

## Case study 3

# Kenya

### The Ogiek in Mau Forest

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## 1 Introduction

The Mau Forest complex is the largest remaining near-contiguous bloc of montane indigenous forest in East Africa. It covers an approximate area of 350,000 ha and is situated about 170 km north-west of Nairobi and stretches west bordering Kericho District, Narok District to the south, Nakuru to the north and Bomet to the south-west. The forest is divided into seven blocs comprising South-West Mau (Tinet), East Mau, Ol'donyo Purro, Transmara, Maasai Mau, Western Mau and Southern Mau. These seven blocs merge to form the larger Mau Forest complex. Of all the forest blocs, only the Maasai Mau is not gazetted. The Ogiek community, who are the last remaining forest dwellers, are scattered all over the seven forest blocs.

## 2 Mau Forest – area in conflict

East Mau Forest is situated about 30 km south of Nakuru. Stretching westwards, it covers the eight forest stations of Sururu, Likia, Teret, Nessuit, Elburgon, Mariashoni, Kiptunga and Bararget. It borders Naivasha Division to the east, Narok District to the south and covers the Divisions of Mauche, Mau-Narok, Njoro, Elburgon, and Kiringet to the west. It has an area of approximately 900 km<sup>2</sup> and of the seven blocs, it has the highest number of dwellers – the Ogiek community – who number about 6,000.<sup>1</sup>

The forest lies 1,200–2,600 m above sea level with an annual rainfall of about 2,000 mm spread throughout the year. The forest regulates the stream flow, thus helping to control flooding and maintain water catchment areas, and drains into Lakes Nakuru, Bogoria, Baringo and Victoria. The forest is also home to endangered mammals like the yellow-backed duiker (*Cephalophus sylvicultor*) and the African golden cat (*Felis aurata*). There are numerous animals, like the giant forest hog, gazelle, buffalo, leopard, hyena, antelope, monkey and small animals like the giant African genet, tree hyrax, honey badger, etc.

The vegetation cover varies from shrubs to thick impenetrable bamboo forest. There are big numbers of indigenous trees like cedar (*Juniperus procera*), African olive (*Olea africana*), *Dombeya spp.* and plantations of exotic trees like cypress (*Cupressus lusitanica*), pine (*Pinus patula* and *Pinus radiata*), *Grevillea robusta* and *Eucalyptus spp.* which are regularly planted by the Forest Department mainly for revenue purposes.

The East Mau Forest leads in timber production from the harvest of exotic trees in Kenya. Approximately 150 sawmills are situated adjacent to the forest in addition to about 200 illegal tractor-mounted saw-benches all over the forest. The forest was declared Crown Land in the 1930s and made a Natural Reserve in the 1940s. It was officially gazetted in 1954 as a Forest Reserve under the Forest Act (CAP

385). Employees who were previously working for the Forest Department were all allowed to stay inside the forest with provision of housing and social services by the Department. However, on retirement the employees were repatriated back to their original homeland, except the Ogiek. The original intention of the colonial government for declaring East Mau a forest was to create a buffer zone between the Nature Reserves (the Maasai who had cattle) and their own areas of residence, the 'White Highlands', to avoid their cattle coming into contact with the Maasai cattle.

### 3 Brief history of the Ogiek community

The Ogiek people are the last remaining forest dwellers and the most marginalised of all indigenous peoples and minorities in Kenya. The Ogiek are traditionally honey gatherers, who survive mainly on wild fruits and roots, game hunting and traditional bee keeping and are, therefore, friendly to their environment on which they depend. They were nicknamed 'Dorobo' a derogatory term given to them by their neighbours, the Maasai. The correct term used by them is 'Ogiek'<sup>2</sup> which literally means 'the caretaker of all plants and wild animals'. An American researcher, Roderic H Blackburn, in his article titled 'High altitude forest conservation in relation to the Dorobo' described the Ogiek as follows:

*The Ogiek are uniquely specialized people intimately related to a particular ecosystem. They are incapable of retaining their essential characteristics, if that ecosystem is destroyed. In the beginning of the last century their ancestral lands were taken from them in a manner little different from the seizure of the Native American hunting grounds in today U.S.A, but with the difference that no Ogiek Reserves were retained. To this great injustice has been added the effects of the forest policy that has progressively and on immense scale replaced their natural forests with conifer forests that are, to the Ogiek, totally sterile and unproductive, useless for either bees or wild animals. Ironically and tragically, the employment offered by the forest department makes them work for their own extinction. Every hectare of plantation trees they plant is a hectare of their birthright lost forever.<sup>3</sup>*

The Ogiek have a unique way of life well adapted to the forest. Their adaptation and their traditions have made them successful foresters and greater environmentalists than any other community in Kenya. The survival of the indigenous Mau Forest is inextricably linked with the survival of the community.

The Ogiek are believed to be the first people to have settled in Eastern Africa and were found inhabiting all Kenyan forests before 1800 AD. Due to domination and assimilation, the community is slowly becoming extinct with the 1989 figures showing about 20,000 countrywide. The Ogiek have been living in Mau Forest

since time immemorial on communally held pieces of land, which were administered through councils of 'Elders' selected according to clan and family units. It was during the colonial administration that the customary land tenure was partially destroyed when the exotic tree plantations were introduced, weakening the Ogiek's direct control of the forest. The Council of Elders or '*Poisionik*' administered and controlled the Ogiek destiny and helped in solving, among other things, disputes over land, which was community-held.

The Ogiek today in East Mau number close to 5,883 (1998 figures). They have been slowly transformed into cattle keepers and to an extent, peasant farmers. Their linguistic facility enables them to adopt their neighbour's language and thus get 'absorbed' easily and become victims of assimilation by their neighbours. Ogiek are also happy in situations of isolation in the forest where birds, trees and wild animals provide them with the 'good neighbourhood' that one may seek from becoming a member of larger communities.

They are self-sufficient in forest products except for small amounts of iron for making into arrowheads, spears and knives. Their skills and expertise lie in:

- Marksmanship with their powerful bows and arrows;
- Management and training of hunting dogs;
- Ability to recognise and identify flora and fauna very quickly;
- Good mapping skills and knowledge of the forest;
- Acute eyesight with good tracking skills.

It is commonly believed by the Ogiek and surrounding communities that the Ogiek were the first people to settle in the East African forests. Their great affinity to forests has made them successful foresters and environmentalists in the past. They have considerable affinity with their environment. Trees, birds and wild animals provide them with the psychological comfort that other people attain by being members of larger communities. For this reason the Ogiek have always dwelled in areas where there are forests adjacent to plains. During the dry season they would live in the forests, moving out to the plains during the rainy periods.

The Ogiek community is believed to have occupied the coastal regions of East Africa as early as 1000 AD. They moved from these areas following attacks by slave traders and other migrating communities. This was the Ogiek's first dispersal. It saw one group moving to Tanzania where they settled among the Hadzabe and Maasai tribes. This first group has been assimilated by the Maasai and now speaks a dialect that is very close to Maasai. A second group moved to the plains of Laikipia bordering Mount Kenya Forest from where they dispersed to various locations in northern, central and western Kenya.

By the turn of the century, the Ogiek were to be found in Mount Elgon, Cherangany, Koibatek and Nandi, as well as the Mau Forest region, which



Photo: OWC

**Typical Ogiek hut**

straddles Nakuru, Narok, Kericho and Bomet districts in the Rift Valley province of Kenya. One group moved from Laikipia and settled in Samburu, Northern Kenya. The wide dispersal of the Ogiek split them into small defenceless groups prone to attack by other stronger close-knit tribes. In 1856, conflict between the Maasai and the Ogiek over land rights in Laikipia and Mau resulted in serious loss of life on both sides causing further depletion of the Ogiek population. Further reduction in the Ogiek population took place in 1876 when a cholera outbreak wiped out sections of the population.

Due to their small numbers, the Ogiek have been an easy target for those seeking land on which to farm or graze. Further, they have not been able to speak up and be heard for the same reason. Everyone has ignored the fact that the Ogiek too have a right to their lands. When the British carved areas of Kenya into tribal reserves<sup>4</sup> for the various tribes, the Ogiek were excluded as they lived in small scattered groups over large areas and did not appear to have any property.

Serious encroachment of Ogiek rights to their land can be said to have started in 1856 when the Maasai attempted to annexe Ogiek lands in Mau and Laikipia. This led the two tribes to go to war. The Ogiek lost the areas around Lake Naivasha but continued to retain the lands around Nakuru.

In 1903 the colonial administration started negotiations with the Maasai over the

transfer of land. This culminated in an agreement signed in 1911 between the Maasai and the colonialists in which the Maasai handed over rights to land in Nakuru, Naivasha and Laikipia for the settlement of white farmers. Ironically it appears to have been lost to the colonial authorities that the land signed over by the Maasai was Ogiek land. This effectively dispossessed the Ogiek of their ancestral lands and was a victory to the Maasai who had failed to forcibly take over these lands in the war of 1856. In 1932 another agreement between the Maasai and the colonial authorities gave out the Mau areas to the colonial settlers.<sup>5</sup>

The first forcible eviction of the Ogiek took place between 1911 and 1914 following the signing of the first pact between the colonial authorities and the Maasai. Colonial soldiers were used to evict the Ogiek and their animals from Mau to Narok. The Maasai accepted the Ogiek in Narok on condition that the Ogiek surrender their animals and language and adopt the Maasai culture. The colonial District Commissioners in Narok and Nakuru agreed upon this without consulting the Ogiek. Once in Narok, most of the Ogiek refused to surrender their animals and to adopt Maasai lifestyles. However, the majority of those Ogiek who had been moved from the areas around Lake Naivasha opted to remain and, having surrendered their animals, were assimilated and lived as slaves. To date, these are the poorest of the Ogiek.

A second eviction took place in 1918. Once again African soldiers in the employ of the colonial authorities were used to forcibly evict the Ogiek from the Eastern Mau to Olpusi-Moru in Narok. Once again the Ogiek refused to surrender their animals and found their way back into Mau Forest.

The British colonial administrators executed further evictions of the Ogiek from their ancestral lands in 1926 and 1927. In these evictions the Ogiek who had remained on their ancestral lands, which had been alienated and converted to settler farms, were forced into the forests. These forests had been declared Crown Lands. The Forest Department was therefore unwilling to allow the Ogiek into the forests and further evictions took place. These evictions were met with fierce resistance, which led to a cease-fire agreement between the Ogiek, the colonial administration and the white settlers. This agreement, dated 23 September 1932,<sup>6</sup> stipulates that the government should stop the harassment of the Ogiek, while the Ogiek on the other hand should cease invasions of the white settlers' farms. The Ogiek understood this to mean ceding their claims to the settled areas in return for being left in peace in the forests. This agreement was made by four colonial representatives and the 12 elders representing the Ogiek.

Following the agreement of September 1932, the Ogiek were invited to testify before the Carter Land Commission. Ogiek elders appeared before the Hon. Harris Carter on 17 October 1932. The elders presented the Ogiek's stand, which was that the Ogiek would not move out of the forests.

The report of the Carter Commission recommended that the Ogiek should be moved to the reserves of the bigger tribes with whom they had an affinity. These were the Maasai and the Kalenjin. These recommendations were drawn from those of a committee made up of white settlers and colonial administrators who had expressed fears that should the Ogiek be left in the forests, their population would increase leading them to claim their land which was now under the white settlers. They saw the dispersal of the Ogiek to various different locations as a means of having them assimilated by bigger tribes, hence reducing the possibility of claims to their ancestral lands. *'Whenever possible the Dorobos should become members of and absorbed into the tribes with which they have most affinity'* recommended Ag. Chief Native Commissioner Mr A De Wade in 1933.<sup>7</sup>

Following the recommendations of the Carter Commission, harassment and disinheritance of the Ogiek continued with unsuccessful evictions conducted in all forests. The colonial Provincial and District Commissioners were particularly instrumental in evictions. *'I am grateful to you for your undertaking to make lists of the Dorobo (Ogiek) sections who wish to join the Kipsigis and I hope we shall be able to move the first batches this year'* wrote the Provincial Commissioner, Nyanza Province, Mr S H Fazan, in September 1932.<sup>8</sup> However, this could not deter the Ogiek who were fully determined to retain their lands as asserted once by their Traditional and spiritual Chief. *'We are totally different from Lumbwa [referring to Kipsigis], they have their own land and we have our own. . . . we are not going to leave our land under any circumstance which is communally owned to anybody'* said Chief Tiwas who was testifying before the Kenya Land Commission on 17 October 1932 in Molo. However, the colonial administration was not successful in evicting the Ogiek and instead moved them to stay in villages, as opposed to the Ogiek clan-based system, pending a decision from the colonial government. The colonial government then provided the Ogiek with social amenities and schools. Since then the Ogiek have continued staying in the forest without knowing that they do not own it.

#### **4 Current predicament**

Recent encroachment of Ogiek lands by fellow Africans started in 1958 when identity cards were issued to Africans for the second time. Some members of the Kalenjin tribe registered themselves as Ogiek in order to have a stake in the Ogiek claims to their ancestral lands.

In the first 15 years of independence the Kenyan government did not interfere with the Ogiek. Independent Kenya's government first started harassment of the Ogiek in 1977. In this year, government forces led by the Rift Valley Provincial Commissioner invaded Mau West Forest. They torched the houses occupied by the Ogiek and confiscated and arrested members of the community who were then arraigned before the court on the charge of being illegal squatters in the forest.



This rendered many families destitute due to loss of animals and property; parents who had children in school were unable to pay school fees, forcing the children to drop out.

Ten years later, in 1987, the government banned the keeping of livestock and carrying out of farming activities in forests. This ban was applied selectively and targeted only the Ogiek and other non-Kalenjin communities. In its efforts to have the government decision reversed, the District Officer in charge of Njoro Division, Mrs A S Abdullahi, is believed to have told the Ogiek on behalf of the government in 1989 that *The Government will not reconsider its decision on this [closure of schools in Ogiekland] on the grounds that you are just a "minute community" with no apparent effect; just like a drop of ink in an ocean*,<sup>9</sup> shattering hopes for the Ogiek to continue with education and prompting the closure of all schools in Eastern Mau in 1989. This affected 500 Ogiek school children who had no alternative schools to go to. Ironically, during the same period the government initiated a settlement scheme in Ndoinet, Mau West. Members of the Kipsigis community were settled alongside the Ogiek. The Ogiek refused to participate in this scheme.

Since 1993, the Kenyan Government has systematically carved out huge parts of Mau Forest for settlement of people from other communities. This has caused constant conflict with the Ogiek who see the destruction of the forests and the alienation of their lands as a continued threat to their existence. This is contrary to the original agreement between the Ogiek and the government. Through the Provincial Commissioner (PC), Rift Valley Province, Mr Ishmael Chelanga, the government assured the Ogiek that the forest belonged to them. *I have been sent by His Excellency the President, to tell you that this forest belongs to you since it is your only remaining home. . . . You should move in quickly and occupy the peripheries to prevent your land and trees from being encroached*.<sup>10</sup> This was greeted by cheers from more than 6,000 Ogiek on 24 February 1994 at Nessuit Primary School where the PC also announced the re-opening of the school.

However, it was not long after the Ogiek rejoiced that things started taking new twists against the original agreement. The land, which by then was in clan-based occupation under customary rights, was subdivided by a team of surveyors to pave the way for close to 80,000 new settlers. The ministers, senior civil servants and politicians who were the main actors in this case used their influence to subdivide the Ogiek land and allocate it to their supporters. It was at this juncture that the Ogiek decided to make a surprise visit to the Head of State. Mr Justus Kuresoi, Chairman of the ruling party, KANU, Mariashoni Location, recalled when the President told them *The land belongs to you [Ogiek] and you have got a right either to give or deny whoever you want*.<sup>11</sup> After this assurance by the President, the Ogiek leaders came back rejoicing and a meeting was urgently convened to announce to the community that the President had given an assurance that his government fully recognised the Ogiek as the true owners of the Mau Forests.

As before, the same politicians, senior civil servants and some cabinet ministers who were not pleased with the President's decision jointly went to see the President. It was not long before things again started unfolding, and once more the Ogiek sought other means of tackling the situation. In 1996, the community engaged an advocate to assist them in pursuing their rights through legal channels.

As a first step, a memorandum was prepared and circulated to all Members of Parliament. The issue of Ogiek land was then raised during Parliament's question time in November 1996. The government then made a statement to the effect that *'The Ogiek have been settled in Mau East forest. They have 26 primary schools and 400 teachers. The Ogiek are being treated like any other landless Kenyans'*. Dissatisfaction with the government's statement, which was totally at variance with the truth, led the Ogiek to file a constitutional land suit in June 1997. This case is still pending in the High Court. The community continues to seek justice through other legal suits, as well as by lobbying.

Among the declarations sought in this case are:<sup>12</sup>

- A declaration that the right to life of every member of the Ogiek community in Mau Forest, including the applicants, has been contravened and is being contravened by forcible eviction from their parcels of lands in the Mau Forest and pretended settlement by the Rift Valley Provincial Administration of other persons from the Kericho, Bomet and Baringo to the exclusion of the applicants.
- A declaration that the eviction of the applicants and other members of the Ogiek community from their land in Mau Forest and settlement of other people on their land by the Rift Valley Provincial Administration is a contravention of their right to protection by law and their right not to be discriminated against under sections 77 and 82 of the Constitution.
- A declaration that the pretended settlement scheme under which the Rift Valley Provincial Forest Officer and Nakuru District Commissioner are allocating to persons from Kericho, Bomet, Transmara and Baringo districts, the applicants' land in the Mariashoni location, Elburgon division and Nessuit location, Njoro division and Nakuru district occupied by the applicants is ultra vires the Agricultural Act and the Forest Act and is null and void.
- An order restraining the second and third respondents from allocating the applicants' land to other persons to the exclusion of the applicants.
- An order restraining the fifth respondent from interfering with the first, second and third applicants' use of their parcels of land in Mariashoni location, Elburgon division.

- An order that the fourth respondent do remove forthwith from Sururu, Likia, Teret and Sigotik Forests and Mariashoni and Nessuit all persons who have purportedly allocated the land belonging to the applicants.
- An order that the first respondent do provide compensation to the applicants.
- An order that the respondents do pay the cost of this suit.

However, on 22 October 1997, the government defended itself through the then Nakuru District Commissioner, Mr Kinuthia Mbugua.<sup>13</sup> In a sworn affidavit, the DC told the court on behalf of the government of the Republic of Kenya, that:

- The Mau Forest is a gazetted government forest and the Ogiek have been using it illegally.
- The settlement scheme covers only the plantations area and does not affect the indigenous forest land.
- The settlement scheme does not involve indigenous forest land from which the community if it so desires is still able to gather herbs, honey and fruits in the traditional manner.
- The plantation forest land is the property of the government who planted the trees therein for environmental and revenue purposes.
- The applicant would be treated for the purpose of the settlement as any landless Kenyan without discrimination on account of clan, tribe, and religion, place of origin or any other local connection.
- The Mau Forest is a gazetted government forest and not a reservation of the Ogiek community as ancestral land.

The Ogiek were granted an injunction on 15 October 1997, stopping the government from further alienating the disputed lands until the issue was resolved in court. However, in an effort to frustrate the Ogiek and the judiciary, probably because those involved are power brokers within the government itself, the order was disregarded with impunity. The individual applicants were treated as traitors and on some occasions threatened with death. *'We are now tired of their threats. Let them kill all of us until nobody will be left in this land, so that the curse of our blood shall haunt them forever'* said one elder, Mr Parsaloy Saitoti (83),<sup>14</sup> who is among the applicants in the historic constitutional land case. Constant threats coupled with intimidation have been the order of the day to the applicants, who have since gone to court again to challenge the government for violating the court order (contempt of court). These proceedings came to court in March 2000, after the government decided to resume its illegal alienation of Ogiek land.

However, the situation cooled down and the activity was carried underground with the full blessing of the government. Those who carried out this exercise were given full protection by the government machinery.

On 12 January 2001, the demarcation and allocation of land in East Mau Forest began again. This was officially announced on Thursday, 4 January 2001 to a group of more than 300 land speculators from other districts, who had gathered in the Mariashoni chief's office waiting for the government to issue them with land. The Elburgon District Officer (DO), accompanied by a team of surveyors and the Officer Commanding Police Station (Elburgon), Inspector Otundo, declared *'This is purely a government project which is legal, and anybody interfering with it will face the full force of the law'*.<sup>15</sup> These remarks came after the Nakuru District Commissioner, Mr John Ole Serian, had, on 3 January, confirmed *'We are in the process of demarcating the cut line in readiness of degazettement'*,<sup>16</sup> when addressing Ogiek Welfare Council officials making a courtesy call to his office. Among the issues raised at that meeting was the continued surveying of the disputed lands contrary to court order. The DC's remarks and the DO's confirmation indicate that the government is determined to carry out the exercise despite its illegality so that the area can be degazetted and the beneficiaries given legal mandate as the true owners.

## 5 Genesis and types of conflicts

The Mau Forest has been a very important water catchment area for the major rivers and lakes in Kenya. The Ogiek community has used the area sustainably with no environmental conflict. The Ogiek, through their customary tenure system, have managed their forests communally. A clan who in turn divides into families communally owns the land. Each family is then responsible for each and every living thing – animals and plants – in the allocated land. No one is supposed to hunt, or cut any tree without permission from the family responsible for that particular forest land. Apart from being home to thousands of Ogiek people the forest has and still plays a bigger environmental role in the region. Before encroachment, the Ogiek lived with all the 'forest treasures' intact.

The settlement has not only introduced conflict over land, but has also generated other conflicts. Social conflict is one of them. Conflicting interests and different cultural and traditional beliefs are the cause. The Kalenjins have introduced their cultures and traditions, which are totally unheard of in Mau Forest. For example, the Kalenjins have renamed most parts they have occupied while the original names from the original owner are disregarded.

In a recent meeting, a respected 57-year-old Ogiek elder, Lenduse Oldaisaba reiterated,

*We have lost our land, identity and our moral values with the coming of Kipsigis [referring to Kalenjins]. They have polluted all our clean water, they have cleared all our forests for farming and they are now very busy digging our graves. Since I was born, I have never seen such a situation. This is not what we expected in our motherland. . . . they have taken our birthright and now we have nowhere to call home and soon, we are going to become their slaves.<sup>17</sup>*

Over the last year the government has further complicated the issue by trying to degazette the area. This was received with a public outcry for the government to rescind its decision, coming in the wake of the gazette notice of 16 February 2001 in which the Environment Minister, Mr Francis Nyenze, gave 28 days' notice of the excision of more than 167,000 ha<sup>18</sup> of forest land.

This decision caused a serious uproar from a cross-section of Kenyans who are opposed to the excision, culminating in its becoming a national issue with Ogiek at the centre of the controversy. Since then, a number of environmental organisations have gone to court to block the degazettement. The Ogiek have not been left behind – they too have gone to court and obtained an injunction seeking to quash the gazette notice.

Following this, the government has been under heavy criticism from international bodies and foreign missions, including the Bretton Woods institutions. However, it has been even worse to learn that the government has been borrowing funds from these very institutions under the pretext of improving the environment and commercial forestry, in turn increasing government revenues. The conflicts involving the Kenyan forests can be summed up as follows:

### **Land ownership**

The key players in this particular conflict are: the government, the Ogiek and the new settlers.

### **Government vs Ogiek**

The conflict between the Ogiek and the government is historical in that in 1932, during the colonial administration, the Kenya Land Commission denied the Ogiek ownership rights for political and selfish reasons and declared Ogiek land to be forest. However, the Ogiek, who were unaware that they had effectively lost their land, continued living peacefully in the forest. There were several unsuccessful eviction orders during that time and also after independence. In 1991 the government initiated a settlement scheme, which was originally understood as solving the Ogiek's constitutional land problem. But this scheme turned out to be politically motivated and unsustainable as the beneficiaries, numbering close to 30,000 overall, were mainly from neighbouring districts with good political

connections. Ironically, the Ogiek were being evicted to pave the way for more new settlers.

This now marked the beginning of the conflict over ownership of the forest. The government claims ownership by virtue of the forest gazettment and declaration of 1942 under the Forest Act (CAP 385). However, the community lays claim to the same land on the basis of historical use and occupancy as their aboriginal land. Luckily, the government's scheme had no legal basis and this prompted the Ogiek to challenge it using constitutional means by taking the matter to the High Court in 1997. The government's persistent violation of the court order led the Ogiek to protest bitterly, and finally to return to the High Court to challenge the government over contempt of court.

These two cases are still pending, with the government reluctant to proceed. This is proven by the fact that the government wants to degazette the disputed forest land. Again, in a dramatic move, at what was seen as the government's last attempt to privatise the forest, the Ogiek again went to the courts to block the degazettment, this time joined by environmentalists who had been silent for the last ten years of the Ogiek's fight for survival. Both the Ogiek and the environmentalists have now obtained orders to block the government's intentions.

### **Socio-economic conflict**

Mau (East) Forest is a haven of biodiversity. The forest is also an important water catchment area for major rivers and lakes supporting the lives of more than five million people. The government initiated its settlement scheme without conducting the necessary Environmental Impact Assessment (EIA) to measure any possible environmental disasters posed by the scheme. The more than 30,000 new settlers, who are mainly farmers, have totally degraded and destroyed the environment to pave way for their settlement and farming. These combined activities have caused several rivers to dry up permanently. This has resulted in conflict with environmentalists who argue that the scheme is unsustainable. The environmentalists have since gone to court to challenge the scheme.

In addition, the Ogiek argue that the new settlers have destroyed thousands of beehives through their destruction of the environment, severely straining relations between the two groups, as asserted by 37-year-old Mr William Kalegu, accompanied by Isaiah Sanet:

*We no longer get enough honey for our needs. They [referring to the new settlers] have destroyed our beehives by burning and felling our trees . . . We are now starving for their greed. They have teamed up with local foresters to loot and sell our trees just because the government 'belongs to' them. We have nobody to turn to since all of them are against us. It's only by God's mercy that we live.<sup>19</sup>*

About 10% of Ogiek fully lead their traditional way of life by honey gathering and hunting, while the rest combine this old way with peasant farming and livestock rearing.

### **Political Conflict**

For politicians and senior government officials, the settlement scheme was a political arena in which they promised their people land in return for votes. Given that the Ogiek population is not large enough to be politically important when it comes to voting, and since they have no leader in the Western sense, the Ogiek were marginalised. Then their land was taken away and they were regarded as squatters in their own ancestral lands. The majority of people who have been settled are supporters of the ruling party, who view the land as a political gift in reward for voting their party in to power. They further believe that this is their last chance for maximum enjoyment of the fruits of independence as the country is heading into political uncertainty and they therefore need to make use of every available chance.

However, the Ogiek, who are a minority, fear that:

- They will lose land if the new settlers are allowed to stay permanently;
- Due to their small population, they will be dominated by the settlers in every way, therefore being assimilated and finally becoming extinct;
- They will be politically dominated since their numbers cannot guarantee them to elect their own leader;
- Having been marginalised for so long and therefore weak in all spheres of life, they cannot compete socially and economically with better equipped settlers.

The combination of the above reasons have brought the Ogiek into conflict with the settlers.

### **Environmental and legal conflict**

The plunder of Kenya's forests has taken many by surprise with many accusing fingers being pointed at the government. The environmentalists have argued that excision will cause a very serious environmental disaster to the country. In a historic judgement on 22 March 2000, in *Tinet Ogiek (S/Western Mau) vs the Republic of Kenya*<sup>20</sup> the court ruled in favour of the government in a bid to evict the Ogiek to pave the way for new settlers, under the pretext that the environment was being conserved for the good of the country.



Photo: Solomon Kones

**A forest being burnt to facilitate settlement after massive logging**

*There is failure to realise that the unsustainable utilization of our natural resources undermines our very human existence. In grappling with our social-economic cultural problems and the complex relationship between the environment and good governance, we must not ignore the linkages between landlessness, land tenure, cultural practices and habits. Land titles, land use and natural resources management, which must be at the heart of policy options in environmental, constitutional law and human rights litigation such as this one . . . indeed, a legal system which provides extensive and simplified procedures for converting public land to private ownership, or which gives reckless access to public natural resources, with little or no regard for ecological and sustainable social developmental impacts, is a national enemy of the people. We must all be ecological ignorance free; and a justice system which does not uphold efforts to protect the environment for sustainable development, is a danger to the enjoyment of human rights.*

These words could easily be mistaken for a lobbying manifesto of environmental activists. They are, however, lifted straight from the High Court of Kenya judgement in *Francis Kemei and 9 others vs the Attorney General & 4 others*,<sup>21</sup> (the Ogiek case) delivered one year ago, by Justices Samuel Oguk and Richard Kuloba.



*Reading this judgement against the backdrop of the declared intention to degazette 14 per cent of Kenya's forest land, may tempt one to think that the government of Kenya is run by con-men. Make no mistake. I have no reason to be sentimental about forest land much as the on-going plunder fills my heart with revulsion. (Kibe Mungai, a Nairobi-based lawyer)*

More than 5,000 members of the Ogiek community in Tinnet (south-western Mau) made the following declarations, among others, after the government issued a 14-day ultimatum for them to quit the forests. These are:

- Declaration that their eviction from Tinnet Forest by the government contravenes their right to the protection of the law, to not to be discriminated against, and to reside in any part of Kenya.
- Declaration that their right to life has been contravened by their forcible eviction from the Tinnet Forest.
- Declaration that the government compensate the community.

Turning to the judgement in the Ogiek case, the government opposed the application, among others, on the grounds that Tinnet Forest is a water catchment area. The learned judges captured the case of the State as follows:

*Concerning the position taken by the applicants that they are completely landless, the respondents say that is not the true position, and that archival administrative records availed from our National Archives show the contrary and that the colonial Government resettled them elsewhere along with other Wadorobo people. But after the said resettlement elsewhere, some people entered the Forest of Tinnet, with an intention to dwell there without any license given by the forest authority on behalf of the government. The unauthorised occupation of the forest has been followed by numerous evictions since the date of the gazettment of the forest as such. The government's 1991-1998 plan to settle all landless persons including some Ogiek people was purely on humanitarian grounds but the program did not materialise when it was later found that to go ahead with it would necessarily result in environmental degradation which would adversely affect the role of the forest reserve and the water catchment area, with dire consequences for rivers springing from there which, presumably, sustain human life, the fauna and the flora there and downstream and their environs. So the plan was shelved, at least for the time being.*

After a careful analysis of the facts and the law the learned judges dismissed the applicants' case. With apparent foreboding the learned judges hastened to add that,

*the eviction is for the purpose of saving the whole of Kenya from a possible environmental disaster: it is being carried out for the common good within statutory power . . . In the context of this case, we know no safe way herein in this country rather than dismissing this case with the costs to the respondents.*

As for the East Mau Case in *Letuiya & 21 others vs the Attorney General and 5 others*,<sup>22</sup> the case is different to that described above. Here the Ogiek seem to have better and stronger arguments, as with indigenous people worldwide. This case can best be compared with the case of *Mabo vs Queensland*.<sup>23</sup>

### **Legal suits vs political interference**

As the Ogiek continue struggling to get their land suit heard and determined judiciously, there is still political pressure by powerful forces within the government for them to withdraw the suits. Several attempts have been made, including harassing of the plaintiffs, but with little success, making the ruling system unhappy about the whole situation and further worsening relations between the government and the Ogiek who have always been seen as rebellious.

One major development was when the head of state addressed a group of Ogiek leaders who went to see him at State House, Nakuru. Commenting on the matter pending in the High Court, President Moi is believed to have laughed and said *'Let the matter go on, I have no worry because I am also that Court'*.<sup>24</sup> Political and legal experts argue that legal tricks are being used to defeat justice. Mr Mirugi Kariuki, Ogiek lawyer and also Vice Chairman, Law Society of Kenya, asserts that *'Legal trickery is being used to defeat the original owners of the land. . . . If the appeal fails then we may have to look for a solution in the post-Moi era'*.<sup>25</sup>

### **Proposed degazettement – legal implications**

As mentioned earlier, no one can really define the legality of the intended settlement scheme in Mau East Forest as cited by the Ogiek in their case against the Republic of Kenya. The Ogiek argue that there is no law or session paper which permits the government to alienate what the Ogiek refer to as their Homeland.<sup>26</sup> In reality, the government cannot explain the legal status of the scheme. The area was and is still a protected forest under forest legislation as provided in the present constitution. The Ogiek further argue that the scheme is unconstitutional as it contravenes both the Agriculture Act and the Forest Act (CAP 385) and is therefore null and void. The law provides that the Minister give out a Notice of 28 days for public opinion. Such gazette notices are always available at Kenya Gazette every Friday but are only limited to government offices. As the gazettes are not available to the public, the government sometimes delays such notice of its own will so that the 28 days are over without any challenge. In their case, the Ogiek further argue that by degazetting the forest the government will be contra-



Photo: Solomon Kones

**Community appraisal during one of the meetings organised on behalf of FPP in Mariashoni Village, East Mau Forest**

vening the earlier court order issued in October 1997, suspending all activities until that case is heard and determined.

## **6 Interests of the main actors in various conflicts**

It is evident that various actors have different interests and on rare occasions common interests as follows:

### **Government interests**

The government is highly controlled by the political class. This has made the government not neutral when making decisions regarding forests. The government's interest is to see that its supporters get the maximum benefit from the available resources so as to get more votes and remain in power in the next general election.

### **Ogiek interests**

The Ogiek interests are mainly their cultural survival. The fear of being extinct and landless is very painful in the hearts of many Ogiek. The desire to have somewhere to call home, like all other communities in Kenya, is the main interest of the Ogiek.

That is a place where they will:

- Live cohesively and peacefully as a community on its own;
- Have access to clean water and a clean environment for bee-keeping;
- Have wider choice for electing their own leaders;
- Carry on their economic activities as desired.

### **New settlers' interests**

The main interests of the settlers are to reap the maximum benefits of the available natural resources and stay permanently in the forest lands. Among the benefits are:

- Selling off the exotic trees to sawmillers in the allocated lands at throwaway prices;
- Felling of indigenous trees for charcoal and other uses so as to transform the forest into a place 'suitable' for settlement.

### **Politicians' interests**

The main interests of the politicians are to fulfil pledges made during electioneering. This includes making all efforts to see that the settlers are never evicted. The politicians have gone so far as to provide title deeds to the settlers where the land is to be degazetted. However, the Ogiek won a court injunction restraining the government from alienating the land further. The politicians are thus undermining the rule of law.

### **Sawmillers' interests**

The main interest of the sawmillers is to take advantage of the confusion in the whole system and make more profits from harvesting trees. It is believed that they also collude with forest officers in this vice. It is evident that since 1991 the government has lost a huge amount of revenue from the timber industry as a result. This situation arose because the settlement was not planned and did not follow the normal constitutional channels.

### **Environmentalists' interests and the long-term effects of degazettement**

The main interests of environmentalists are simply conservation of the forest for the good of the country and the public at large. This is well demonstrated by the two High Court orders obtained by two different groups of environmentalists restraining the government from degazetting the forests.

The major arguments, which seem to be common to the environmentalists, are the need:

- To save water catchment areas from encroachments;
- To conserve the forests purely for environmental purposes;
- To save major rivers from drying up;
- To improve the economy.

The planned excision of 167,000 acres of forest land in Kenya threatens not only a multi-billion shilling power project but could see the end of many rivers and lakes.

### **Interests of the World Bank and other foreign missions**

The government is in serious contravention of the Environmental Management and Co-ordination Act. The World Bank wants the Kenyan government to cancel the planned excisions of the country's forest reserves announced in February [2001] as this move contradicts the government's commitments as a signatory to the Convention on Biodiversity and the World Heritage Convention. *'Perhaps more importantly,'* Mr Madavo who is a World Bank official noted, *'the government itself is in contravention of the Environmental Management and Co-ordination Act, which requires it to carry out an environmental impact assessment prior to any activity which results in a major change in land use.'*<sup>27</sup>

The Bank views the degazettement of some of the Mount Kenya forests with particular concern as they were designated a World Heritage Site in 1997. Mount Kenya Forest constitutes a critical catchment area for the Tana River, which generates a large proportion of Kenya's hydroelectric power. The World Bank is also concerned with the proposed degazettement of sections of Mau Forest as it will have an impact on power production, the Lake Victoria ecosystem, domestic water supplies and on soil erosion.

The World Bank provided a total of \$80 million for Kenya's forestry sector between 1969 and 1998, when it completed the fourth phase of its Kenya Forest Department Project. In an interview with a local daily paper, Mr Madavo said that four projects had contributed significantly towards the realisation of the government's vision for clean, enhanced watershed protection and a robust forest industry.<sup>28</sup> As with other actions taken to excise and degazette natural forests and industrial pine and cypress plantations over the past decade, the new excisions of the forest estate will jeopardise these accomplishments and reduce government revenue. In this regard a question can now be posed: why are our forests managed so poorly? Kenyan forests are managed by several agencies. The Forest Department manages all gazetted forest, both indigenous and plantation; the Kenya Wildlife Service (KWS) manages those forests which fall under the area it controls; county councils manage the forest in the lands and on hills; while private individuals or companies manage forest on private land.

The reality on the ground is that the forests managed by the Forest Department and the county councils are not fulfilling their functions and these forests are

dwindling at a high rate. On the other hand, those forests falling under KWS or owned by private individuals and companies are thriving. Here I will single out the Forest Department because all the forests that are intended for degazetting fall under this Department.

## **7 Problems with forest management in Kenya**

The Ogiek's land dilemma is complicated by the structure of forest management in Kenya. From this a number of issues arise, including:

- The Forest Department has been in serious conflict with the Ogiek regarding access to natural resources. The Forest Department considers the Ogiek to be squatters, while on the other hand the Ogiek consider the forest as their only ancestral home which the Forest Department is only using for a while.
- There is animosity and mistrust between the communities that border forests and the Forest Department as personified by forest guards and forest officers. The result is that there are constant skirmishes with the communities; there are illegal squatters in the forest; forests are often set on fire; and communities do not protect forests against illegal poachers. This state of affairs is not helping the country's forests.
- There is no transparency and accountability in the management of forests. Thus, in a number of areas, forest officers and forest guards hold their own 'courts', 'fine' offenders, and confiscate whatever has been illegally obtained. The fines and the confiscated materials end up in the pockets of the forest officer or forest guards. In other areas, foresters collude with timber companies to defraud the State. Further, in many cases, forest land has been allocated to 'developers' under very unclear circumstances, while in others, even water catchment areas have been placed under agriculture by local communities. All these have led to forest degradation and the demoralisation of honest officers.
- The Forest Department does not attract adequate resources to enable it to run efficiently. The allocation from the Treasury is only enough to pay salaries and provide essential services. The result is that forest extension is now non-existent; tree nurseries do not operate; there is no forest protection capability and worse, there is no capability to reforest. Further, because the Department has not got the capability to reforest, some non-resident cultivators have been working on the same forest plot for up to ten years making it difficult to evict them.

## 8 Possible solutions

In conclusion, the following recommendations are proposed:

- With the case of Ogiek, their constitutional land problem should be addressed once and for all by defining an area within the forest to act as their home, like any other community in Kenya, and by conserving the remaining forest. This will reduce the number of people posing as Ogiek so as to be given squatter status. These squatters will encroach on and finally destroy the forests.
- The problems listed above must be given priority and not be brushed aside.
- The department must, as a matter of urgency, produce tree management plans: short-term (3 years); medium-term (20 years); and long-term (60 years).

NB: In attempting to solve its problems, the Forest Department should not use its 'business as usual' style. What does the Department need to do? It needs to do the following:

- Put in place dynamic leadership that is willing to take bold decisions.
- Adapt to changes as dictated by the present social, economic and environmental conditions.
- Put in place new policies and legislation that would enable the Forest Department to adapt accordingly.

The dynamic leadership of the Department would, working within current or new legislation, aim to increase forest cover in Kenya to the internationally acceptable level of between 5% and 10% of total land cover. A deliberate effort must be made to replant and to ensure sustainability. This would be done in part by:

- Surveying all State forests to establish boundaries and what is on the ground. Title deeds would then be obtained for those forests without them.
- From the survey, establishing what resources are available for commercial use or for biological diversity. As the forests for biological diversity conservation need more technical know-how, these would be co-managed in collaboration with other stakeholders under lease. Lease out plantation forests to pulp, timber, sugar and tea companies.
- Allocating plantation areas to private companies as the Forest Department has not planted new areas or even effectively replanted clear-felled

plantations in the past ten years. The lease period and the consideration to be paid to be decided following appropriate discussion and negotiation. The income obtained from leases to be used for conservation work. Selected areas to be leased to companies which would like to produce posts, fuel wood and charcoal. These products will continue to be in demand in Kenya and provision should be made to make them available.

- Co-managing with a competent agency, forests that are important for water catchment and biological diversity conservation.
- Co-managing selected forests with community forest associations. These associations to be formed by communities living adjacent to the selected forests. However, special arrangements to be made in the case of forests considered as important water catchment areas and biological diversity reservoirs.
- As much as possible, and depending on their use as described above, gazetting County Council forests and either leasing them to private companies, to co-manage with a competent agency (biodiversity), or to co-manage with communities.
- Immediately handing back to the Forest Department the forest land that was turned over to Nyayo Tea Zone and which was cleared of trees and yet not planted with tea, and replanting this land with trees.
- Retraining forest officers and guards to understand their new roles as facilitators. They would then assist communities to make management plans and provide support to the private sector leased forests.
- Acknowledging that the implementation of the above activities would indeed need bold and dynamic leadership. It would also require hard work and enough political space to allow the Department to operate. Thus, in the case of leases, this could be done either under current legislation or legislation under preparation.
- Obtaining the companies' agreement to take on some foresters from the Department to provide technical assistance in the establishment and managing of the forests.
- In the case of co-management, seconding foresters to competent agencies or local communities to offer them technical assistance in species selection, planting and preparing management plans.
- Incorporating in all agreements the fact that the forests must not change their status and become agricultural farms, for example.



- Acknowledging that whenever any changes have been suggested in the management of forests in any country, there has been serious resistance from the Forest Department. This resistance should be expected in Kenya too. And it is not necessarily such a bad thing. Resistance to change offers the change managers an opportunity to convince those against change by sharpening their ideas further. One of the changes will be to leave them with no role to play.
- Empowering the Forest Department to have several important roles, such as regulating and ensuring that the leasing and co-management agreements are adhered to.

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## Notes

- <sup>1</sup> Ogiek Welfare Council unofficial figure (1999).
- <sup>2</sup> The name 'Ogiek' is used by professional anthropologists to refer to hunter-gatherer communities that inhabit the forests in Kenya. The name 'Dorobo' has also been used in recent literature to refer to the Ogiek and in newspaper articles. Amongst themselves, members of this community prefer the term 'Ogiek' or 'Okiek'.
- <sup>3</sup> 'High altitude forest conservation in relation to the Dorobo in Kenya Past Present and future', *Swara Magazine* (East African Wildlife Society) August 1978: 23.
- <sup>4</sup> Kenya Land Commission Final Report. 1932. 'Evidence from the Dorobo' Vol. 3, 17 October 1932, Kenya National Archives, Nairobi.
- <sup>5</sup> Archival Information Records, Kenya National Archives, Nairobi.
- <sup>6</sup> Archival Information Records, Administrative files Vol. iii 1933, Kenya National Archives, Nairobi.
- <sup>7</sup> Archival Information Records. Administrative files Vol. iii 1933, Kenya National Archives, Nairobi.
- <sup>8</sup> Archival Administrative Records. 1932. Kenya National Archives Nairobi.
- <sup>9</sup> Njoro District Officer Mrs A S Abdullahi addressing Ogiek community members at Cheptoroi Secondary School in 1989.
- <sup>10</sup> Interview with Kiprotich Muchura, village elder, Nessuit recalling the Provincial Commissioner's speech in 1994.
- <sup>11</sup> President Moi addressing 21 Ogiek leaders in his Kabarak Home on 10 January 1997.
- <sup>12</sup> *Letuiya & 21 others vs Attorney General & 5 others* in HCCA 635/97, High Court of Kenya, Nairobi.
- <sup>13</sup> Affidavit sworn on 22 October 1997, HCCA No. 635/97, High Court of Kenya, Nairobi.
- <sup>14</sup> Parsaloy Saitoti, village elder, Mariashoni. Source: Field Notes.
- <sup>15</sup> Elburgon District Officer, Mr H O Nakitari, addressing a public meeting in Mariashoni, East Mau.
- <sup>16</sup> District Commissioner, Nakuru, declaring government stand on impending degazettement.
- <sup>17</sup> Field Notes, March 2001. Interview with Lenduse Oldaisaba, Nessuit village elder, East Mau Forest.
- <sup>18</sup> This constitutes about 10% of forest cover in Kenya. Of this 40% is in Eastern Mau alone.
- <sup>19</sup> Isaiah Sanet, village elder, Mariashoni. Interviewed on 28 March 2001.
- <sup>20</sup> 22 March 2000, *Tinet Ogiek (S/Western Mau) vs the Republic of Kenya* (HCCA 228/99). High Court of Kenya, Nairobi.
- <sup>21</sup> *Francis Kemei & 9 others vs the Attorney General & 4 others* in HCCA 227/99. High Court of Kenya, Nairobi.
- <sup>22</sup> *Supra*, note 12.
- <sup>23</sup> *Mabo vs Queensland* (1990).
- <sup>24</sup> Kinyanjui, Elijah. 1999. 'The day the Ogiek angered the President' in *The People Daily*, 26

- November 1999.
- <sup>25</sup> Kamau, John. 2001. *The Ogiek: The on-going destruction of a minority tribe in Kenya*, Rights News and Features Services, Nairobi: 34.
- <sup>26</sup> 'Help us live in our ancestral lands and retain both our human and cultural identities as Kenyans of Ogiek Origin' Memorandum presented to all members of parliament by Ogiek in East Mau, 15 June 1996.
- <sup>27</sup> *East African Standard*, 11-17 March, 2001.
- <sup>28</sup> Ibid.

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## Acronyms

AP	Administration Police
DC	District Commissioner
DO	District Officer
FD	Forest Department
GSU	General Service Unit
KANU	Kenya African National Union
KBC	Kenya Broadcasting Corporation
KWS	Kenya Wildlife Services
LSK	Law Society of Kenya
MENR	Ministry of Environment & Natural Resources
OWC	Ogiek Welfare Council
PC	Provincial Commissioner
PRA	Participatory Rural Appraisals
PS	Permanent Secretary
UNEP	United Nations Environment Program

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## Conference discussions: Kenya, Tanzania, Uganda

### Commentaries on case studies by presenters and community representatives

*The three case studies were presented and discussed in one conference session to gain the benefit of a combined overview.*

#### Tanzania

**William Ole Seki** commented that since the case study was written, there was now the very real threat of eviction.

**Isaya Naini**, Projects Manager, Community Research and Development Services, Tanzania, (CORDS), showed a newspaper cutting about the Maasai's threat to sue the government over its violation of the 1959 Act allowing them to live in the area. He urged all participants to suggest a strategy for their immediate help.

#### Uganda

**Penninah Zaninka** made the following comments to complement her case study:

- 1 regarding schooling, there is now one Batwa child at secondary school. However, hunger is still linked to non-attendance at school, which in turn impacts on employment opportunities. Civil service jobs are consequently unattainable, but jobs as guards or guides ought to be possible and would guarantee some income – particularly as the Batwa have existed alongside the animals since the time of their ancestors;
- 2 electoral representation is difficult because the community is so small;
- 3 as access to the forest is denied, traditional sources of the following are no longer available:
  - firewood for cooking
  - medicines
  - raw materials for tools
  - means to practise religions.

**Rwubaka John**, Batwa Chairman, UOBDU, commented, 'When my father died I inherited land given to my parents by kings but now the authorities are trying to evict me.' He also spoke of a Batwa man who was murdered while he was collecting firewood in the forest.

**Gakoti Ephraim**, UOBDU, gave his story: 'I grew up in the forest; I was collecting wild

potatoes and yams and the announcement came saying we had to go away, had to go and live at the border. That is where we remain. We never got any compensation. We were afraid they would kill us. Now we sell our labour services to others, like servants, actually – and we have been left behind. . . . we used to get meat and honey, collect medicinal herbs and make local beers and now we cannot do this, and our children are dying.’ He expressed concern at his people’s situation, ‘We are like animals, but at least the animals are being looked after. No one is looking after us. We are about to die and disappear – those houses we are living in now are not good, human beings require good shelter and we do not have this. There are so many things that we need – I feel so sad that I cannot even utter any words.’

**Allen Musabyi**, UOBDU, spoke of the uneven subsidisation and availability of uniforms for school children from agencies in charge of the forests.

The session chairman, Marcus Colchester, commented that a lot had been said about the problems, but what about solutions? He asked whether participants had sought solutions through dialogue with managers of the parks and the World Bank.

In reply, a representative of the Rwanda Office for National Parks & Tourism (ORPTN), drew attention to a new policy among the guards to allow entry into the parks. He wondered whether the Batwa were actively prevented from entering or were unaware of the policy?

Rwubaka John told how ‘Last year we created our own organisation, UOBDU, and set up an office in Kisoro. So now we have somewhere to meet and exchange ideas. FPP helped us send a representative to Washington to talk to officials and expose our situation. When we came back from Washington the Trust started buying land for us. So now a few have land, but not all’.

John Rubaramira, Batwa Project Officer, Mgahinga & Bwindi Impenetrable Forest Conservation Trust (MBIFCT) explained the efforts that had been made since the Trust was set up in 1995. There had been five objectives, one of which was to purchase 226 acres from the Batwa in two districts, who could then buy land for each household. So far, 147 households had acquired land. Regarding education, the Trust supported 501 Batwa children at primary level, and one was hoping to get to university. Training in agricultural and vocational skills was provided for all those who bought land.

He confirmed that the Trust had been working with CARE to identify how the Batwa could benefit from development through conservation. For example, the communities around the parks are allowed to go and collect fruit products on a sustainable level; another objective is to offer sanitation. The Trust was sensitive to the Batwa predicament.

## Panel discussion

Panellists: Nicolette Raats	– Senior Social Ecologist, South African National Parks: Kgalagadi Transfrontier Park
Joram  Useb	– Assistant to WIMSA Co-ordinator, Working Group of Indigenous Minorities in Southern Africa (WIMSA)
Albert Kwokwo Barume	– Human Rights Lawyer

**Nicolette Raats** said she would have liked some conservation input into the conference as a number of conservation issues had not been documented. She felt that conservation should not be seen ‘as a reservoir for land for people’; it was important to identify the desired outcomes clearly since the links between land and culture were not always made and ought to be recognised. She agreed that negotiation should involve all parties all of the time and was optimistic for workable solutions.

She made the observation that ‘population expansion in Africa cannot be ignored. Local problems can be solved locally, but broader problems need to be solved more globally’.

**Joram |Useb** endorsed the earlier observation that it was not helpful to discuss problems, but important ‘to look at ways to address the problems in order to get solutions, because there were good promises which were never fulfilled’.

The Tanzanian case study had identified their strong and weak points:

- Strong points: the Ngorongoro Conservation Area Authority (NCAA) and the Pastoralist Council. He recommended changing the Pastoralist Council into an independent body capable of involving more stakeholders and encouraging the NCAA to reconstruct its own council to give it more power.
- Weak points: organisational capacity was weak and consequently dangerous. Technical competence and financial management needed to be improved. This aspect could be handled by a body independent of the NCAA since there is the perception in the community that they are government employees. It would be worth training leaders in this area.

He cited the example of the Nyae Nyae in Namibia, where many stakeholders have been involved and are included on the board – ranging from government to community-based organisations – and this influences the policies. He also stressed that terminology used in park and community policies must also be expressed in the local language.

**Albert Kwokwo Barume** recommended looking both for common themes and differences. He identified four main common features:

- 1 'The cases are all of first nation people evicted from their land by force. These people are the owners of the land, and their right is based upon occupation since time immemorial.' They had occupied the land long before the African states had been formed.
- 2 'All three governments are trying to assimilate the indigenous people, to decide what is good for them, through laws: forest acts, agriculture acts. . . . In all the three cases there has never been consultation.
- 3 'All three cases are claiming collective rights to land – these are rights which are different from the rights they are being offered by the government. The rights of private individuals do not protect them well enough.
- 4 'Finally, in all three cases, there are strong international actors behind the scenes but nobody talks about them – e.g., the World Bank. . . . We have to realise that the strongest misery of human beings is due to these organisations sending millions of dollars. These strong actors are getting away without taking any responsibility.'

The differences appeared in the way they approached the same problem:

- a the Kenyans were taking the legal approach;
- b the Tanzanians had not yet decided to go to court but were trying to strengthen the community first by creating their own local institutions;
- c the Batwa, because of their different languages, levels of literacy, and economic power, had opted for support from international advocacy organisations to help defend their rights.

## Participant discussion

Subsequent debate covered three topics:

- 1 Need for objective analysis
- 2 The question of conservation
- 3 Communities' personal experiences.

### 1 Need for objective analysis

Innocent Munyarugero, Twa community representative, Rwanda, called for coordinated accounts of the situations described, as different individuals appeared to be interpreting events differently, some identifying problems, others saying they had been resolved. He had not come across these inconsistencies in Bweyeye and urged participants to find agreed solutions.



Jackson Mutebi, Project Manager, CARE Uganda: Development through Conservation Project, had three comments:

- a 'I would like to remind members here that we must work in a realistic context. In Uganda we have other communities who also claim similar rights to the forests. . . . We cannot address indigenous peoples' issues in isolation; other communities have other demands. We must address the bigger picture.
- b 'The communities are not homogenous – within Batwa, there are people with different hopes, etc. Are there initiatives that do address some of these peoples' needs?
- c 'As I listen, I would advise us to not be confrontational, not to emphasise those things that divide us. We should also note the groups who are helping indigenous peoples.'

Penninah Zaninka, in response to Jackson Mutebi's first point, conceded that Batwa do have some of the same problems as others but not 100 per cent. She explained that the area has various groups: 'it is the Batwa who lived in the forests, the others come from different sources . . . potters were dispossessed of pottery making, marshlands were turned into farmlands, etc. and their livelihoods taken. They do not have the same problems and theirs are not as serious as for the Batwa.'

Ezekiel Kesendany, Executive Director, Ogiek Development, Culture & Environment Conservation (ODECECO), added that funding for resettlement of South West Mau came from the Forest Ministry through the World Bank. 'People were told they could settle there; others were brought into the area to benefit from the project. Outsiders wanting to help may not understand the problems – squatters are everywhere – we have people who are from the area, but the others are speculators or have other homes.'

## **2 Comments on the question of conservation**

William Olenasha, Co-facilitator, Ngorongoro, felt that there should be a clear distinction between the roles of conservation areas and community areas as the two could not overlap successfully.

Eleanor McGregor, Development Worker, South African San Institute (SASI), acknowledged that when a community is moved out there are a lot of problems for which the park concerned can be held responsible. 'We must knock on their door to solve these problems, to say let us meet half way. We must ask the park to help us to address our problems.'

Jean Bourgeais, Principal Technical Advisor for the Gamba Project/Gabon, WWF Central Africa Regional Program Office (CARPO), asked for participants' help to overcome problems from the start: 'I am starting a park. I need to find a system to find solutions to the many problems that have been set out. . . . Decision-making creates conflicts and in

some protected areas the use of revenue is not always perfect, but now there is good communication between conservation organisations, although not between environmental organisations and indigenous peoples. If I could find the solutions I need, it would be a good outcome of this meeting.'

### **3 Communities' personal experiences**

Benjamin Mugabuku Meye, Chef de volet sensibilisation, Parc national des volcans, commented that the Uganda case had shown that firewood was no longer a big problem for those who have got land. However, he noted that school books and uniforms provided by organisations sometimes reach those who are not entitled to them and he asked why this cannot be better coordinated.

Kalimba Zephyrin, Director, CAURWA, developed the point raised earlier, that 'The problem that still persists is the role of indigenous people in management of these problems. It is unfortunate that when the World Bank has given money which has been put into a fund, the Batwa are not aware of the fund, or its activities. They have no information and those managing the fund are not accountable to the indigenous peoples. Indigenous peoples should be involved in these activities. There is a Rwandan saying: "In the country of blind people, the one who has one eye is a king."

'I visited the areas in the Tanzania case study, and visited the Hadza who, like the Batwa, live by hunting and gathering. But the government is not aware of them. The Maasai have become known, but these others are not even known to their own government. They still have problems because farmers and pastoralists encroach on their land. They are poor, uneducated, and have no houses. NGOs in environmental conservation should set up a fund for these small communities that have been left behind or else they could disappear.'

He then questioned the practice of demanding payment for entry to parks, particularly for nationals who could ill afford it. Alternatively, he suggested that profits from parks should be shared among the nationals so they all benefit.

Juvenal Sebishwi, APB (Association pour la Promotion Batwa), agreed: 'Natural resources are common to all, and should be open to all. Here they have coltan. If it is on your land, you are asked to leave in return for compensation, but a Mutwa is evicted without compensation. This should be done properly. The indigenous people are looking for their basic rights. They are not trying to disturb others' situations – we just want our rights back. . . . Our community is decreasing – they are dying – let us not forget why we are here.'

Asked about the situation in Kenya – whether there are negative impacts from interactions between the Maasai and Ogiek – Ezekiel Kesendany replied that the Maasai are indigenous pastoralists and the Ogiek are hunter-gathers, so there is no conflict.

Crispin Mutimanwa Lusanbya, DRC community representative, provided a further example of the impact on health issues: 'We have lost the traditional healing skills because we were chased out of the forest. Before, our *sages femmes* had access to the herbs of the forest and women had no need for caesarean section. But today we are so sad – now we see them with malaria and have no way to heal them. This used to be a source of income. What we ask is: give us access to these herbs, etc., and then we can help others.'

Close of session.