Written contribution

**Measures taken to protect indigenous people in Africa**

Submitted to

 Expert Mechanism on the Rights of Indigenous Peoples

**Background**

The humanitarian crisis faced by indigenous tribes in Africa raises alarm bells. Indigenous peoples are excluded and poorly represented in decision-making processes on issues that intentionally affect them, and are not consulted on projects affecting their lands, or in the adoption of administrative or legislative measures that may affect them. In addition to all this, they are often displaced from their ancestral lands due to natural resource exploitation projects. In this context, **this report presents the measures taken by African countries to implement the United Nations Declaration on the Rights of Indigenous Peoples in the context of constitutional reforms, laws, legislation and policies, and judicial rulings. It also highlights the violations committed against indigenous people in Africa (with a case study of Kenya and Ethiopia), especially the impact of state-led development projects on the rights of indigenous people.**

**First: Legal framework and protection for Indigenous people**

1. **Kenya**

The concept of indigenous peoples is not recognized in Kenya but the government acknowledges the existence of "marginalized communities" and the new 2010 Constitution identifies these in terms very similar to the language used in the UNDRIP. Kenya recognized the existence of ethnic, linguistic and religious minorities within its territory. The Kenyan Constitution under Article 260 further appreciates the existence of indigenous communities. The Constitution defines ‘marginalized community’ as including a community that, due to its relatively small population has been unable to fully participate in the integrated social and economic life of Kenya; a traditional community that has segregated itself for the sole purpose of preserving its unique culture and identity; an indigenous community that has retained and maintained a traditional lifestyle and pastoral persons and communities.[[1]](#footnote-1)

Article 11 of the Constitution, further recognizes culture as “the foundation of the nation” and as the cumulative civilization of the Kenyan people and nation. It goes further obligates the State to promote all forms of cultural expression as well as protection of indigenous knowledge and technologies.

Article 44 of the Constitution guarantees every person including minorities (Indigenous People) the right to use language and participate in the cultural life of their choice. The Constitution further protects the rights of persons belonging to cultural or linguistic.

1. **Ethiopia**

Although Ethiopia is home to a great diversity of people speaking more than 80 languages. Ethiopia does not have national legislation protecting the rights of Indigenous Peoples. As a result, the rights of Indigenous Peoples are not protected effectively. As well as Ethiopia wasabsentduring the voting on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)**.[[2]](#footnote-2)**

**Second: The reality of Indigenous people in Africa**

1. **Kenya**

The Republic of Kenya has a multi-ethnic population, among which more than 25 communities identify as indigenous.[[3]](#footnote-3) The Ogiek people, whose name means "keeper of all plants and game", are one of the last hunter-gatherer communities in Kenya. Since time immemorial, this indigenous minority has lived in the Great Mau Forest estate, a territory covering 400,000 hectares in the Rift Valley. But in October 2009, the Kenya Forest Service issued an order to expel the Ogiek community from the Mau forests within 30 days; The Kenyan government was aware that the Ogiek had been living in these forest lands for a long time, but refused to recognize them as indigenous people in need of protection.

Since 2009, the case of the Ogiek community began to be brought to the African Court on Human and Peoples’ Rights, based in the city of Arusha in northern Tanzania. In May 2017, the Court ordered Kenya to take all necessary measures within a reasonable period of time to address the violations found and to report to the Court on the measures taken within six months.[[4]](#footnote-4)

The Kenyan government did form a working group to review the implementation of the judgment. But the working group did not include any representatives of the Ogiek, nor were the Ogiek consulted in its work, contrary to the terms of the judgment requiring that in all matters affecting them the Ogiek must be consulted. The working group apparently never issued a report.

This constitutes a violation of Article 38 of the United Nations Declaration on Indigenous Populations, which states: “States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of the Declaration”. Even worse, in July 2020, in the midst of the Covid-19 pandemic, 300 Ogiek families were evicted from their land by the Kenyan Forest Service, leaving their homes behind in ashes.

The African Court on Human and Peoples' Rights on June 23, 2022 ordered the Kenyan government to return to the indigenous Ogiek people their ancestral lands. Kenya was also ordered to pay reparations to the community, which has been repeatedly evicted to date. The court decision’s execution by the Kenyan state remains uncertain.

In November 2023, the Kenyan government began to evict Ogiek communities from the Mau Forest - allegedly on environmental grounds – destroying their homes and schools. Around 700 members of the Ogiek Indigenous community in Sasimwani, Mau Forest, Kenya are facing an impending humanitarian crisis.[[5]](#footnote-5)

1. **Ethiopia**

For many years, the threats posed by the Gibi III Dam and sugarcane plantations to indigenous communities, including the Kweju, Bodi and Mursi tribes in the region, have been increasing. Dam projects and sugar plantations have increased hunger, disease and misery among indigenous communities in the lower Omo Valley of Ethiopia.[[6]](#footnote-6)

For the past 17 years, these indigenous communities have come under threat as the Ethiopian government has pushed forward with its plans to transform the region. The projects have wiped out livestock, driven mass displacement and decimated local communities’ ability to make a living, leading to widespread hunger.

One of the most serious consequences of the Gibe III Dam, completed in 2015, was the loss of the annual flood of the Omo River when the government began filling the reservoir upstream. This put an end to natural flooding. This flood was the core of food production for indigenous communities and a major component of their economies. Since the dam started generating power in 2015, the annual flooding has not occurred.

With the Indigenous losing most of their land to the dam and sugar plantations, over half of their cattle have perished in recent years. The crisis continues today with cattle dying of malnutrition and various illnesses such as tuberculosis, anthrax and pasteurellosis. The wild game that the Indigenous relied on for subsistence have also disappeared – having fled or died due to the loss of habitat to the sugar plantations. Moreover, having been disarmed by the military, locals lack the arms to hunt.

These different factors have forced villagers to eat bush leaves in order to survive, while others go hungry because they cannot find anything to subside on at all.

In October 2022, 22 Mursi villagers died of malnutrition near the Mago checkpoint. Locals estimate that every family in the area has lost two or three children to malnutrition and leishmania.in 2023, the Kwegu and Mursi are suffering from an outbreak of chickenpox. Additionally, they are also experiencing a measles outbreak, which started in 2021.[[7]](#footnote-7)

**Recommendation**

After monitoring and extrapolating the facts of indigenous people in African countries by focusing on Kenya and Ethiopia, set of recommendations can be submitted to both the Expert Mechanism on the Rights of Indigenous Peoples and the governments of Ethiopia and Kenya to promote and protect the rights of indigenous people as follows:

1. Elizka urges the government of Ethiopia to address displacement in peace processes and should promote compensation, restitution, transitional justice, and social cohesion initiatives as part of the recovery process.
2. Elizka calls the Expert Mechanism on the Rights of Indigenous Peoples to focus its efforts on helping Ethiopian and Kenyan refugees find other durable solutions to their displacement, including working with other countries to quickly pursue resettlement options for those in Ethiopia and Kenya who are most vulnerable.
3. Elizka appeals to financial donors in Ethiopia to intensify their financial assistance to indigenous peoples who constantly suffer from the impact of development projects on their lands.
4. Elizka urges the government of Kenya to Ensure that those affected by the current eviction campaign receive adequate compensation for the damages they have suffered. As well as Fully implement the judgments issued by the African Court on Human and Peoples’ Rights in 2017 and 2022. This is long overdue and the government must end its delay tactics.
5. Elizka demands the Government of Kenya Immediately cease the eviction campaign against the Ogiek community and respect their rightful ownership of their ancestral land in Mau Forest Complex.
1. INDIGENOUS PEOPLES AND THE RIGHT TO FREEDOM OF RELIGION OR BELIEF, KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR), OHCHR, 7TH JUNE 2022, <https://bitly.ws/39rpz> [↑](#footnote-ref-1)
2. Indigenous peoples in Ethiopia, IWGIA, <https://bitly.ws/39yeh> [↑](#footnote-ref-2)
3. Kenya: Country Technical Note on Indigenous Peoples Issues, Ifad, July 2023, <https://bitly.ws/39Asc> [↑](#footnote-ref-3)
4. Kenya ordered to redress wrongs done to Ogiek indigenous minority, JUSTICE INFO.NET, 29 July 2022, <https://bitly.ws/39rxA> [↑](#footnote-ref-4)
5. Press Release: Indigenous Ogiek face ‘humanitarian crisis’ as Kenyan government evicts them from their ancestral lands in direct violation of African Court. Forest peoples programme, Novamber 3, 2023. <https://bitly.ws/39rnS> [↑](#footnote-ref-5)
6. Starvation, disease: Tribes of Lower Omo bear the brunt of development projects, Down to Earth, 15 February 2023, <https://bitly.ws/VtHT> [↑](#footnote-ref-6)
7. Tragedy in the Omo Valley, TWN, May 4, 2023. <https://bitly.ws/Vu9W> [↑](#footnote-ref-7)