Law, Religion and the Environment in Africa

Edited by
M. Christian Green
Muhammed Haron

ACLARS

AFRICAN CONSORTIUM FOR
LAW AND RELIGION STUDIES

18 THE OGIEK INDIGENOUS PEOPLE, LAND RIGHTS AND THE ENVIRONMENT

Loreen Maseno¹

INTRODUCTION

Conservation in Kenya has been undertaken in different ways. On one hand, it is a government initiative, often an imposition which yields limited results. On the other hand, it is the project of indigenous groups living within these systems, who continue to preserve and conserve their habitat, yielding much better results. According to theological and environmental ethicist Michael Northcott,² in his presentation, "Indigenous Peoples, Land Rights and Care for Creatures", at the conference "Radical Ecological Conversion After *Laudato si'*: Discovering the Intrinsic Value of all Creatures", held at the Pontifical Gregorian University in May 2018, there is a variety of ways in which conservation has been undertaken. However, even in government-designated "protected areas", government corruption, commercial coercion and industrial pollution occur and creatures are still being pushed towards extinction. In Northcott's view, indigenous people in Borneo and Sumatra are threatened with extinction by palm oil plantation expansion, since the protected areas are too small to provide them sufficient land area. The forests of Borneo have been Northcott's area of focus in several studies, in which he has shown that the forests of Borneo, like forests in other tropical regions, are being destroyed by economic corporations and political elites at the cost of the habitats of indigenous people and species. Similarly, the Mau Forest, even as a protected area under the government, has been deforested and converted in large acreages for plantations. What was to be protected has, in a contradictory manner, ended up endangering species and habitats and also endangered indigenous peoples and their livelihoods.

The Ogiek people of Kenya have seen the government initiatives as an imposition which has resulted in much harm and is opposed to the ways in which their forefathers, with generations of indigenous knowledge and careful cooperation with habitats over the years, have continued to preserve and conserve the local environment. To the Ogiek, even when the state has a crucial role in conservation, the approach has been less habitat-friendly and flies in the face of their identity as a land community, that is, as a spatiotemporally restricted entity, located in a

1 Research Fellow, Department of Biblical and Ancient Studies, University of South Africa; Senior Lecturer, Department of Religion, Theology and Philosophy, Maseno University, Kenya; Humboldt Fellow, University of Bayreuth, Germany, 2015-2018.

2 A detailed rendering is provided in Maseno L. Response to Prof. Dr Michael Northcott, University of Heidelberg, Germany, Indigenous Peoples, Land Rights and Care for Creatures. Online at: <https://bit.ly/3dtbWo8>

particular place and time and providing for an integrated, cohesive and causal interaction amongst the parts, whose components have a collective as well as separate welfare.

The Ogiek approach to conservation in a land community seeks to address not only endangered species, but also the very habitat, the Mau Forest, which they call their ancestral home, which includes both endangered indigenous peoples and their means of livelihood. The Ogiek approach has been contested by the state, which has evicted them from the Mau Forest on the claim that the forest must remain uninhabited. The Ogiek have resisted this victimisation by the government, seeking legal redress from the Kenyan courts. To their dismay, the Kenyan courts seemed unmoved by their plight and have allowed their cases to drag on for long periods. In protest, the Ogiek proceeded to the African Court on Human and Peoples' Rights in Arusha,³ which was able to hear the case to its logical and legal conclusion. This was a new case under new jurisdiction, in light of the challenges the Ogiek had experienced in the corridors of justice in Kenya.

THE OGIEK MODEL OF CONSERVATION

The UN Convention on Biodiversity (UNCBD) affirms the "intrinsic value" of species, and that states parties are responsible for their conservation. The convention's overall objective is to encourage actions, which will lead to a sustainable future. The UNCBD preamble states in selected parts:

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.

Affirming that the conservation of biological diversity is a common concern of humankind,

Reaffirming that States have sovereign rights over their own biological resources.⁴

This preamble on contracting parties goes on to indicate that they subsequently agreed to various articles listed in the UNCBD document. The objectives of this convention, crafted as a legally binding treaty, include the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources. The action

³ The African Court on Human and Peoples' Rights became functional in 2006. It is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. This Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights, the Protocol and any other relevant human rights instrument ratified by the states concerned. The Court officially started its operations in Addis Ababa, Ethiopia in November 2006, and in August 2007 it moved to its seat in Arusha, Tanzania.

⁴ Convention on Biological Diversity [UNCBD], adopted June 05, 1992, 1760 UNTS 79, entered into force Dec. 29, 1993, preamble.

18. *The Ogiek indigenous people, land rights and the environment*

being undertaken by the contracting parties of the convention is to ensure that parties develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity.⁵

Conservationists in developing countries have in times past been associated with the elite and well-resourced persons in-country and beyond. In the Kenyan case, a number of known conservationists have largely been from Britain, a former colonial power.⁶ Their ways and approaches have had far-reaching implications on the population and not only in recent times, but also since the time when Kenya was a British protectorate.

According to Michael Northcott, there are stark differences between indigenous management of habitat, community-based conservation and the modern conservation movements.⁷ As a result, there are conflicts that present an enduring and structural problem of power in relation to conservation. Some conservationists prefer to restrain the ecological impact of economic development, focusing on strategies that involve a focus on particular endangered species or habitats. This is done by introducing a range of national laws, international treaties and scientific conservation projects, which involve the identification, conservation and, where possible, reintroduction of individual endangered species into a habitat. Another approach includes designating sites of special scientific interest and the construction of conservationist spaces. Meanwhile, the indigenous people, traditional users of lands appropriated for conservation, are drawn into a new mode of environmental governmentality.⁸ This is evident, for example, in the contrast between indigenous management, which involves the indigenous groups living within their habitat sustainably, and community based conservation, which was introduced to address the problem of environmental exclusion of local communities from national parks and nature reserves.⁹ In the light of these, conservation efforts have been met with resistance in some regions, where indigenous communities have felt their power taken from them and their land rights trampled upon. These confrontations with wildlife, government agencies and private conservationists have continued to see the biodiversity of the Mau Forest threatened.

5 Convention on Biological Diversity [UNCBD], adopted June 05, 1992, 1760 UNTS 79, entered into force Dec. 29, 1993, art 6, p. 5.

6 Maseno, Reponse to Northcott.

7 Northcott M. 2012. "Artificial persons against nature: environmental governmentality, economic corporations, and ecological ethics", *Annals of the New York Academy of Sciences* 1249(2012):104-117 [https://doi.org/10.1111/j.1749-6632.2011.06294.x].

8 This combines the terms government and rationality, in a sense to capture the conduct, or an activity meant to shape, guide, or affect the conduct of people. Governmentality, in general is a Foucauldian term concerned with the generation of different subjectivities through techniques and modes of ruling and guiding in an encompassing sense. See Amos K. 2010. "Governance and governmentality: relation and relevance of two prominent social scientific concepts for comparative education", *Educação e Pesquisa* [Education and Research] 36(spe):23-38 [https://doi.org/10.1590/S1517-97022010000400003].

9 Northcott, "Artificial persons against nature", 105-107.

But there are contradictions at the heart of modern conservation. It has been noted that major profits from corporations fund such ventures. Conservation efforts are paid for by corporations, which also enjoy the economic growth originating from the sale of conservation and ecology journals, conferences, books, organisations, projects and the like. All of these activities are dependent on the same stream of income, the growth of which is corporately driven and sustained.¹⁰ There is need to inquire into preferred modes of conservation in particular contexts and the drivers behind them.

THE OGIEK COMMUNITY

The term “Ogiek” literally means “carer of all plants and wild animals”. They are commonly referred to as the “caretakers”.¹¹ This is the name that the community has been living up to since their earliest existence as an indigenous minority of hunters and gatherers. The Ogiek inhabit the Mau Forest complex in the Rift Valley of Kenya. About 35 000 Ogiek live in Kenya, in and around the Mau Forest complex. This forest complex spans about 4 000 hectares and five counties in the country’s west.

The Ogiek are organised along age sets. These age sets arise from the groupings made during circumcision. Circumcision is a very important rite of passage, which serves the end of unifying the Ogiek, pledging allegiance to their ancestors and ensuring that their culture is preserved. Elders play a significant role in socialising the initiates into the depths of the culture and they also ensure organisation along lineages. All major political and legal decisions are carried out by the elders.

The Ogiek are one of the last remaining forest-dwelling communities and amongst the most marginalised indigenous peoples in Kenya. In an investigative report titled *The Ogiek: The Ongoing Destruction of a Minority Tribe in Kenya* by John Kamau, a journalist whose focus is the determination of the Ogiek to live on and save their home terrain, the Ogiek are described as inhabiting the 100-mile long Mau highland forest along the western escarpment of the great Rift Valley in Molo South, Nakuru District of Kenya. This report was prepared to put into perspective the struggle of the Ogiek people against the current onslaught on their traditional homeland. As Kamau observes, “The Mau Forest complex, the last Ogiek base, covers an area of 900 square kilometres and lies 200 kilometres Northwest of Nairobi. It contains the largest remaining block of indigenous forest in East Africa and is under intense pressure from developers and non-Ogieks. In summary, the Ogiek are on the verge of losing the homeland they have held for ages. From 1902 forests have been seen as government land and are covered by the Forest Act. Under the Act, only through degazettement can forestland cease to be a forest and be inhabited.”¹²

10 Northcott, “Artificial persons against nature”, 106-107.

11 Sang JK. 2004. “Government Admits Irregularities, Stick to Land Commission Report as Environmental Suit Kicks Off”, *Breaking News*, 5 July.

12 Kamau J. 2000. “The Ogiek: The Ongoing Destruction of a Minority Tribe in Kenya”, Rights Features Service. Online at: <http://www.ogiek.org/report>

18. *The Ogiek indigenous people, land rights and the environment*

The Ogieks' life in the Mau, like that of many other African indigenous groups, includes rituals of sacrifices, libations, offerings, prayers, taboos and other forms of sacred acts. These are appropriated by the Ogiek in seeking the intervention of the good spirits in the combat with evil spirits. While some spirits are propitiated, others are driven away through prescribed rituals. The Mau forest in its vastness is to them an object of rituals and sacrifices. According to Ogba Kalu, a scholar of religion, there are dimensions of space perceived by Africans, which, include first, the sky, wherein the supreme being is manifested as the sun, thunder, lightning; second, the earth, with the earth deity responsible for human, plant, and animal fertility; and third, ancestral spirits or the spirit world, in which physical nature such as rocks, streams, and trees are imbued with divine power. All these realms of life are sacralised, and there is nothing in the visible world that has not been predetermined in the invisible realm. This organic worldview in which the three dimensions of space are bound together generates a tendency for Africans to seek divine intervention, cure or diagnosis.¹³

The Ogiek in Mau have endured for thousands of years without significant biodiversity reductions. However, over the years, they have lost their agency as managers of the Mau, which had once enabled them to practise their spirituality, hunt, gather honey and fruits and use the forest for medicinal use, while at the same time not diminishing the ecosystems. Gradually, the Ogiek found themselves losing their agential power to manage the Mau Forest environment in ways that might enable them to feed and house themselves. The Kenyan government approach to conservation in the Mau involved a re-configuring of human–nature relations in this area, which privileged external actors over the indigenous Ogiek. Consequently, the Ogiek found themselves drawn into battles with the government, which wanted the Mau Forest to be vacated. Their access to their traditional land was denied, and a heavy presence of Kenya wildlife and forestry guards were stationed around the area to prohibit their access to the Mau Forest. The Ogiek have seen the same land plundered by politically connected persons who care less for the environment than for seeking profits for themselves. In sum, the ecological governmentality of the Mau in Kenya has resulted in the Ogiek being subjected to increased surveillance to prevent them from entering the forest at will and using it for all the purposes they had done in the past, thereby infringing on their right to culture, religion and livelihood.

THE LAND COMMUNITY

According to Michael Northcott, ecological and evolutionary science indicates that humans are members of the land community, and that instead of its conquerors they must act as its citizens. This includes the idea that communities and species coexist alongside each other and need each other. This mutual dependence does

13 Kalu O. 2002. "Preserving a Worldview: Pentecostalism in the African Maps of the Universe", *PNEUMA: The Journal of the Society for Pentecostal Studies* 24(2):119-122 [<https://doi.org/10.1163/15700740260388009>].

not allow for total independence.¹⁴ In general, there are interconnections in nature that sustain the very species and the life community on which humans and all other species depend. Northcott also shows that ecology generates a new sense of right and wrong in the earth community, which has been described as the “land ethic”.

According to Aldo Leopold, a forester, hunter and professor, in his 1949 essay “The Land Ethic”, “A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.”¹⁵ In his understanding, Leopold was clear that a biotic community included both biotic components, such as plants and animals, and also abiotic components, such as water and soil, and that, collectively, this made up the land.¹⁶ Since all the aforementioned encompass what land is for Leopold, they need to coexist in a mutual responsive way, in a community.

The concept of land community has been critiqued on several fronts. There are scientific facts of interconnectedness and coevolution on a small scale, but equally particular ecosystems and communities do not persist through time. Hence, there is no clear “dynamic stability” of an ecosystem or community.¹⁷ The discussion of land community has also been problematised by scholars, who note that it is really not clear how to define a land community, that particular land communities are not things that persist through time and that the boundaries of communities and ecosystems are not fixed by nature, but rather determined by the scientific questions that ecologists pose.¹⁸

According to Millstein, a Leopoldian concept of a land community should be seen as consistent with contemporary ecology, to provide a more precise characterisation of the land community and to demonstrate that if any such entity exists in the world, it would also be an individual. At the same time, a Leopoldian land community consists of populations of different species interacting with each other and with their abiotic environment, creating interdependencies between organisms. These survival-relevant interactions produce a flow of energy and materials between biotic and abiotic components, and vice versa.¹⁹ In general, the land community is the same entity if and only if there is continuity of interaction and material and energy flow within the entity through time. Thus, since their members may change, land

14 Northcott, “Artificial persons against nature”, 108.

15 Leopold A. 1949. “The Land Ethic”, in *A Sand County Almanac and Sketches Here and There*. New York: Oxford University Press, 201-226.

16 Leopold, “The Land Ethic”, 204.

17 Shrader-Frechette K. 1996. “Individualism, Holism, and Environmental Ethics”, *Ethics and the Environment* 1:55-69, 60.

18 Millstein R. 2018. “Is Aldo Leopold’s ‘Land Community’ an Individual?”, in Bueno O, Chen R and Fagan MB (eds). *Individuation, Process, and Scientific Practices*. Oxford: Oxford University Press, 279-302.

19 Millstein, “Is Aldo Leopold’s ‘Land Community’ an Individual?”, 6. Online at: <https://bit.ly/2z4UWFM>

communities may or may not be stable in the sense of “stasis” or “equilibrium”. Sustainability and stability may be a more pertinent trait or feature.²⁰

THE OGIEK IN A LAND COMMUNITY

The livelihood of the Ogiek is intertwined deeply with the land which they occupy. According to African studies researcher Ron Nomi, it is clear that the Ogiek identify and is linked with inhabiting the Mau Forest, which supports an abundance of diverse plant and animal life. The Ogiek, have existed for centuries in a peaceful and symbiotic relationship with their homeland.²¹ As members of the land community, there has been peaceful coexistence and a clear relationship with the Mau Forest, which the Ogiek value and guard religiously. This union of the land community has spiritual implications and caters for the Ogieks’ livelihood needs. As a land community, the Ogiek remain a forest-dependent community, who have continually resisted, struggled and survived decades of discrimination and eviction from their ancestral land.²²

Precolonial land tenure systems included the abundance of land in Kenya. Indigenous people, such as the Ogiek, were the original owners of vast parcels of land. The customary practices of forest husbandry through their indigenous knowledge systems ensured sustainable livelihoods. The Ogiek considered the forests in which they hung their honey barrels as “theirs”. In these forests they continued with hunting and gathering. However, after independence, a new land tenure regime came into place in Kenya, in which the government was the sole allocator and arbitrator. At the same time, there were vast excisions of thousands of hectares of land which were given off for settlements. This led to the Ogiek, as hunters and gatherers, being excluded from the agrarian reform process which was being carried out within their immediate vicinity.²³

Over the years, post-independence African states like Kenya have not been able to eradicate colonial economic policies which encouraged the seizure of rich and fertile indigenous land for the survival of those in power. The large ranches and fields that were seized by the powerful government officials remain unused, while many Kenyans continue to be landless. The poor have even been evicted from ancestral land by the colonial government and lately by the Kenyan government under new

20 O'Neill RV. 2001. “Is It Time to Bury the Ecosystem Concept (with Full Military Honors, of Course!)”, *Ecology* 82(12):3275-3284 [[https://doi.org/10.1890/0012-9658\(2001\)082\[3275:ITTBT\]2.0.CO;2](https://doi.org/10.1890/0012-9658(2001)082[3275:ITTBT]2.0.CO;2)].

21 Obare L and Wangwe JB. 1998. “Underlying Causes of Deforestation and Forest Degradation in Kenya”, World Rainforest Movement, cited by Ron Nomi. Online at: <http://www.ogiek.org/indepth/forest-guardians.htm> [Accessed 11 March 2019].

22 Astill J. 2002. “Tribal Trials”, *The Guardian*, 12 March.

23 Chabeda-Barthe J and Haller T. 2018. “Resilience of Traditional Livelihood Approaches Despite Forest Grabbing: Ogiek to the West of Mau Forest, Uasin Gichu County”, *Land* 7:140 [<https://doi.org/10.3390/land7040140>].

land tenure systems which overrule customary land tenure systems,²⁴ with less concern for the poor who inhabit the land, such as the indigenous Ogiek people. It is clear that most elected officials in Africa still allow the interest of their former colonial masters and the West to determine or influence the type of political and economic policies they design for their countries. Indeed, the land tenure systems, as they currently exist, protect the rich and oppress the poor, who cannot meet legal and statutory requirements for land registrations. At the same time, their claim to land is contested in the absence of documentation, which in recent times has been complicated by forgery and a national land registry whose data is incomplete.

Ogba Kalu has presented an anatomy of the African religious worldview. He contends that the relationship between religion and ecology is extensive and that ecology can be geographical, human and cultural.²⁵ Using a mix of Christianity and indigenous religion, Kalu shows that in real-life situations and in field experience, the process of indigenous assimilation brings to the fore new patterns of congruence, making their religious experience one that is organic and unified. It is clear that the size of the African continent and her myriads of cultures defy any attempt to construct an “African” worldview. But scholars agree that there is a deep-seated and underlying cultural pattern that makes Africans African. Details in the manifestations of the pattern may certainly vary: however, two predicates appear useful, namely, time and space. Africans, more often than not, and including the Ogiek, conceive time in a cyclical pattern. Life moves from birth to death and back to life by reincarnation. Many of these communities are agriculturalists, who move from planting to harvest and back to planting. As the sun and moon appeared and disappeared only to return in an endless cycle, life was conceived as following a similar cyclical pattern. In this schema, land was of great significance. At the same time, the trees, caves, streams and rivers were also imbued with spirits. Thus, all the realms of life were sacralised with no distinction between the sacred and the profane and thus providing an important ecotheology.²⁶

In my own theorising of the environment, I have made use of what Kalu considers dimensions of space perceived by Africans, including the sky, the earth, and the ancestral spirits or the spirit world. This worldview generates a tendency to seek divine intervention, cure or diagnosis.²⁷ For the Ogiek, the boundedness of these dimensions in the space of Mau Forest works to facilitate a land community which is interdependent.

24 Customary or communal land tenure systems were based on local agreements with elders of the community on land ownership. Thereafter, came the private and modern land tenure systems in Kenya premised on government paperwork, with title deeds and land registration which is not always favourable for many indigenous communities.

25 Kalu, “Preserving a Worldview”, 113.

26 Kalu, “Preserving a Worldview”, 118-119.

27 Maseno L. 2017. “Prayer for Rain: A Pentecostal Perspective from Kenya”, *The Ecumenical Review* 69:336-347 [<https://doi.org/10.1111/erev.12297>].

18. *The Ogiek indigenous people, land rights and the environment*

In traditional religion, the Ogiek believe in God whom they call Torooret. This supreme being amongst the Ogiek is able to bring calamity and misfortune if forgotten. Care is therefore exercised, so as not to wrong Torooret, who can affect the very existence of the community. The Ogiek perceive the Mau Forest as having spiritual powers, wherein they can transact religious business. Their ancestors, who help them connect to the spirit world for the necessary ritual dynamics, abide within this area.

The Ogiek revere the trees in the Mau Forest, which they believe are imbued with spirits and cannot be cut down wantonly. The Ogiek therefore have the motivation to preserve the forest cover for religious purposes. Indeed, as a land community, the trees and herbs in the locality have continued ability to cure different ailments. The Ogiek have very well appropriated the medicinal use of plants and herbs for treatment of conditions, and these can serve as an aid to modern medicine. In their cosmology, the Ogiek are also aware that diseases may arise due to religious, social and natural causes. Medicine for the Ogiek, like many other African communities, was important to re-establish the security of the moral order and reconcile broken social relationships. The Ogiek diviners would appropriately diagnose the problem at hand in order to prescribe curative and protective spiritual powers through herbs or by covenanting the individual or community to protective spirits. At the same time, festivals, dances and mimics were employed to reenergise ancestral and other covenants and heal the community from untoward conditions.²⁸ In a similar vein, in Africa, using these places of protective spirit, resources for ecological justice have been enumerated to the end of a more just and righteous relationship to the whole inhabited earth.²⁹

The Ogiek have a series of myths which, like other Kenyan ethnic communities, are used to communicate wisdom on matters ecology. These myths serve to educate and make the community knowledgeable on how to live with fellow humans and also with all living and non-living creation.³⁰ Through myths, the Ogiek pass on to subsequent generations their wisdom as members of the land community. The Ogiek community and the Mau Forest which they inhabit has been construed in a manner ordered to prevent scarcity, as members use the forest and the land with future generations in mind. The land community understands that the sacred rites and spiritualism of the Mau Forest can provide historical information for future generations.

28 Kalu, "Preserving a Worldview", 121.

29 Maseno L. 2019. "An African Response to Christopher Vena", in Conradie E and Koster H (eds). *Christian Theology and Climate Change*. London: T&T Clark, 484-489 [<https://doi.org/10.5040/9780567675187.0049>].

30 Maseno L. 2011. "Towards an African Inculturated Sophiology: The Case of African Wisdom Traditions from Myths for Ecological Concerns", in Deane-Drummond C and Bedford-Strohm H (eds). *Religion and Ecology in the Public Sphere*. London: T&T Clark. 125-138.

With only 500 families practising their ancestral lifestyle as hunters and gatherers in the Mau Forest, the survival of the Ogiek heritage is of great importance.³¹ The lessons of the Ogiek land community continually attest to centuries of living in a symbiotic and peaceful relationship with nature. This has translated into the Ogiek developing a deep understanding of their environment, which is very useful to environmentalists and conservationists. The centuries of environmental and conservation practices of the Ogiek land community can be documented as indigenous knowledge, which can be applied for forest management not only in Kenya, but wherever else other indigenous communities dwell.

Northcott shows that the biggest cause of biodiversity loss in different parts of the world is the continuing destruction of moist tropical forests prior to land use. In such regions, massive logging follows and there is a change towards commercial-scale monocrop plantations such as soya and palm oil. This destruction, according to Northcott, is driven in large part by economic corporations, rather than by indigenous populations, whose traditional harvesting practices depend on natural biodiversity and not on a single cultivated species.³² Indigenous communities engage in community-based harvesting of timber and non-timber forest products. These communities prefer to maintain forests, rather than losing them to tree burning and replacement with monocrops. Such community-based timber projects give considerable economic benefit to the Ogiek people. The small-scale and labour-intensive nature of this approach results in much less damage to the Mau Forest than large-scale commercial logging, which takes place each time they are evicted from the forest.

Of significance, Northcott maintains, there are two storms brewing. The first is the storm of human adaptation to Anthropogenic Climate Change (ACC) and the second is the moral storm of mitigation of ACC, in which those least responsible for the problem in Africa and elsewhere suffer most from its consequences. Northcott contends that carbon markets lowest emitters are the ones who end up suffering most.³³ The Ogiek, who have for years been working to conserve the environment using indigenous knowledge, shall continue to find themselves bearing the brunt when it comes to consequences of the ecological injustice.

Indeed, the Mau Forest water catchment area has recently been reported to have dropped in its volume of water reserve. According to Mark Boitt, a geomatics engineer, the Mau Forest is a water catchment area for many Great Rift Valley lakes. Satellite images have shown changes in the Mau Forest and their effects on the neighbouring Lake Naivasha, Lake Baringo, Lake Nakuru, Lake Bogoria and Lake Elementaita. During the period between 2000 and 2010, the volume of water

31 Astill, "Tribal Trials".

32 Northcott, "Artificial persons against nature", 104-105.

33 Northcott, Michael. 2011. "Anthropogenic Climate Change, Political Liberalism and the Communion of Saints", *Studies in Christian Ethics* 24(1):34-49 [<https://doi.org/10.1177/0953946810389117>].

18. *The Ogiek indigenous people, land rights and the environment*

decreased even as the forest itself decreased. Boitt adds that the Mau complex is one of the five largest forest blocks, which include Mount Elgon, Mount Kenya, the Aberdare Range and the Cherangany Hills. These are the main water towers of Kenya and form the catchment of all main rivers in Kenya. In general, the forest catchment depletion, is directly related to the decrease in the waters of the Great Rift Valley lakes in Kenya.³⁴

OGIEK ENVIRONMENTAL RIGHTS IN COURT

The Ogiek have been harassed and evicted from their land since colonial times. The Ogiek filed a case against the Kenyan government for the denial of their land and indigenous rights. Following a legal battle, in the case of the *African Commission on Human and Peoples' Rights v. Kenya*,³⁵ came an historic judgment from the African Court on Human and Peoples' Rights, in its verdict delivered on 26 May 2017, in Arusha, Tanzania, finding that the Kenyan government violated seven separate articles of the African Charter on Human and Peoples' Rights in a land rights case that dates back to colonial times.³⁶ In their plea, the Ogiek alleged eight violations of their rights to life, property, natural resources, development, religion and culture by the Kenyan government under the African Charter, to which Kenya is a signatory.³⁷ The court ruled in favour of the Ogiek, recognising their right to Kenya's Mau Forest as their ancestral home and their role in protecting it.

Conservation measures have repeatedly threatened Kenya's Ogiek tribe with eviction from their forest home. Ever since colonial times, there have been attempts to evict the Ogiek from their ancestral forest, usually on the pretext that they are degrading it. But when the Ogiek are removed, their forest is not protected, but rather exploited and subdivided to politically powerful people. Over the last fifty years, the Ogiek have consistently raised objections to these evictions with local and national administration to no avail. According to Lucy Claridge, a lawyer who argued the case, the Arusha Court recognised that the Ogiek – and therefore many other indigenous peoples in Africa – have a leading role to play as guardians of local ecosystems and in protecting land and natural resources, including the Mau Forest.³⁸ The Ogiek challenged the denial of their land and associated rights.

34 Boitt M. 2016. "Impacts of Mau Forest Catchment on the Great Rift Valley Lakes in Kenya", *Journal of Geoscience and Environment Protection* 206(4):137-145 [<https://doi.org/10.4236/gep.2016.45014>].

35 See App. No. 006/2012. Claridge L. 2018. "Litigation as a Tool for Community Empowerment: The Case of Kenya's Ogiek", *Erasmus Law Review* 11(1):1 [<https://doi.org/10.5553/ELR.000095>].

36 Claridge, "Litigation as a Tool for Community Empowerment", 1.

37 African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

38 Claridge, "Litigation as a Tool for Community Empowerment", 1.

The court was clear in its ruling, preferring indigenous management of habitat conservation and insisting that over the decades, the Ogiek had protected the Mau Forest cover and could therefore not be considered to be a threat to the same forest. It found violations of Articles 1, 2, 8, 14, 17, 21 and 22 of the African Charter. This was the first indigenous people's rights case considered by the court. Further, the litigation itself and Ogieks' participation in the various stages of the legal process provided a model for community engagement. The Ogiek argued that they had been denied use of the forest and the natural resources in the ancestral land, whereas the government had been plundering it without seeking their consent and approval.³⁹

The Kenyan government's practice and policies were destructive in many ways. They had far-reaching implications on the social, religious, economic and cultural survival of the Ogiek, and the irreparable harm done to them was explicit. The government continued to deny the Ogiek access to their religious sites, which mean much to them for the purpose of religious transactions. These sacred and religious sites were not demarcated by the Kenyan government as protected sites; hence, government administrators could trample on these sites without regard or reverence. De-sacralising these sites through these actions, created chaos in the religious worldview of the Ogiek.

The Ogiek knowledge of indigenous land rights and their practice insisted that this was ancestral land, to which they were intrinsically bound as persons and a community. Detaching the Ogiek from this place and space was a failure on the part of the Kenyan government to recognise them as an indigenous community, which denied them their right to communal ownership of their traditionally owned lands.⁴⁰ There is even a greater challenge when it comes to matters of land rights, especially when the respondent in the case is actually the state, which has the mandate to execute land and property law, as shown in the Ogiek case. Those with power, in this case the state, end up wielding it over and against the indigenous peoples. Indeed, the ruling was historic and the Ogiek were very glad. However, it remains another thing yet to be translated into action by the Kenyan government.

CONCLUSION

The Ogieks' right to religion and culture was infringed upon when their right to live in the forest was so infringed. As a land community in Mau, their religious observance is connected to a place and space, which in turn has an impact on how they relate to the forest. It appears that there remain significant religious dimensions to this land and forest, which require unpacking in forms of indigenous knowledge carried by the Ogiek. This worldview is useful, in the enterprise of care for creatures, to explain from other faith traditions, such as the African traditional religion of the Ogiek, how they have effectively achieved indigenous management of the Mau Forest over the many years they have inhabited it.

39 Claridge, "Litigation as a Tool for Community Empowerment", 2.

40 Claridge, "Litigation as a Tool for Community Empowerment", 2.

18. *The Ogiek indigenous people, land rights and the environment*

It is indigenous peoples who show us how best we can be citizens in the land community and whose wisdom and knowledge, if taken seriously, can have an impact on the world we live in. They remain a storehouse of knowledge, which we ought to embrace and from which we should learn before what they know is no longer available to us. The Ogiek, like other indigenous communities, see the world in a different way and are a prophetic voice against the widespread consumerism that we see in our present society. They see the world and all that is within it as interconnected, with none being self-sufficient. Their values and spiritual attachment to the Mau Forest, if understood and taken seriously, have much to offer in the care of all creation.