans who migrated to this great land for agricultural purposes to be compensated, which means the Ogiek people will occupy lesser area considering their population which is approximately less than 10,000 people means a larger part of Mau will be reforested.

The Ogiek people live in the following areas of Mau Forest Complex which forms their sole source of livelihood:

1) Marisbooni Location,
2) Nesuit location,
3) Saino,
4) Surury,
5) Kiptungo,
6) Sogoo Location,
7) Nkaroni,
8) Tinet,
9) Sasimwani,
10) Olpirik,
11) Nkareta; and
12) Olmekenya.

Land remains a focal point in Kenya's history. It was the basis upon which the struggle for independence was waged. It has traditionally dictated the pulse of our nationhood. It continues to command a pivotal position in the country's social, economic, political and legal relations. (Report of
the Commission of inquiry into the illegal/irregular allocation of public land (The Ndungu report, 2004, p.xvii). This makes all to note that the issue of land is so critical in our country today.

It is not just the Ogiek that seek to protect their interests. The international Community is very much alive to the perils facing the marginalized, moreso the Ogiek. For instance, having considered the reports submitted by state parties under Article 16 and 17 of the Covenant on Economic, Social and Cultural Rights during its 41st Session held in Geneva on 3rd – 12th November 2008, the Committee on Economic Social and Cultural Rights made the following observations, among others, on Kenya:

*The committee recommended that the State party (art.15) recognize the Nubians and Ogiek as distinct ethnic communities, as well as their right to the preservation, protection and development of their cultural heritage and identity (observation 35 on Kenya, 2008)*

International Covenant on Civil and Political Rights (ICCPR) which came into force 23rd March 1976 in accordance with Article 49, recognizes that rights are derived from the inherent dignity of the human person. Article 27 of the Covenant provides:

*In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their language.*

On the other hand, the Convention on Biological Diversity (CBD) in Article 8j states:
each contracting party shall, as far as possible and as appropriate: Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovation and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practises.

Ogiek people should be recognized and allowed to practice their culture within the Mau Forest complex. Evicting them from their ancestral land will certainly contravene Article 27 of the ICCPR as well as Article 8 j of the CBD. We earnestly appeal to our Kenyan government through its three arms to protect our dignity, cultural heritage and identity moreso as a vulnerable ethnic community.

The Ogiek community should be considered an asset in protection and preservation of the Mau Forest Complex. Its members will utilize their traditional knowledge in the management of this great natural resource. Our involvement in whichever action that is to be taken in Mau is so integral to us that it is desirable that there be free and prior informed consent before the Government can effect any form of relocation on the Ogiek.

Honorable members of Parliament, the agitation by the Ogiek community for the recognition and protection of their rights as a minority group is not a new issue. Other nations of the world have recognized not only land related issues but also government
representation of members of their minority groups. Some of the nations are:

a) Maori seats in New Zealand's Parliament - Recently the New Zealand government signed its biggest ever deal to settle Indigenous Maori grievances, agreeing to hand over nearly 420 Million (US$ 318 million) in forestry assets to seven tribes.

b) Hungarian National Minorities Representation in Parliament

c) Canada, Minorities Representation in protection of Amazon forest

d) U.S.A. Minorities are the largest in the municipal government

e) Australian Parliament, included aborigines representatives

f) Norway- the Saami People representation as Minorities.

We are not asking for Government representation, but our land, the land of our ancestors.
OGIEK ANCESTRAL LAND IN THE MAU FOREST COMPLEX

IS HOLISTIC TO THEIR SURVIVAL

This memorandum is, to a large extent, informed by the provisions of the International Labour Organization (ILO) Convention No. 169 of 1989 (herein after "the ILO Convention No. 169") and also by the deliberations of the Ogiek meeting held in April 8th 2009 at a Nakuru Hotel. The former is the foremost International policy instrument on indigenous and tribal peoples while the latter provided a domestic context for a detailed discussion of these issues. While it should be noted that Kenya is not a party to ILO Convention No. 169, the Convention reflects best contemporary practices on the issue of indigenous peoples’ rights, hence our reliance thereon. Articles 13 to 19 of the ILO Convention No.169 contain provisions regarding land rights. The basic provisions on land rights contained in the Convention is in Article 14, which requires that the rights of ownership and possession of peoples concerned to the land they traditionally occupy shall be recognized. This wording makes it clear that rights do exist whenever lands have been traditionally occupied. The article also requires governments to take steps to identify the lands that Indigenous Tribal Peoples traditionally occupy and guarantee effective ownership of their rights to ownership and possession. While the principle of non-retroactivity with respect to law should hold good, this constitution should create a Lands Claims Court to provide redress on claims arising from loss of territory, as shall be hereafter provided.

Apart from these, this memorandum is also informed by several other international standards, some of which Kenya is party to by way of having ratified them. These include, but are not limited to, the International Covenant on the Elimination of all Forms of Racial Discrimination (ICERD), the International Convention on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Prevention and Punishment of the Crime of Genocide, the UNESCO Convention Against Discrimination in Education, the UNESCO Declaration Against Race and Racial Prejudice, and the

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Working for a Just and Equitable society by Promoting Sustainable Livelihoods for Ogiek Community in Mau forest of Kenya.
Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities adopted by the UN General Assembly in December 1992, the Convention on Elimination of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (Article 27).

The Premises

The Mau Forest Conservation should recognize the fact that Kenyans generally, and Ogiek community in particular, have suffered historical injustices, for instance:
1. Human Rights abuses,
2. Forced Displacements from their ancestral lands,
3. Discrimination in many areas of their lives,
4. Exclusion in the decision-making process especially in the areas that directly affect their lives.

Nearly 45 years have passed since Kenya attained her independence and the minority Ogiek people still live like squatters in their own country yet historians believe that the Ogiek are the first inhabitants to modern day Kenya. The land seizure by the colonial powers in Africa and in Kenya particularly left the Ogiek landless following the findings of Lord Carter in 1933. The Carter Land Commission recommended to the Crown that the Ogiek were a savage, barbaric and a wandering tribe and hence deserved no reserve of their own. The Ogiek lost their land as a result of the Carter Land Commission.

In 1942, the Forest Act was enacted by the colonial powers which Act in itself criminalized the activities of the Ogiek being a hunter-gatherer community. Upon independence in 1963, the post colonial regimes carried over the Eurocentric views on Ogiek Land rights and did not address the Ogiek land question nor attempted to find a solution to the Ogiek land problem. The Local Authorities Act Chapter 265 was subsequently promulgated together with protected areas Act Chapter 204 Laws of Kenya which unilaterally extinguished the rights of the Ogiek to their ancestral lands in the vast Mau Forest. However the provisions of the Forest Act in particular
before it was amended as it stands now contravened the Constitution of Kenya as the Constitution provides for the right to life, liberty and livelihood.

**Honorables;**

The saga surrounding the Mau Forest and its destruction is monumental and cannot be attributed to a small indigenous community like the Ogiek. The Ogiek are renowned conservationists and would not destroy their own environment as in the case of the Mau. While the Ogiek of Narok live under the trust land of the Narok County Council, the Ogiek of Nakuru live under the so called protected areas or Government forest. During the Moi regime the Ogiek lost most of their land to settler communities and powerful interest in the government then. The Moi regime degazzetted huge chunks of lands in Mau East and West for political expediency. Land was given out in the name of Ogiek or victims of tribal clashes while the genuine beneficiaries were left out. It is now common knowledge that the holders of the irregularly issued titles are not the Ogieks.

It is thus fundamental to note that though individuals have moved in and settled in the Mau, the past regimes had a hand in the ongoing wanton destruction of the Mau Forest. The settlement of people in Sururu, Likia and Tinet is a good example of bad governance and mismanagement of resources. The Ogiek Community has resided in the forest since time immemorial. Why did the destruction of the Mau Forest commence after degazzetment and not before?

The situation facing the Ogiek living in Narok is that a few Group Ranches were reserved for the Ogiek boarding the Maasai Mau Forest. Enkaroni Group Ranch and Enkishomi Group Ranches are the only designated group ranches for the Ogiek in Narok. The said Group Ranches were fraudulently used by land grabbers and speculators to encroach on the Maasai Mau Forest without the due process of the law. Members of the said group ranches have no claim of what is not formally within their defined group ranches respectively. While thus mooting debates on the Mau Forest the issue of group ranches should be clearly delineated save where there are
issues on boundaries. Further, the Ogiek of Enoosupukia and Sasimwani in Narok district have no legal claim over their ancestral lands despite having lived there from time immemorial. They are said to be living in trust land of the Narok County Council. The principle of trust land as created in the Kenyan Constitution was that these lands are held in trust for the local people. The people of Sasimwani and Enoosupukia thus deserve by right, under the Constitution and the doctrine of adverse possession to be rightfully granted the legal rights to their territories they occupy.

**Honorable Members,**

The scenario in Nakuru is messy; most of Ogiek land in Nesuit, Kiptungo, Mariashoni, Likia, Sururu, Ndoinet and Tinet was expropriated to other communities. The Ogiek resisted the move of putting them in 5 acre plots while settler communities including Government personnel allocated themselves tracts of land. As a result the Ndung’u Commission established that public land in the Mau Forest was illegally allocated to individuals and thus should revert back to the government. The Ogiek went to court to seek for justice over their lands and to date nothing is forthcoming as there is no independent judicial system in Kenya. As a result the Ogiek cannot pursue economic and infrastructural developments in their ancestral lands as they have no legal assurance of ownership of the lands they occupy.

**Honorables,**

Nature can never be managed well unless people closest to it are involved in its management and a healthy relationship is established between nature, society and culture. Common natural resources were earlier regulated through diverse, decentralized community control systems, but the state’s policy of converting common property resources into Government property resources has put them in the service of the powerful today with no participation of the Ogiek people in the management of local resources. Even the poor have become so marginalized and
alienated from their environment that they are ready to discount their future and sell away the remaining natural resources for a pittance.

In the past, the Ogiek could live their lives by hunting, harvesting honey and eating wild fruits, but through legislation, the Local Government Act and the Forest Act Caps 265 and 204 respectively have incorporated forests, hills, valleys and all hunting grounds making it impossible for indigenous peoples to exercise their rights to their culture and the right to self determination as contained in the recently adopted Declaration on the Rights of Indigenous Peoples. It is in our view that any solution to the Mau forest lies with the people and the use and management of the natural resources. We have seen in the recent past how conflicts on land and resource use can ruin a country. The perpetual denial of the Ogiek to their ancestral land is not only discriminating but a ticking time bomb.

If the government has to achieve vision 2030, then the people of Kenya including minorities must be on equal footing in both social and economic pedestals. We all agree that the Mau Forest crisis is not only a local issue but have far much international implications in this era of global warming. The effect on wildlife in the Mara ecosystem is far reaching and only negates the spirit of achieving the millennium development goals and vision 2030.

The grand coalition government therefore must take urgent measures in collaboration with communities and stakeholders to address the issue surrounding the Mau Forest: that is land, resources and more importantly the Ogiek people's rights to their lands within the larger Mau.

In the past 15 years, conservationists have made more concerted efforts to develop principles and guidelines designed to reconcile Indigenous Peoples Rights with conservation initiatives. The Convention on Biological Diversity (CBD) imposes obligations on governments to respect, preserve and maintain indigenous people's knowledge, innovations and practices and to protect and encourage their customary use of natural resources. At the same time major advances in international law have more clearly defined the
rights of Indigenous Peoples and these advances have been consolidated in the recently adopted UN Declaration on the Rights of Indigenous Peoples.

It is now possible to point to international human rights committees which interpret them and state with confidence that international law now recognizes the Rights of Indigenous Peoples to self-determination, in no case to be deprived of their means to subsistence, own, develop, control and use their communal lands, territories and resources, traditionally owned or otherwise occupied by them, the free enjoyment of their own culture and to maintain their traditional way of life, free and informed consent prior to activities on their lands, represent themselves through their own institutions, exercise their customary law and finally restitution of their lands and compensation for losses induced.

RECOMMENDATIONS

In order to effectively address the issue of the Mau and the Ogiek, the Ogiek people recommend inter alia:

1. The establishment of an ad hoc Mau Forest Commission divorced from the Kenya Forest Service and the Government as it has contributed heavily in Mau Forest destruction;

2. The marking of Group Ranches' original boundaries against those of the Trust lands under the Narok County Council;

3. That the Ogiek Community are not interested with compensation, neither does any alternative land elsewhere apart from Mau suit them. The recognition of Ogiek ancestral lands in Narok and Nakuru within the Mau forest complex is key to addressing the issue.

4. Constitutional review with focus on the rights of minorities on land and representation.
5. Comprehensive Land Reform Policy should encourage Communal land ownership and embrace the tradition.


7. A declaration that the Ogiek have rights to their ancestral lands in the Mau Forest complex.

8. A confirmation from the Government that the Ogiek shall not be evicted, re-located or displaced from their ancestral lands in the Mau.

As a leader who embraces change we believe in, it is our hope that you shall take it upon your good leadership qualities to sort out the Mau Forest saga and the Ogiek land question once and for all.

God bless you.

**Endorsed by:** and on behalf of the following Ogiek Community leaders in Mau Forest Complex

[Signature]

Daniel Mpoiko Kobei

Executive Director

Ogiek Peoples Development Program (OPDP)
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