KENYA

Indigenous Peoples human rights defenders on the run: A country report on criminalization and violation of Indigenous Peoples’ rights in conservation
Executive Summary

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Citation


Cover Photos

(above) Members of the Indigenous Ogiek community march in protest over the killing of a 16-year-old boy by the police. (Photo by OPDP)

(below) A six-feet deep trench and steel chicken wire fence restrict the movement of the indigenous Maasai community and their livestock living inside their customary lands encroached by Kedong Ranch Ltd. (Photo by Daniel Kobei)
About the study

As part of its work to confront criminalization of, and human rights violations against Indigenous Peoples, Indigenous Peoples Rights International (IPRI) decided to contribute to the ongoing calls for a human rights-based approach to conservation. As a start, we conducted a research study on the issue and commissioned global and country reports covering Democratic Republic of Congo, Kenya, Tanzania, Nepal, and Thailand. Each report is published independently and can be read as stand-alone publications.

The study aims to contribute in raising awareness and attention to the issue of criminalization and violations of Indigenous Peoples' rights in relation to environmental conservation. We hope that it will be useful for Indigenous Peoples and human rights organizations in their advocacy initiatives at the national, regional, and global levels. We also hope the reports will be useful for states and conservation institutions when developing programs and policies that aim to address human rights violations in conservation, including the access to justice and remedy of the victims of criminalization and human rights violations in conservation.

The country report of Kenya was written by Daniel Kobei.
**Executive summary**

Human rights violations against Indigenous Peoples living within and around conservation and protected areas is a persisting issue in Kenya. Colonial laws on conservation were progressively amended under Kenya’s Constitution of 2010 resulting in laws crafted with specific clauses recognizing the roles of communities, including those of Indigenous Peoples residing in conserved forests and protected areas. However, these laws are largely disregarded by authorities who still regard and treat them as illegal settlers or encroachers. The report highlights cases of arrests and trumped-up charges against Indigenous Peoples human rights defenders from Ogiek and Maasai communities, and a series of violent evictions of the Sengwer community in 2020 and 2021. These cases have yet to acquire any restitution or justice.

The two conservation laws that primarily criminalize practice of traditional livelihood and access to forests and protected areas are Forest Conservation and Management Act no. 34 of 2016 and Wildlife Management and Conservation Act of 2013. The Wildlife Management Act categorizes protected areas into national parks, national reserves, and conservancy. At present, there are 27 national parks with four sanctuaries in them, 34 national reserves, and 160 conservancies. National parks are managed by Kenya Wildlife Service; national reserves by county government; and conservancies by either private entities or communities. Currently, no community manages any of the conservancies which roughly make up 11 percent of the country’s total land area. On the other hand, forests in Kenya are under the Forest Conservation Act and are managed by Kenya Forest Service. Kenya has around 7.4 percent forest cover and the government aims to expand it to 10 percent by 2022 as noted in the progress assessment of Aichi Target 5 on habitat loss.

The African Commission on Human and People’s Rights identified 14 indigenous communities that are inextricably linked to their lands and natural resources for their livelihood, food, identity, survival, and perpetuation of their cultural heritage. Largely grouped as hunter-gatherers are the Ogiek, Watta, Sengwer, and Yaaku communities; and as pastoralists are the Maasai, Samburu, Elmolo, Turkana, Rendille, Borana, Somali, Gabra, Pokot, and Endorois communities.
The government has consistently denied and ignored the existence of indigenous communities in forests and protected areas, but the Sengwer in Embobut Forest, the Yaaku in Mukogodo Forest, the Ogiek in Mt. Elgon National Park and in Mau Forest, and the Maasai in Hell’s Gate National Park, have been living and traditionally managing these lands. At some point in their lives, these communities have experienced violent evictions, criminalization of their leaders and council elders, and other human rights violations. These incidents have caused prolonged and undue stress and trauma to the communities. The Sengwer people regard themselves as “socially dead” after being deprived for decades of freely practicing their cultural ceremonies and rites within their forest. Lack of access to their lands and natural resources has driven indigenous communities to poverty and many of them have turned to charcoal burning for sustenance.

The report underlines that deprivation and insecurity of Indigenous Peoples’ land tenure are deeply rooted in discrimination against them. The Indigenous Peoples’ way of life was never regarded as a crucial contribution to wildlife conservation and natural resource management despite being recognized in Kenya’s conservation laws and Community Land Act no. 27 of 2016. Prejudice against Indigenous Peoples is such that they are treated as less than human and their traditional livelihood and practices are devalued and criminalized.

Kenya’s conservation initiatives still echo its colonial past, which several influential international and intergovernmental conservation institutions reflect in their programs. Despite these institutions’ avowed recognition and protection of Indigenous Peoples’ rights through safeguard policies, they still reiterate the existing model of conservation that the government strongly implements. The Endorois community fears the disregard and violation of their land rights as Lake Bogoria National Park is set to be included as a UNESCO’s World Heritage Site. Similarly, the Ogiek community dreads disenfranchisement with the Mau Forest being admitted to the Queen’s Commonwealth Canopy in 2020 as pronounced by the United Kingdom Government and will be considered a highly conserved forest.

The report recommends that the government of Kenya properly implement the Community Land Act and the decision of the African Court of Human and Peoples Rights recognizing the Ogiek community’s land rights in the Mau Forest Complex. The Kenyan government should bolster its existing legal instruments and ratify ILO Convention 169. It should recognize the role of Indigenous Peoples in achieving
the government’s biodiversity targets and conservation initiatives and create an enabling environment where Indigenous Peoples can be considered for leadership roles in the government or through creation of special constituency.

The report further recommends that international and intergovernmental conservation institutions ensure that their initiatives and recommendations to the government do not disenfranchise Indigenous Peoples of their collective rights to lands. Lastly, support organizations should continue standing with Indigenous Peoples human rights defenders and consider providing them and their families psycho-social support.
Full version of the report will be available soon.