

EUROPEAN INTERDISCIPLINARY MASTER IN AFRICAN STUDIES (EIMAS)

Sweet Are the Waters: Ogiek Rights to Land and Development and the African Court on Human and Peoples' Rights Court Ruling

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Master's thesis submitted in partial fulfilment of the requirements for the degree of European Interdisciplinary Master in African Studies (EIMAS), supervised by Professor Doctor Amélia Polónia and by Invited Assistant Dr. Miguel Filipe Silva, mentored by Cornelius Were Okello, Ph.D.

Faculdade de Letras da Universidade do Porto | Faculty of Arts and Humanities of the University of Porto

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Declaration of Honour

I hereby declare that I am the author of this thesis, which has never been used in other course units or subjects at this or any other institution. All references to authors (statements, ideas, thoughts, quotes) have scrupulously met the applicable citation rules and are, therefore, referenced in the text and in the bibliographical references, in accordance with the referencing rules. I am aware that plagiarism and self-plagiarism is an academic offense.

Porto, Portugal, 25.07.2022

Diana Takácsová

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Resumo

Vivendo principalmente nos ecossistemas da *Floresta de Mau*, situada na região do Vale do Rift, no Quênia, e no ecossistema do Monte Elgon, no oeste deste país, os Ogiek são uma das últimas populações conhecidas de caçadores-recoletores da África Oriental. Com uma cultura e tradições inalienáveis do seu ambiente natural, a comunidade tem sido historicamente confrontada com reassentamentos forçados e alvo de marginalização. Estes factores impulsionaram um longo processo de resistência. Em 2017, o *Tribunal Africano dos Direitos Humanos e dos Povos* proferiu uma decisão histórica em favor dos Ogiek, reconhecendo que o governo do Quênia violou vários direitos desta comunidade. Está trabalho parte precisamente desta decisão judicial, procurando analisar e desconstruir o papel dos atores internos e externos na marginalização dos Ogiek e na mercantilização da *Floresta*. A questão fundamental a que este trabalho procura responder prende-se com a tensão entre o direito da comunidade à terra e a um desenvolvimento endógeno e a pressão para a mercantilização da terra, pececionada como um ativo económico alienado de quem nela habita. Utilizando conceitos (e visões) antagónicos e em conflito próprios da área do Desenvolvimento, como a Teoria da Modernização e Alterglobalização, este estudo de caso mobiliza diferentes metodologias como a observação participante, entrevistas semiestruturadas, fotografia documental e práticas visuais colaborativas para responder à questão já enunciada e propor a hipótese de que a decisão do *Tribunal Africano de Direitos Humanos e Humanos* não constituiu apenas uma decisão entre os interesses de uma comunidade indígena e um Estado, mas uma tomada de posição sobre duas visões de mundo opostas: uma fundamentada na globalização neoliberal e na teoria da modernização e a outra na tradição cultural preconizada pela alterglobalização.

Palavras-chave: Ogiek, Floresta de Mau, alterglobalização, fotografia documental, práticas visuais colaborativas

Abstract

Living mainly in Kenya's *Mau Forest Complex* situated within the Rift Valley Region, and in the Mount Elgon ecosystem in Western Kenya, the Ogiek are one of East Africa's last hunter-gatherer populations. With a distinct culture and traditions tied to their natural environment, the community has been historically faced with evictions and marginalisation and has a long history of resistance. In 2017, the *African Court on Human and Peoples' Rights* delivered a landmark ruling in favour of the Ogiek of the *Mau Forest*, which recognised that the Government of Kenya violated the community's rights on several accounts. This research takes the landmark court ruling as a central point to deconstruct the role of internal and external actors in the Ogiek's marginalisation and the commodification of the *Forest*, turning to the question of how the community's right to land and development can be achieved amid the existing land pressure. Building on the theoretical grounding informed by the concepts of modernisation theory, land grabbing, and alterglobalisation, it relies on participant observation, semi-structured interviews, documentary photography, and collaborative visual practices in order to examine the hypothesis that the *African Court on Human and Peoples' Rights'* ruling was more than a decision between an indigenous community and the state. What was ultimately at stake is a weighing on two opposing worldviews: one grounded in the progress of neoliberal globalisation and the modernisation theory – and the other in the translating of alterglobalisation.

Keywords: Ogiek, Mau Forest, alterglobalisation, visual research, collaborative visual practices

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INTRODUCTION

Land has been perceived as a vital resource worldwide. Indigenous communities around the world have been affected by this demand, which have a clear connection with colonial history, sometimes more evident, sometimes more subtle. In the context of Africa, Syagga (2002) points out that Kenya, alongside Zimbabwe and South Africa, inherited one of the most skewed land schemes of the continent (p. 293). Land struggles have been central to the country's historical, political, social, economic, and legal relations during both past and present times. According to Kanyinga (2000), while colonial land expropriation and evictions designed to benefit European settler economy created a base of the country's land question, throughout the post-colonial period, there has been minimal interest in the creation of large resettlement efforts (p. 12-13) and in correcting the distorted land distribution.

These land struggles have also been playing out in the context of Kenya's Ogiek community. Living mainly in Kenya's *Mau Forest Complex* situated within the Rift Valley Region, and in the Mount Elgon ecosystem in Western Kenya, the Ogiek are one of East Africa's last hunter-gatherer populations. With a distinct culture and traditions tied to their natural environment, the community has been historically faced with evictions and marginalisation. The Ogiek of the *Mau Forest Complex* have been collecting fruits, hunting wild animals, collecting herbs, and practicing beekeeping in the trees since time immemorial, but the community's way of living has been threatened throughout history. While the targeting of the Ogiek date back to colonial times (1894/1920-1963)¹, in most recent time, it is the Kenyan government who insists that the community is a threat to the *Mau Forest Complex*. Throughout history, shifting powers, and profound transformations of dominant definitions surrounding not only land, but also nature, conservation, citizenship, or law have left their mark on the Ogiek and the *Mau*. The significance of the Complex is manifold: it is a space with unique fauna and flora - and the main water catchment area for a number of rivers that drain into five major lakes, including Lake Victoria. In past decades, human encroachment for agriculture, charcoal and logging has dramatically reshaped the *Forest* and made the area vulnerable to soil erosion and flooding. Population increase, as well as the politicisation of land allocation in the Complex both contributed to the

¹ From 1894 until 1920 as a British protectorate - and afterwards as an official British colony.

worsening situation and an increase in forest degradation. In this research, we argue that the recent developments are to be looked at in a broader sense, and that is through the complex processes originating in other parts of the world - yet profoundly affecting the pre-independence and post-independence contexts of Kenya, continuing to shape society to date. Such circumstances disproportionately affect forest-dependent people. Wilhite and Salinas (2019) note that people who live in forests in the so-called 'peripheries', as defined from a West-centric perspective, carry a triple burden which has been brought on by three aspects: extractive capitalism, climate change as a consequence of high-energy consumption practices originating in parts of the world considered as 'centre', and, recently, market-based global environmental regimes which supposedly safeguard climate mitigation (p. 151). We explore these aspects and their underlying effects on the Ogiek and the *Mau* in detail in the Theoretical framework section and in our analysis.

The Ogiek community has a long history of resistance to avert land evictions and marginalisation, relying both on legal and non-legal tools. It was, however, the year of 2017 that brought a breakthrough in the community's long-standing efforts: the Ogiek won a case against the Government of Kenya in the African Court on Human and Peoples' Rights in Arusha, Tanzania. The Court declared that the Government of Kenya violated the Ogiek's right to property, cultural life, disposition of wealth and natural resources, and right to their economic, social and cultural development, freedom – and identity (African Court on Human and Peoples' Rights, 2017, p. 33-68). The landmark court ruling made headlines worldwide and renewed both media and research interest not only in the Ogiek community's case – but it also set a major precedent for indigenous peoples' rights both worldwide – and across the African continent, where the concept of 'indigeneness' remains contested. As Hodgson (2011) outlines, when the first African groups joined the transnational indigenous peoples' movement – using 'indigenous' as a tool for political and social mobilisation, African nation states reacted with hostility and claimed that all their citizens are indigenous – and that such movements fuel tribalism (Hodgson, 2011, p. 3; 26)². Rösch (2017) adds that many scholars or communities also struggle with this concept and see it as an

² See Hodgson (2011) for the detailed process of joining the movement – and translating it into the local context.

artificial construction in the African context (p. 246). Such hostility and tension surrounding 'indigenouness' in Africa is still present.

The euphoria of the landslide victory slowly faded as five years later, the ruling remains largely unimplemented: the Government of Kenya has done little, so far, to fulfil the court's decision which ordered remedial action³. Moreover, as per Minority Rights Group International (2020), the COVID-19 pandemic also brought another event of forceful evictions (para. 2). In this research, we take the landmark court ruling as a central point through which we deconstruct the role of internal and external actors in the Ogiek's marginalisation and the commodification of the *Forest* and turn to the question of how the community's right to land and development can be achieved amid the existing land pressure. For this, we employ a theoretical grounding informed by the concepts of modernisation theory, land grabbing, and alterglobalisation, utilising a case study methodology, which is enriched by a visual research methodology primarily working with the medium of photography.

While extensive research is available on the Ogiek, the *Mau Forest*, and the community's marginalisation (Kratz, 1980; Yeoman, 1993; Micheli, 2014; Chabeda-Barthe and Haller, 2018), we argue that more studies are needed that emphasise Ogiek peoples' epistemes, their role in the production of knowledge on nature, and their connection with their livelihood. With regards to this, the research employs both photography - and collaborative visual practices with Ogiek community members. We note that such approaches have, in the notion of applied visual anthropology, immense potential in two key points: shifting power relations between researcher and research participant – but also between the photographer and photographed – through collaborative approaches where Ogiek community members play an active role in producing data and communicating not only across academic disciplines - but also across fields outside academia, and through cultural boundaries. Therefore, this research will, beyond its knowledge-production character, contribute to the democratisation of knowledge through overcoming barriers posed by academia such as language, access, and dissemination which translate into restrictions in accessing academic research, limited use of technology, or narrow audiences due to publishing in dominant

³ See more at www.the-star.co.ke/news/2022-05-26-ogiek-ask-state-to-implement-african-court-judgment (26,05. 2022).

languages. Moreover, as Pink (2006) outlines, it can also contribute to empowerment through the production of images which might further participants' own causes (p. 37) and awareness raising.

The structure of this research is as follows. In the first chapter, we review key literature and discuss the underlying drivers surrounding the theme of this research. In the second chapter, we present the research methodology, which has an approach of a case study strategy. The third chapter introduces the theoretical grounding of the research, which is informed by modernisation theory, land grabbing, and alterglobalisation. The fourth part constitutes the analysis which, relying on the framework outlined in the previous parts, utilises a mixed methodology including participant observation, semi-structured interviews, photography, and visual research methods.

1. RESEARCH OBJECTIVES AND QUESTION

The main aim of this research is to examine the role of the systemic historical and political circumstances of the marginalisation of the Ogiek community and the negative changes affecting the *Mau Forest Complex*. It does so in light of the *African Court on Human and Peoples' Rights* ruling on application number 006/2012 delivered on 26 May 2017.

The specific objectives of the study will be:

1. The examination of Ogiek community's land claim articulation versus the Government of Kenya's response.
2. The examination of perceptions of right to development, as articulated by the Ogiek community and the Government of Kenya.
3. The investigation of the *African Court on Human and Peoples' Rights'* ruling's meaning in the context of the above points.

The research question is, therefore: How can forest preservation and the Ogiek's right to development be achieved amid the land pressure surrounding the *Mau Forest Complex*?

2. THE CONTEXT OF THE OGIEK AND THE MAU FOREST

Unlearning becomes a process of disengaging from the unquestioning use of political concepts—institutions such as citizen, archive, art, sovereignty, and human rights, as well as categories like the new and the neutral, all of which fuel the intrinsic imperial drive to “progress,” which conditions the way world history is organized, archived, articulated, and represented. (Azoulay, 2019, p. 30)

In this chapter, we review key literature and discuss the underlying drivers surrounding the theme of this research. The below sections elaborate on the historical, environmental and socio-economic context of the Ogiek community of the *Mau Forest Complex*. While a historical view outlines the previous events that are feeding into the current situation surrounding the *Complex*, the contemporary reality is also characterised by increased land pressure and scarcity, population growth, climate change, and populations’ need for natural resources.

2.1. Historical context

This section lays out the historical context relevant for the focus of this research, and that is, land regime regulations touching upon the *Mau Forest Complex* and the Ogiek community. It covers the timeline as a whole: the pre-colonial, colonial and independence period. It also outlines how political and social realities were reflected in each era.

As Mwangi (1998) notes, prior to the colonial period, present-day Kenya’s forests were managed by communities. Whether utilitarian or based around sacred and taboo items, these communities had their own sets of traditional systems that enabled the communal utilisation of resources. In most cases, such rules were enforced by the council of elders – and are evidence of organised and well-defined forest management. Speaking broadly of indigenous communities, contradictory accounts exist with regards to such communities’ forest degradation, which were likely exaggerated by colonial observers (p. 2-3). In this period, the land of the *Mau Forest Complex* was held communally by several lineages of the Ogiek community, where the rules and regulations of the group were closely monitored and passed on. As Yeoman (1993) points out, there is no evidence of the Ogiek coming from elsewhere: living in high altitude throughout the *Forest* – but in contact with the agricultural people of the area, they were regarded as the original inhabitants of the *Mau* (p. 31).

Land regime transformations that continue influencing present-day Kenya date back to colonial times. According to Syagga (2002), dispossessing indigenous communities began in 1888 when the *Imperial British East Africa Company* (IBEAC) made an agreement with the Sultan of Zanzibar, ceding all territory except private lands to the Company. Official forest management dates back to Kenya's declaration as a *British Protectorate* (1894). The following legislations (1902, 1908 and 1915) in reality transformed Africans into tenants of land (p. 294) despite, as Alden Wily (2018) outlines, their previous system of customary tenure managed by communities where founding norms originated from longstanding practices by a tribe or village (p. 4).

Domínguez and Luoma (2020) highlight that in the African context, colonial powers sought to establish land systems that, in line with capitalism, commodify nature to maximise economic returns. Agriculture has been designated as the most valuable – and accepted model of land use, requiring land ownership (p. 3-5). Syagga (2002) further elaborates that the 1902 enactment of *Crown Lands Ordinance* meant that land which was empty or vacated could be further rented or sold to Europeans. Land either had to be developed – or forfeited. The colonial administrators and settlers, however, did not stop at this point: they progressively worked towards gaining legal access to Africans' land. While the 1908 legislation affected only the coastal belt, the 1915 amendments to the *Crown Lands Ordinance* redefined the meaning of *Crown Lands* to include land with visible occupation – as per European settlers' perception of this act – by the natives as well, creating specific reserves for Africans, which were far away from the areas of European settlement (p. 294-295). As per Morgan (1963), the term "*White Highlands*" was used to define certain fertile areas. These were climatically suitable for settlement and reserved for European settlers – while previously inhabited "only" by wandering hunters (p. 140).

Moreover, the dual system of land tenure and administration evolved: customary tenure was in place to regulate the natives' relation to land, enforced by chiefs and the colonial administration, and an individualized tenure regime with a high level of civil rights to citizen settlers. The above was formalized by the 1926 *Native Areas Ordinance*. In 1920, Kenya became an official British Colony being transformed from the *East Africa Protectorate*. As Di Matteo (2017) summarises, in 1932, the *Carter Commission*, appointed by the British government, was tasked with assessing Africans' land claims, and both their present and future needs. It evaluated the whole area of today's Kenya. Its resolution recognised African rights to land only as usufruct (for temporary use),

which meant a minimisation of the possibility of titling land. It also abolished the claiming of any land rights by Africans outside the borders of reserves. Following the author, land alienation to the settlers and inadequately low financial compensation (when it occurred) to Kenyan land users were legitimized. Consequently, land reserves remained designated as *Crown Lands*, with a possibility of alienation at any given time.

The findings were implemented through a series of laws, among which was the *Native Trust Ordinance* of 1938. This transformed the previous *Crown Lands* into *Trust Lands*, now entrusted to the *Native Land Trust Boards*. This model saw natives as unable to liaise with the state or the market, therefore, they retained only use rights: the ultimate administrator of the land was the trustee: an intermediary between the colonial system and the natives (p. 5-6). While land decisions were at this point highlighted by the colonial power as benefiting those living in the reserves, there was no definition on what 'benefit' means (Alden Wily, 2018, p. 7). Land scarcity and population pressure in productive areas became a significant issue in the African reserves (Syagga, 2002, p. 296).

Moreover, according to Kanyinga (2000), opposition to the colonial administration, racial separation of land ownership and demands for land restoration grew in light of Kenyan landlessness: the building up tension signalled an inevitable need to be addressed (p. 3). The above tension was also influenced by the increasing pressure on peasant producers in the aftermath of *World War Two* (Thurston, 1987, p. 1). In 1952, the overarching situation culminated in the *Mau Mau* revolt. In response to the uprising, the *Plan to Intensify the Development of African Agriculture in Kenya* (1954) was created by Sir Roger Swynnerton, after whom the strategy was named, and who was the *Assistant Director of Agriculture for Field Services* from 1951 until 1954. Syagga (2002) notes that it outlined the individualization of tenure with an aim of improving agricultural production. The proposal gained further support in 1955, when the *East African Royal Commission Report* proposed to enable natives to grow cash crops and, therefore, remove barriers to racial land ownership. In 1956, *Native Land Tenure Rules* were promoted, and the *Minister for African Affairs* was tasked with putting the mechanisms in place (p. 296-297). As per Hodge (2010), the aim was the establishment of wealthy African elite and middle peasant units with the hopes of stabilising the existing rural class relations - and broadening the base of collaborators (p. 31-32). Therefore, during the 1950s, Native councils became the trustees of the land – a function after the

1963 independence replaced by locally elected councils. Nevertheless, the 1968 *Trust Land Act* also made the *Commissioner of Lands in Nairobi* the official administrator, recentralising land control (Alden Wily, 2018, p. 7).

The colonial regime's policies led, in present-day Kenya, to unequal land ownership and use. Despite the high expectations, the 1963 independence did not bring the long-awaited corrections of the skewed land schemes. Some of the disparities were seen as even widening as, according to Klopp and Lumumba (2017), in the lead up to the independence, rural conservative elites led by independent Kenya's first President, Jomo Kenyatta, knew the benefit of maintaining the colonial land apparatus, leading to the colonial continuity in land laws (p. 6). Di Matteo (2017) recounts that the *Trusteeship System* remained in use – but the responsibility for *Trust Lands* was transferred to the county councils who began acting as legal administrators in the place of communities of natives, requiring the local authority to prioritize the benefit of the local inhabitants. However, county councils also held the power to lend or lease concessions to individuals or companies, to sanction privatisation, as well as to judge cases on land right issues. This power has been described as extensive – and it translated into political interference via land grabbing, carried out predominantly by Kenyan political and economic elites. Continuity between the colonial and post-independence period was also demonstrated via another important element: the adjudication of *Trust Lands*, which began with the *Swynnerton Plan* in 1954. In the post-independence period, it contributed to transforming *Trust Lands* to individualised plots and to the issuance of titles. Still following Di Matteo, *Trust Lands* take up 67 percent of the country's land – but its share became minimal in areas that have high agricultural potential. The county councils managed *Trust Lands* on behalf of native communities until the *2010 Constitution*, with power to lend *Trust Land* concessions, sanctioning land alienation or adjudicating land rights (p. 6-8).

According to Boone (2012), the politicization of land in Kenya has been a cross-cutting issue across governments, where political leaders used land allocation as a reward – and a tool to gain popular support. The question of who can remain on land and who must vacate it has been instrumental in Kenyan land policy and politics (p. 75-103). Forest land has been also allocated to smallholders through “declassification” or “degazettation” – a process via which governments since the colonial era used such land opportunistically – as a “freely available resource”. For instance, in the 1940s

and 1950s, the colonial government forcibly resettled African “squatters” from white-owned farms to the *Narok Forest*. In the post-independence period of the 1960s and 1970s, politicians and district officers looked the other way as Kikuyu immigrants settled in part of the *Mau Forest* in Nakuru District – under the protection of the Kenyatta government (Boone, 2012, p. 81-82). In 1968, the *Land Act* and in 1970, the *Trust Land Act* both served only as a weak framework for community land rights (Home and Kabata, 2018, p. 6). As per Southall (2005), from 1986, forest lands became President Moi’s tool of patronage, which resulted in further declassification – and resettlement into such land (p. 149). In the last year of the Moi regime – in the run up to the 2002 elections – vast areas of the *Mau Forest Complex* were cleared for settlement, and the discretionary power the state held over land used to allocate areas to the ruling elite was highlighted. The Kenyatta and Moi-era land allocation was, therefore, a political artifact (Boone, 2012, p. 82). As Klopp and Lumumba (2017) recount, despite the clear presence of land grabbing, the political class presented land disputes as ethnicised. The freeing press of the 1990s contributed to an increased public exposure of land issues, which also led to mobilisations against grabbing. It was in response of this mounting resistance, that the government created a commission to look into land laws in November 1999 (p. 7). The year 2002 brought a historic change of power, as the opposition coalition of the National Rainbow Coalition (NARC)⁴, headed by Mwai Kibaki, won the election, promising Constitution reform and fighting corruption, which consequently led to setting up the *Ndung’u Land Commission*. According to the *Africa Centre for Open Governance* (2009), the *Report of the Ndung’u Commission on Illegal and Irregular Allocation of Public Land* rightfully highlighted the issues of land disputes as well as the abuse of the *Trusteeship* system. Composed of 20 members, the *Ndung’u Commission’s* aim was to tackle the issue of corruption and land allocation to “politically well-connected persons”, and to reverse unlawful actions in this context. In its findings presented in 2004, the commission outlined that illegal public land allocation is a prominent demonstration of corruption and political patronage – and made a number of recommendations on correcting wrongdoings, which were implemented only to a limited extent⁵

⁴ NARC was an alliance of the National Alliance Party of Kenya and Liberal Democratic Party, winning a landslide victory over the Kenya African National Union in December 2002.

⁵ For a detailed overview of implementation, see *Africa Centre for Open Governance* (2009, p. 32-36).

(Africa Centre for Open Governance, 2009, p. 5-31).⁶ According to Manji (2012), another significant aspect the report revealed is the extent in which administrative and professional corruption paved the way to illegal or irregular land transactions (p. 469).

The overall tension around land ownership, in combination with the electoral violence and displacements of 2007 and 2008, contributed to the creation of the 2010 Constitution. This, via its *Land and Environment* chapter, set the land law reform in Kenya in motion.⁷ It is important to outline, as Alden Wily (2018) did, the timeline of the changes: the 2010 Constitution was the first to majorly depart from the two earlier versions. *The Trust Land Act* was revoked only in 2016, by the *Community Land Act* (p. 3).

The 2010 Constitution defines community land in article 63, in straightforward terms, yet, according to Alden Wily (2018), its last two points are a subject of contestation between state authorities and communities. The point of discourse is the state's claim that most lands under the fourth point – and some under the fifth point are public property (p. 8). Point four and five are defined as following:

- i. *ancestral lands and lands traditionally occupied by hunter-gatherer communities; or*
- ii. *lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under Article 62 (2)*
(Government of Kenya, 2010, p. 22)

Consequently, the 2016 *Community Land Act* broadened the interpretation by adding sections outlining common socio-economic interest, ancestry, ethnicity, culture, or similar interest, among others (The Republic of Kenya, 2016, p. 10-11). According to Home and Kabata (2018), this *Act* could have put communities in a powerful position – but there was no political will to use such a complex land system: the *Act* was not enabled in the envisaged time frame (p. 7). Therefore, the

⁶ Adapted from Takácsová, D.: Land Rights and Forest Degradation: The Case of the Mau Forest Complex and Its Ogiek Community, term paper for Global Trends in Africa, in *the European Interdisciplinary Master in African Studies (EIMAS)*, in 2020.

⁷ A detailed overview of the process and implementation of the Community Land Law is beyond the scope of this thesis, however, it has been elaborated by Di Matteo (2017).

contemporary reality remains favouring individual land tenure rather than communal land management.

2.2. Environmental and socio-economic context

In order to demarcate the geographical space in which this research is situated, we examine the context of the *Mau Forest Complex*, which is East Africa's largest indigenous montane forest. A vital biodiversity spot and the largest closed-canopy forest of Kenya, the present-day *Complex* is situated on the Mau escarpments in Kenya's Rift Valley Region, covering a large area of the country's south-western highlands. According to the Kenya Forest Service, the *Mau Forest Complex* is located about 170 kilometres from Nairobi, and borders Kericho County (West), Narok (South), Nakuru (North) and Bomet (South-West) (n.d., para. 1-2). Its area covers about 273,300 hectares and is recorded as a place with the highest rainfall rates in Kenya. Obare and Wangwe (1998) describe the differentiations in vegetation as a moist montane forest on the steep slopes, with an average canopy height of about 20 metres – and a dry forest ecosystem on the Eastern side (p. 6-7).

This section examines the characteristics of the *Mau Forest Complex* in a bid to pinpoint its significance: it is as water catchment area important for all East Africa, and the largest of Kenya's five water towers⁸. As per Albertazzi et al. (2018), the *Complex* is composed of 22 blocks – all of which, except the *Maasai Mau*, are forest reserves. The *Forest* is situated at an altitude between 1200 and 3000 metres. 12 rivers originate from the *Forest Complex*, feeding the transboundary *Lake Victoria*, *Lake Natron* and *Lake Nakuru* - and supporting the livelihoods of the *Maasai Mara* and the *Serengeti*. The rivers are significant for a wide range of supplies such as urban water access, agriculture, hydro power, or wildlife habitat. The *Forest* spreads across Nakuru, Kericho, Narok, Baringo, Bomet, Nandi and Keiyo Marakwet counties, which is an area that is home to about seven million people (p. 2-3).

Overall, the *Complex* has a non-disputable ecological value: it is an attractive, fertile area rich in fauna and flora, characterised by complex vegetation patterns. Moreover, it is important to acknowledge that this *Complex* forms a fragile ecosystem which consists of large animal biodiversity, many indigenous plant species as well as a combination of a range of forest forms and

⁸ The other four water towers are Mount Elgon, Mount Kenya, the Aberdare Range and the Cherangani Hills.

open grasslands. The most ecologically valuable parts are, however, the intact canopy forest sections, such as in the western part of the *Mau*. According to Bennun and Njoroge (2001), the *Forest* is home to one of the richest selections of central East African montane bird variety. With varying scarcity and location, other notable wildlife includes the *Yellow-backed duiker*, the *African golden cat*, the *African bush elephant*, the endemic *Cupreous protea butterfly*, or the rare *Polystachya bella orchid* (p. 453). Beside the indigenous forest, the *Mau* is also populated with (often monoculture) commercial plantation forests dating back to various years. These, however, do not boast a richness in biodiversity comparable to the closed-canopy pockets.

Despite, or better, because of its ecological value, the *Complex* remains a contested space within Kenya. Considering climate change, biodiversity loss and human interventions, resource-rich tropical forests are faced with increased pressure in various forms – and the *Mau* is also evidence of the above. The reality of the *Forest* has been affected by environmental degradation and drastic deforestation. In a bid to understand the extent of forest cover loss, we turn to data provided by Sena (2006): in the period between 1973 and 2003, 36,780 hectares of the *Mau Forest* were removed – and in 2001 itself, 67,000 hectares were excised by the government for logging purposes, and to settle agricultural communities. Moreover, in the period of 1996-2003, more than 30 percent of the *Maasai Mau* forest was removed (p. 1.). Reflecting on high rates of forest removal across East Africa, Klopp (2006) asks what and who causes deforestation, urging to consider the wider circumstances, such as its connection to power and politics (p. 352).

The *Mau Forest Complex* is currently managed via the state corporation of the *Kenya Forest Service* (KFS), which was, as the World Bank (2007) notes, established in 2007 under the *2005 Forest Act* to replace the *Forest Department*. Its establishment has been part of a continuous effort to revert the heavily centralised forestry management in the country, which was a legacy of the colonial period. The *Service's* mandate is to administer, conserve and sustainably manage Kenya's forests with the aim of shifting from an exclusionist to a more participatory approach to natural resource management, which also incentivises sustainable forest management through forest community associations (p. 1; 15). The *Kenya Forest Service* management is composed of 10 ecologically demarcated conservancies (Wanjiru, 2014, p. 7). The *Complex* has undergone a transformation and area reduction which have been impacted by different dynamics that are, according to Albertazzi et al. (2018), centred around power.

With its history dating back to the colonial era and peaking in the 90s, until the promulgation of the *2005 Forest Act*, the present-day forest degradation and deforestation of the *Mau Forest Complex* reveals the complex struggle beyond the land question in Kenya, as well as government tactics of using the *Forest* as a political asset (p. 1-4). From the times of Kenya under British rule until the post-independence period, the *Mau* has been in the centre of attempts to control access to forests. The above is, as per Domínguez and Luoma's (2020) analysis, a continuity of the link between colonialism and contemporary conservation ideologies on the continent, which first stemmed from the colonial powers' maximisation of resource extraction for colonisers' benefits – and then, upon realising the natural degradation, from an aim to reverse the damage mainly through conservation which removes indigenous peoples from the affected areas, disregarding indigenous peoples' conservation practices preceding European contact. Colonial conservation practices, therefore, persist (p. 4).

Agriculture has been determined as a key aspect of forest cover loss. The expansion of small-scale permanent agriculture is linked to population growth and to the government's land allocation to small-scale farmers. According to the Government of Kenya and UNEP, in 2001, 14 percent (61,023 hectares) of the forest were removed in order to make room for small-scale farmers (2008, p. 28). Albertazzi et al. (2018) outline that, in fact, pre-2001 population density was low in the *Mau Forest Complex* – and this did not create unsustainable pressure. According to the authors, population growth is a result of not only the re-distribution of the local inhabitants - but also of immigration from other counties of Kenya: the fertile soil and high rainfall rate made the forest an attractive resource for various groups. Notably, the implemented settlement scheme speaks of a strong connection to environmental policies and political strategies.

The government set up the settlement schemes following the conservation recommendations of the *Kenya Indigenous Forest Conservation Programme* (KIFCON), with the official aim of environmental conservation while removing the forest's inhabitants. Due to the attractiveness of land, the resettlement scheme also brought people beyond the forest-dweller Ogiek community ancestral to the *Mau Forest*⁹. This initiative was an aim to retain political power in the last years of Moi's presidency. Additionally, the resettlement zones were located inside the protected part of

⁹ More on the Ogiek in chapter 2.3.

the *Complex*. Therefore, in this complex case, population growth was not the origin of the deforestation process – but its consequence (p. 4-5).¹⁰ Consequently, logging schemes also need to be noted. The *Mau Forest Complex* is Kenya's most logged forest (Sena, 2006, p.2). While this logging has roots in the colonial period, its consequences are contemporary – and far-reaching. For instance, a 2005 report on the *Maasai Mau Forest* by *UNEP, Kenya Wildlife Service, Kenya Forestry Working Group* and *Ewaso Nyiro South Development Authority*¹¹ stated that in the western part of the *Forest*, this activity was so widespread that it was not possible to count logged trees (Nkako et al., 2005, p. 17). With the Kenyan government's country-wide ban on logging, three multi-national companies, which happen to be the largest loggers in the *Mau Forest Complex*, were exempted from the ban: *Pan African Paper Mills, Raiply Timber* and *Timsales Ltd.* The government's justification included the high number of Kenyans depending on employment in *Raiply Timber* and *Timsales Ltd.* – and the government's shareholding in the *Pan African Paper Mills* (p. 2).

Tea production is another considerable part in the socio-economic context of the *Mau Forest Complex*. The area just outside the *Forest* is a major centre of tea production in Kenya. As Morgan (1963) states, this is a consequence of more than the favourable climate: historically, this part consisted of the western part of the "*White Highlands*", fertile land reserved for European settlers (p. 151). Between 1994-2003, the number of tea estates increased by 13% (Swart, 2016, p. 24). Beyond this, logging in Kericho district is aimed at supporting the tea industry in order to provide timber for roasting tea leaves (Sena, 2006, p. 3).

Notably, monospecific tree plantations significantly contribute also to forest degradation. Such plantations have their origin in the colonial times – and now cover about one third of the *Mau Forest Complex*. As per Ofcansky (1984), as wood consumption rose due to the construction of the Uganda Railway, wood depletion became a concern – and following the exploitation of the indigenous forest, this led to an establishment of tree plantations that are more productive, including eucalyptus (p. 138). In Albertazzi et al.'s (2018) words, the *East African Timber*

¹⁰ Adapted from Takácsová, D.: Land Rights and Forest Degradation: The Case of the Mau Forest Complex and Its Ogiek Community, term paper for Global Trends in Africa, in the *European Interdisciplinary Master in African Studies (EIMAS)*, in 2020.

¹¹ To know more about these organisations, please see www.unep.org, www.kws.go.ke, www.kenyaforests.org and www.ensda.go.ke.

Cooperative Society Limited – later *Timsales*, the main wood-based company in the *Mau Forest Complex* was created in this era. As of the 1940s, its focus was on exotic plantations. The independence brought a status change to a public company and an increase in its ties to the political system, as the Kenyatta family became involved in the company directly. Plantations are not defined as deforestation – but their share on the loss of natural habitat and biodiversity is prominent. Such exotic tree plantations are now managed directly through the *Kenya Forest Service* (p. 7).

While infrastructure construction is still relatively limited, it is predictably another threat to the state of the *Forest*. The largest project in the pipeline is the *Itare Dam*, developed on the Itare River in Kuresoi North, with the goal of providing clean drinking water to about 800,000 people in the county. Dam construction is underway – but the process has stalled due to mismanagement. If advanced with, the construction of the dam will affect the inhabitants of Kiptororo and Tinet. For Albertazzi et al., (2018) the 280-hectare reservoir of the dam is constructed in a cleared area – but in the proximity of the *Forest*. Moreover, various parts of the dam’s infrastructure are going to affect areas of great environmental value. Alongside the *Itare Dam*, another reservoir on the Kipsonoi River (South West forest block) and infrastructure construction related to small-scale farming and plantations also poses additional challenges (p. 11).

2.3. The Ogiek and land abuses

The Ogiek (singular: Ogiot) is a community of about 30,000 members, with a majority living in the *Mau Forest Complex* and the great Rift Valley Province in Kenya. Another group lives in Tanzania. Historically surrounded by misconceptions, the Ogiek were called “Dorobo” – a term describing people without cattle, which, however, gained a negative meaning in the community¹². The Ogiek are a group of people with distinct cultural features and with their own language - the Ogiek (also Okiek or Akiek) – which belongs to the Kalenjin family. “Ogiek” literally means the caretaker of animals and plants. The community is one of East Africa’s last hunter-gatherer populations. With regards to the *Mau Forest Complex*, as described earlier, there is no evidence of the Ogiek’s

¹² Kratz (2002) notes that with Europeans arriving, the colonial officers first learned about the Ogiek via the Maasai, accepting Maasai portrayal of the community (Kratz, 2002, p. 89).

migration from another region, hence, it is believed that they inhabit the *Forest* since time immemorial. The community traditionally relied on hunting game meat, beekeeping, gathering fruits, honey, other food items and medicines from the *Mau*. They also regard the *Mau* as their environment, presenting a distinct idea of spatial understanding. Blackburn's description, in 1974, highlights the need to understand the Ogiek in a broad setting of the natural environment they inhabit, which is complex – and encompasses various ecological zones, enabling the community to secure food across seasons (p. 145). For Yeoman (1993), the Ogiek are people with affinity and care for the *Forest* and wild animals, practising sustainable hunting of predominantly species with large populations. They are, the author says, resilient and craftspersons who know the details of bow and trap creation, and who are skilled beekeepers placing their hives in the heights of (often branchless) trees while strategically following the flows of nectar (p. 32-33). Historically, the Ogiek used their own structure dividing the territory of the *Forest*, with each clan having an assigned part in order to prevent the overexploitation of their environment and maintained its fragile ecosystem. Their close link to the *Complex* is not only based on livelihood – it also constitutes a spiritual and cultural connection.

Yeoman (1993) noted that while the above description of the Ogiek is still valid, the Ogiek way of life has been marked by the political, societal, and ecological changes that began – but did not stop - with colonial rule. These translated into restrictions of wildlife hunting, dependence on land cultivation and cattle, and the introduction of cash economy. The areas the community could utilise decreased, and land insecurity and the high-altitude farming conditions did not make the Ogiek's farming commercially successful (p. 33).

The areas inhabited by the Ogiek were historically out of the focus of infrastructural or institutional development, except for the (unsuccessful) efforts to remove certain Ogiek groups with the declaration of forest reserves (Kratz, 2002, p. 7). The transformation of the lifestyle is traceable; however, the community continues to rely on the *Forest* for their livelihood. In relation to this, as early as in 1980, Kratz highlighted the Ogiek's ability to move between spaces, have a fluid identity which is negotiated in daily relations, and interactions with neighbouring communities such as the Maasai, Kipsigis or Nandi (p. 356-358). The arrival of colonial rule marked the beginning of the Ogiek's large-scale evictions from their land. According to Stiles (2002), the *British Colonial Government* began this process in 1903 in order to remove trees so that a railroad can be

constructed. The majority of the forest area in 1911-1914 signed from the Maasai to the British belonged to the Ogiek. As the gazetting of the *East Mau Forest* took place in 1932, the Ogiek were deemed illegal inhabitants, and were evicted. This process was accelerated due to the community's non-homogeneous character, hence, the lack of land right attributions (p. 50). With regards to this, Yeoman (1993) described the Ogiek as following: "*They were an elusive, apparently (but not truly) nomadic, uncountable people lacking a recognisable hierarchical structure and resistant to tidy organisation*" (p. 31). In 1937-1938, the *Carter Commission* made further attempts to evict the Ogiek from the remaining parts of the *Forest* and to transform them into labourers on European farms – or to move them to Forestry Department labour camps. This was met with failure. Attempts were also made to assimilate the Ogiek, with the recommendation that whenever possible, the Ogiek should become members of the closest tribe (these being the Maasai and the Kalenjin). The entire *Mau Forest Complex* was gazetted by 1954, while the 1957 Forest Act declared it a *Crown Land* (Stiles, 2002, p. 50).

As outlined in the land section of this research, the independence brought high hopes in revisiting the skewed land distribution in Kenya. These expectations were not met – and such this was also reflected in the experience of the Ogiek. The marginalisation of the community continued, alongside with the lack of its formal recognition. Kratz (2002) outlines that the character of stereotypes surrounding the Ogiek also transformed somewhat with the changes of colonial and post-colonial Kenyan society. While negative perceptions around economic and social aspects are continuous, they have been subtly reformulated to cater for nationally approved terms such as "modernity" or "development" (p. 7). Consequently, the 1964 *Forest Act* revision ignored the Ogiek – and the 1967-1988 Kenya African National Union (KANU) government sporadically continued evicting the community. Standing outside the formal administrative structure, the Ogiek's fight for survival continued as they began lobbying for their cause (Stiles, 2002, p. 50-51). Resisting the loss of their land, a clan of elders presented a 1990 memorandum to the Rift Valley Provincial Commissioner, and were, for the first time, received by President Daniel arap Moi. The seeming support, however, did not materialise. In 1995, the *Mauche* (Mau-Chepalungu) *Settlement Scheme* was set up – but support faded as each Ogiek family was about to get only two hectares, leaving a large part of the *Complex* unassigned. The Ogiek tried to complain to President Moi – but to no avail. In addition, people from other tribes posing as Ogiek got allocated land in

the *Mau Complex*, too, as well as politically well-connected persons not fulfilling the criteria of the scheme. The Ogiek's protest was met with military violence, and the community was not allowed to build any houses in the *Complex* (Kimaiyo, 2004).

As per Klopp and Sang (2011), the *Kenya Indigenous Forest Conservation Programme* (KIFCON), implemented between 1991 and 1994, was aiming at sustainable forest management and exploitation benefiting the environment and people. Failing to capture the complexities of land relations in Kenya, the Ogiek settlement scheme recommended by this programme became a pretext for massive and irregular land allocations on some of the highest political levels. In 2001, President Moi's government announced the clearance of over 60,000 hectares of the *Mau* under the false pretext, according to the authors, of resettlement of Ogiek people. Both the international community and many Ogiek protested the events (p. 129-130). The Ogiek have been actively resisting the evictions and filed several claims against the government. This first took place in 1997, when the community filed a suit in the High Court. As per Kahura (2018), this case remained unlisted until 2012, and then it was moved to the new *Environment and Land Division* of the High Court. In 2014, the judgement was handed to the applicants, with findings mostly in favour, recognising the violation of the Ogiek's right to dignity and life, and the discriminatory character of evictions.

This was followed by a period of inertia and illegal parcelling of vacant *Mau Forest* land (para. 2-3). In reaction to the 30-day eviction notice which the Kenyan government issued in 2009, the Ogiek decided to submit a case against the Government of Kenya to the *African Commission*. They did so through the *Ogiek Peoples' Development Programme*, with the support of *Minority Rights Group International* (MRG), a United Kingdom-based non-governmental organisation, and Kenyan non-governmental organisation *Centre for Minority Rights Development* (CEMIRIDE)¹³. The case reached the *African Court on Human and Peoples' Rights* in 2012. As per Claridge (2018), the 2013 *Order for Provisional Measures* required the Kenyan government to restore the restrictions on land transactions in the *Forest* until decision is taken, but the Government did not comply: harassment of the Ogiek continued, culminating in a violent eviction of about 1000 community members in

¹³ As per Mulindwa (2020), "minority" as a term has been used in international and human rights discourse, but no international instruments on minority rights provided an explicit legal definition of the concept. Similarly, despite Africa being home to many ethnic minority communities, there is no generally accepted definition of ethnic minorities, as these are recognised by individual states through objective and subjective criteria (p. 60-61).

March 2016. After the (unsuccessful) exploration of options of amicable settlement in March 2015, the Court delivered its judgement on 26 May 2017 (p. 58). This was a landmark ruling which made news worldwide and gave renewed hope to the Ogiek and to indigenous communities across the continent. However, five years later, little has been implemented from the decision¹⁴.

3. RESEARCH METHODOLOGY

3.1. Research design

This research has an approach of a case study strategy. According to Stake (1995), it is expected that a case study captures the complexity of a single case while studying its activity in the context of important circumstances (p. xi). Simons (2014) notes that a case study is a detailed documentation of a situation or event in a specific sociopolitical context. This model is not dependent, nor constrained by time, and its flexibility in timeframe provides for differing outcomes (p. 455; 458).

Moreover, the employed research design is qualitative which is, according to Leavy (2014), a way of learning about social reality and an umbrella term encompassing a wide array of approaches. In the social sciences, these are frequently used to explore or explain a social phenomenon, understand an aspect of social life or a meaning people ascribe to activities (p. 2). The possibilities of qualitative research are almost endless – and qualitative researchers draw from various methods while constructing many different types of projects. As Denzin (2018) states in *The Qualitative Manifesto*: “We are all interpretive bricoleurs stuck in the present working against the past as we move into a politically charged and challenging future.” (p. 6)

Furthermore, the study relies on anthropologically informed visual interventions. According to Pink (2006), the diverse field of applied visual anthropology is signified by using visual anthropological theory and practice applied to non-academic ends, is interdisciplinary, and has a great potential to communicate across academic disciplines and cultural boundaries. Applied visual anthropology has a problem-solving component, an aim to create social interventions, and

¹⁴ See more at www.the-star.co.ke/news/2022-05-26-ogiek-ask-state-to-implement-african-court-judgment (26.05.2022).

is mostly characterised by collaborative approaches with research subjects playing an active role in producing data. They at times have a personal or community stake in the findings of the research (p. 87-88; 100). The approach also speaks to a broader context of understanding of social sciences. For instance for authors like Camas et al. (2004), social research is a form of intervention as opposed to a methodological practice, and it should aim to dissolve the border between the researcher and the researched, and a tool for a fairer, inclusive society and to bring often marginalised voices to the public (p. 132).

In this thesis, qualitative research relied on primary sources and secondary sources, with the former providing an initial solid base and clarification for what is to be studied. According to Stewart et al. (1993), secondary information relies on a wide range of sources, data or different information which was collected by others. This in almost in all cases provides a point of departure for primary research (p. 1). In this study, we utilised the diverse literature already available on the topic, which enabled us to delve into the designated problem. We namely focused on land claims and pressure, and the Ogiek's right to development in the historical and contemporary reality of the *Mau Forest Complex*. This phase also consisted of preliminary contact gathering and establishing, ensuring the smooth proceedings of the primary research section.

As per Driscoll (2011), the main goals of primary research are filling information gaps and eliminating one's own biases in the process (p. 154). With this aim, we conducted field research in Kenya for two months, from 16 February until 14 April 2022, and were based in Nakuru, Nakuru county – an area which is in the proximity of *Eastern Mau*. This study's primary research relied on participant observation, semi-structured interviews, documentary photography, and collaborative visual practices. The above tools were selected based on the secondary research and on the alignment with research aims, as outlined below.

As Musante (2015) notes, participant observation entails the collection and recording of information which is acquired in a social setting while observing happenings. All humans participate in observation – and observe in everyday interactions, however, what makes a difference is that researchers do so to systemically use the information in formal analysis (p. 252). According to Simons (2014), observations especially relevant for case study research are close-up descriptions of activities, events or incidents of a particular context (p. 462). Semi-structured interviews were selected to enrich our visually grounded research by textual data in a format which

has only some predetermined questions. According to Brinkmann (2014), qualitative interviews are not a goal in themselves: they are a tool for the researcher's knowledge production. The semi-structured format, as the author notes, allows for a better utilisation of the knowledge-producing potential of the discussion and for respondents to contribute to the flow of it (p. 286).

Holm (2014) states that our culture is becoming increasingly visual – but this visual saturation is not utilised correspondingly in social science research (p. 380).¹⁵ According to Azoulay (2010), the majority of sociologists, historians or philosophers do not recognise photographs as documents, as a source for research in their disciplines. In this context, a photograph is, among other points, considered as partial, biased incidental or false (p. 3). One of the difficulties associated with using photography as a research method is the medium's ambiguity leading to the scepticism of especially positivist researchers - and the divergence from perceiving photographs as displaying only the reality - simple truths. Holm recognises that photographs are constructed – made (Holm, 2014, p. 383). However, as Dona Schwartz stated in her keynote from the 1st International Visual Methods Conference in 2009: “In the sciences, the idea of ‘productive ambiguity’ with multiple readings giving rise to innovations that would have been unimagined had not a plurality of readings been possible” (Schwartz, 2009, cited in Denzin and Lincoln, 2012, p. 181). As the multivocal character of photographs makes their use problematic, there is an academic tendency to constrain multiple voices while one is prominent: that of an illustration, a representation of something already described in the text. Photographs are, however, not to be taken lightly - and their tandem with texts should be contextual (Banks, 2001, p. 144).

As noted above, an increasingly visual and interconnected world calls for re-imagining research approaches that address barriers and inequalities created by language, access, or power. In this study, we employ, for enriching our case study methodology base, a visual research methodology primarily working with the medium of photography. Within this, we focus on documentary photography. This process was preceded by participant observation and semi-structured interviews. Pink (2012) in her introduction outlines interdisciplinary and transdisciplinary visual methodologies as a “set of approaches to working with the visual in research and representation that are constantly in progress and development”. According to Rose (2016), the different

¹⁵ For instance, see Pink (2006) for a historical overview of turning points in visual anthropology's support and sidelining by mainstream anthropology.

modalities contributing to a critical understanding of images in the discipline are technological, compositional and social aspects (p. 26). The definitions of documentary photography, which is central to this study, are not monolithic – and evolve as visual cultures¹⁶ do. However, with the words of photographer and *Magnum Photos* member Susan Meiselas, “Documentary photography is principally based on capturing and not constructing a world” (Interview by Bogre, March 13, 2017, cited in Bogre, 2020, p. 30).

As per Morphy and Banks (1997), much that is observable and can be learned about a culture can be captured most comprehensively in a visual form. The justification is not that it is possible to record a whole – but that neglecting visual data might reflect a Western bias of the elevation of the intellectual over the experiential or phenomenological (p. 14). Good social research requires the researcher to enter the process self-consciously, and not to pretend to somehow transcend one’s humanity and stand outside, only observing (Banks, 2001, p. 112). When creating images of persons and their actions, the social researcher is intervening in the lives of those, and forging representations of variable degree of interest and control (Banks, 2001, p. 113). According to Azoulay (2010), a photograph which is a result of an encounter always contains more and less than what someone wishes to capture in it. It always bears excess of – and lack of – in relation to each of the protagonists (p. 12). Photographs are defined by these complex reflections of a relationship between ‘maker’ and the person on the other side of the camera where both play a role in shaping the character and content (Collier, 2004, p. 36). Following Prosser and Schwartz (2005), we cannot speak of methods that are uncontaminated by reactivity between those in front of – and behind the camera, culturally unbiased, or unmediated by the technology itself, but we build on the unique capacity of photography to represent a specific moment in time and space (p. 105) as a guidance for this research.

To acquire an in-depth understanding translating into visual research, one must complete ‘immersive’ field research, which is driven by theoretical questions (Harper, 2005, p. 29). As per Prosser and Schwartz (2005), photographic data analysis, just as with textual data, is a series of inductive and formative acts which is done through the research process. Similarly to other qualitative research strategies, visual researchers also begin the analysis while conducting field

¹⁶ See Rose (2016, p. 20).

research in order to include new inferences (p. 109). Consequently, full contextual detail (if ever possible) provides for the recognition of the trustworthiness and limitations of photographs (Prosser and Schwartz, 2005, p. 111). Informed by the ever-evolving debate on ethics¹⁷, processes, representation and the power relations embedded in photography, this research relies on both documentary photography and collaborative visual practices.

According to Banks (2001), social researchers' image construction in the field must be at least to some extent collaborative as even the researcher's presence is a result of social negotiations (p. 119). Pink (2006) also notes the methodological importance of participation in applied visual anthropology, whereas if researchers seek to collaboratively research and represent other people's experiences, the importance of visual is clear-cut as it should be useful for MacDougall's (MacDougall, 1998, cited in Pink, 2006), "'transcultural communication' of one group's experiences to others" (p. 88). A collaborative process is also a critique of a purely observational approach: the latter implies doing research *on* people and focusing on what is visible rather than working with informants in a way that demonstrates the multitude of invisible aspects and experiences. Moreover, a collaborative approach also signifies knowledge-production (Pink, 2006, p. 37). Therefore, collaborative visual practices were selected both in reflection of the above – and also because we believe that they are crucial in subverting the, as explained by Colberg (2020), unequal power relations inherently embedded in photography which manifests in the camera operator as opposed to the one in front of it (para. 1). While we researched – and prepared for – possible ways of proceeding with this aspect prior to the primary research phase, we were open to shaping the collaborative aspects by community members themselves once in the *Complex*.

3.2. Research area and process

The area of our primary research focused on two selected parts of the *Mau Forest Complex*: the *Eastern Mau* area with stays to Mariashoni, Kiptunga Forest and Nessuit, and the *Southern Mau*, in Nkareta. The areas were chosen based on a combination of factors: these included previous contacts acquired during a reporting trip in 2018 which was facilitated by *Minority Rights Group International* through the *Media, minorities and migration* program, logistical possibilities, and recommendations from Ogiek community members on the ground in identifying an area which

¹⁷ See the *Ethical considerations* section.

responds to our research needs. From our base which was, as previously noted, Nakuru, we planned research stays within the selected parts of the *Forest*, which were further narrowed down with the support of our two research assistants, Clare Rono of *Mariashoni Community Development* (MACODEV), and Samson Luari of the *Ogiek Peoples' Development Program*, as well as other members of the same local non-governmental organisations, which also constituted our main contact points on the ground. Furthermore, our research agenda also depended on Ogiek community members' availability, and – especially in April when the rainy season began – on the logistical limitations caused by limited accessibility of certain areas.

Each research stay lasted two consecutive days - an imperative of both the logistical realities, and of the research needs given the mixed methodology. With these sections, we were able to cover key points of our research focus on the context of the *Mau Forest Complex* overall, and to derive trends. Moreover, during our research stay, we were able to join a two-day *Ogiek Elders' Council* meeting in Nakuru, and a women's group meeting in Mariashoni. In reaching our research areas, we relied on a combination of public transport (matatus), private and shared cars, motorcycle taxis (boda boda), and walking. Such manoeuvring at times required careful planning or support. It eventually also highlighted the logistical challenges Ogiek community members are faced with, such as the lack of asphalt road between Nessuit and Njoro, the often-insufficient amount of available transit options, or the deterioration of road conditions with the influence of bad weather, which in some cases led to walking as the only option. Throughout the research, the research assistants who are knowledgeable about both the *Complex* and the community were important actors in identifying suitable respondents – and helped to overcome language barrier where it persisted as numerous community members either do not speak English – or simply feel more comfortable speaking in Ogiek or Swahili. Preliminary research, personal encounters, and our research aims of connecting with craftpersons and land right defenders also contributed to the selection.

In the first stage, we conducted semi-structured interviews and participant observation. Overall, 9 Ogiek and non-Ogiek respondents were interviewed in person at various locations in and around

the *Mau Forest Complex*, and on one occasion online, via the Zoom platform¹⁸. Research assistants were not interviewed as part of this study due to their role in facilitating access on the ground.

Table 1 – List of interviewees

Respondent's name	Affiliation	Location
Respondent 1	NGO director	Nakuru
Respondent 2	Elder	Eastern Mau
Respondent 3	Elder	Eastern Mau
Respondent 4	Community member	Eastern Mau
Respondent 5	Elder	Eastern Mau
Respondent 6	Herbalist	Eastern Mau
Respondent 7	Herbalist and craftsperson	Maasai Mau
Respondent 8	Herbalist and craftsperson	Maasai Mau
Respondent 9	Human rights lawyer	Online

Source: author

We joined the Ogiek in the forest on several occasions, where we could both see (and capture) the diversity – and observe community members' interaction with the *Forest*. The purpose of these visits ranged from striving to understand the circumstances of herb collection, beekeeping, household activities or hunting, through recognising – and photographing the various forest forms and the associated flora and fauna, to visiting ancestral sites such as caves. As part of documentary photography, we embedded ourselves into Ogiek everyday life – and followed whichever opportunity arose to do so. Of course, our presence never went unnoticed – and we do not claim an absolute immersion into such everyday life, nor do we assume that our presence did not have

¹⁸ Interview recordings are available upon request.

some impact in the community's daily life. According to Pauwels (2011), rituals or society's other prescribed activities provide a condensed look at the main aspects of human organisation. This can benefit from a visual approach which has the potential to capture an event's richness and complexity, including cultural specificity and development through time and space (p. 9). With our documentary photography section, we aimed to translate the complexity of the Ogiek lifestyle and identity. The outcome of this part of the study is varied, and includes settings populated by a wide range of motives - both figurative and non-figurative.

As we began meeting the Ogiek, within – and outside the interviews, we also inquired about Ogiek art expressions and their meanings in order to prepare for the collaborative visual practice aspects of this research. As such, collaborative visual practices in this research translated into community members' direct and indirect determining of what is of significance and should be photographed, through Ogiek artists' selection of photographs to be further altered for their artworks, as well as through knowledge sharing, which co-shaped the study. With regards to altering images, with the support of research assistants, we initiated collaboration with a women's craft group, a poet, and an herbalist/crafts person. Upon a personal meeting, we outlined the aim of the research and shared a few examples of collaborative practices stemming from photographs to illustrate some of the many possible directions. A decision was then taken by artists on how each of them would proceed in creating collaborative artworks. In case of the women's craft group, we walked in the *Forest* and photographed plants chosen by two members, who subsequently selected the exact photographic files they would like to work with. These were then printed in Nairobi, and further transported between Nakuru-Mariashoni/ Njoro and back to Nakuru. The poet and herbalist both selected from ready photographic prints after outlining the themes they would like to focus on: the prints were also transported between locations. Each artist also stated the needed material, which was provided by a combination of efforts between the artists and us, often overcoming logistical limitations; however, the creation process of these artworks was entirely in artists' hands.

3.3. Ethical considerations

The main ethical considerations related to this study were informed consent, privacy, and confidentiality (both related to the chosen research theme and to the respondents), and the power relations embedded in photography.

An overarching concern emerged in relation to the research thematic. Brosius (1999a) underscored that with academics studying environmental, indigenous, or other social movements, the researchers operate in a certain space of precarity and consequences – both intended and unintended - of work as their accounts or critiques (even if constructive) might be appropriated by the opponents. These concerns are linked to the in-depth study of movements, their practices and agendas – their strengths and weaknesses, strategies – and all that is “hidden” (p. 370). Consequently, with the accessibility of internet and online databases, “the production of meanings and identities is now occurring in a global political space in which claims to authenticity are a critical dimension of legitimacy” (Brosius, 1999b, p. 180-181). There is also an unexamined question of researchers establishing a “rapport” while moving between sites – let it be persons from rural villages, local NGO members, or company executives. How many stories does one tell? And in them, to what extent are we manifesting one’s political sympathies? (Brosius, 1999a, p. 372). Such research concerns can have far-reaching consequences, and therefore require researchers’ special attention.

With relation to consent, each person involved in this research was informed about the study’s aims and goals prior to any activity, which was furthermore adhered to a voluntarist principle where participation was at one’s free will. Informed consent – as opposed to a contractual consent – has been vital to the design of this research; however, its ethical questions are two-fold, and have different implications for observation, interviews (which provided for a higher level of confidentiality as they were anonymised), and photographs and collaborative visual practices. Pauwels (2008) notes that with when research involves audiovisual recording of human behaviour, ethical issues become even more pressing, because such data differs from written to numerical research.

As global standards evolve, ethical concerns such as ongoing, informed consent instead of a purely “contractual” approach are discussed (p. 244; 249). Such a shift in overall approach can be attributed to the increased interconnectivity of the world, the digital dissemination of material, or the democratisation of knowledge, however, we argue that while the above questions of ethics are long-standing, the described changes fuelled a reckoning with the insufficient attention dedicated to their fulfilment contributed to re-centring these considerations. The ethical questions surrounding photography – both as a medium and as a research tool – are complex – and their

discussion is ever-evolving. For instance, Azoulay (2008) highlights the acceptance – and legal establishment of the photographer owning the images she or he takes. The author questions the concept of “right” in this context – and challenges the assumption that the photographed person has no right over the image taken, as well as the transformation of a photograph into private property (p. 94-95). As per Holm (2014), to overcome questions of informed consent, a collaborative research of co-production with participants could be a more ethical method of visual research (p. 399). In our study, we were being guided by these principles and discussions, carefully considering our position in the visual space that does not provide definitive answers. In his lecture titled *Ethics in Visual Journalism*, Campbell outlined situational ethics as of importance for photography: rules are divorced from context, therefore working with a set of ethical principles rather than guidelines is a better approach (Campbell, 2022).

‘Permission’ needs to be understood within a socially or culturally appropriate context (Banks, 2001, p. 131). As per Denzin and Lincoln (2012), visual researchers who work within the qualitative paradigm carry an additional burden. Visual methods comprise of a wide range of media and approaches, which raises additional challenges to ethics committees with limited involvement in such methods. These are predominantly demonstrated in the bureaucratic limitations associated with confidentiality and copyright. There is, according to the authors, a real concern that such a context discourages genuine discussions on sensitive ethical concerns. Qualitative visual researchers should know enough about the society, community, and culture they are researching to make sensitive moral decisions. The overarching point of an ethical system should be, therefore, the developing of a visual researchers’ integrity and knowledge base (p. 206). According to Fluehr-Lobban (1994), informed consent became a base of ethics in all research areas involving human subjects (p.1). Such consent does not have to be written: but when informed consent is used mechanically or as a verbal formula, it can place the protection of the researcher in its focus (Fluehr-Lobban, 2015, p. 146). Similarly, Pauwels (2008) states when mandatory, a written consent is focusing on avoiding personal or individual accountability rather than prioritising the well-being of those participating in the research. The dominance of acquiring a written consent represents a “legalistic” approach – but it is not sufficient in ensuring the privacy and minimal levels of harm for the participating subjects – both during and after the research (p. 250). Marshall (2003) outlines that the nature of the consent – written or verbal – should be determined depending on the

character of the research, and should take into account the risks which might arise for the participants by signing a document (p. 275). In reflection of the above, we aimed to approach informed consent holistically – as, as Pauwels (2008) notes, an ongoing process. Due to the nature of the research and the context, we relied on verbal consent. Also working with the research assistants, we ensured the clarity of our research aims and goals, and conducted the study with a withdrawal policy, which provided participants with space to withdraw at any stage. We also clarified the way of participation on an individual basis and respected each person's wishes regarding privacy and confidentiality.

4. THEORETICAL FRAMEWORK

As outlined in previous sections, the pre-independence and post-independence contexts of Kenya have been profoundly affected by complex processes originating in other parts of the world, which can be analysed through numerous lenses. This chapter introduces the theoretical grounding of the research, which is informed by modernisation theory, land grabbing, and alterglobalisation.

Francis (2020) concludes that natural and unnatural environments are constructs informed by historical processes and the power structures embedded in them. These also determine how specific groups see, value, experience, understand and interact with the natural world. In that regard, it is important to understand modernity and capitalism's role in separating humans from nature, in exacerbating ecological degradation and in the unequal distribution of the benefits and burdens surrounding the environment (p. 41-42). To situate the above within the broader context, according to Wallerstein (2004) the capitalist world economy, a large, non-homogenous geographic zone with flows of goods, capital and labour, which is not limited by a unitary political structure but where, however, the market never functions completely freely, has its origins in the 16th century. It was then located in parts of Europe and the Americas – but it expanded to cover the globe (p. 23-25). Each phase of the capitalist development has been both a cause and consequence of an overarching restructuring of world ecology, eventually leading to today's global ecological crisis (Moore, 2000, p. 123-124).

From a capitalist outlook, nature is perceived as a repository of resources to be commodified – and the people inhabiting nature either as obstructions to this extraction, or potential workers serving the extractive industry (Wilhite and Salinas, 2019, p. 152). Shrouded in a legitimisation based on justifications of racial hierarchy, a ‘civilising mission’, a sense of Western cultural superiority, and a paternalist approach (Andreasson, 2005, p.974), colonial rule, slavery, and all forms of human exploitation has been enshrined as a policy in the late 19th century (Tucker, 1999, p. 5). Modern colonies were constituted as the expansion of the world-system through incorporating new zones by strong states. They performed internally the same kinds of functions as sovereign states; they were, however, the weakest type of state in the interstate system (Wallerstein, 2004, p. 55-56).

Andreasson (2005) summarises that the destruction of World War II in Europe produced a crisis for the advocates of colonialism - and for the overall justification of exporting the ‘Western civilisational project’ – but the idea of development remained, and was adapted to a new social and political context (p. 974-975). The modernisation theory outlines that all societies’ economic dimensions follow a linear path which leads to becoming a developed nation. These stages are categorised as the traditional society, the preconditions for take-off, the take-off, the drive to maturity, and the age of high mass-consumption (Rostow, 1959, p. 4). As Antunes de Oliveira (2019) notes, mainstream development came to exist based on a linear developed/underdeveloped dichotomy, which was inherited from the above theoretical framework of the modernisation theory (p. 2)¹⁹. This majorly shaped development in the period between 1945-1970, when North-South relations and development were defined by this approach, which signifies a discourse of ‘lack’ (McEwan, 2019, p. 161). From this economic base to the ‘basic human needs’ approach of the 1970s which placed the emphasis on growth’s redistribution, the main aim of theorists and politicians revolved around the kind of development to be pursued to solve social and economic problems of the constructed ‘Third World’, allowing those who sought to critique the dominating capitalist strategies to frame their opposition in the same wording: it appeared impossible to conceptualise social reality in terms other than ‘development’. Since its inception, the successfully deployed regime of the ‘Third World’ apparatus, a space for ‘subject peoples’, did not cease to produce new arrangements of power,

¹⁹ See Escobar (2001) for “mapping the invention of development”.

theories, strategies and so on, exercising certain governance and control over it (Escobar, 2001, p. 4-5; 9).

Consequently, neoliberalism has been settling in as the dominant political-economic practice since the 1970s, meaning the deregulation, privatization, and state withdrawal from numerous areas of social provision, with strong private property rights, free market and trade (Harvey, 2007, p. 2-3). Globalisation has also come to signify the internalization and global integration of world order, a time-space compression which, however, does not translate into homogenous spatial distribution of growth (Munck, 2006, p. 4-6). This new level of interconnectedness meant another transformation of realities. The late 2000s brought a renewed worldwide interest in farmland and agriculture investments, which was triggered by the climate, food and financial crises (Oliveira et al., 2021, p. 321). Land grabbing, as GRAIN et al. (2014) define the term, is a large scale land acquisition (either through long term lease, allocation, concession or purchase) which is done by individuals, corporations or states for private use, food crop production, biofuel production or other large project which includes displacing hundreds of families or individuals (p. 18). Daniel and Mittal (2009) state that the land grab phenomenon is also defined by wealthier, food insecure nations' rush to reach food security by buying or leasing vast land from developing countries (p. 2-3). It is, however, argued that the developments of land grabbing must be understood in a genealogical overview of histories of colonial and imperial domination, as well as new forms of neoliberal governmentality. These are heralding structural changes in the global food production chain, as well as affecting peoples' rights to land, water, resources, intellectual property and self-determination (Kish, 2011, p. 629-630).

As a narrower point of land grabbing, the term green grabbing was coined by journalist John Vidal (2008) – as Fairhead et al. (2012) signify, it is the worldwide growing appropriation of land for environmental means, whether for food, fuel – but also to 'alleviate pressure on forests'. This can involve alienation of land, restructuring the rules and authorities of access, use or management of land in relation to labour, but also human-ecological relationships (p. 237). While the phenomenon builds on long histories of colonial and neo-colonial resource alienation under the guise of environment protection, it is also quite new given its variety of actors and players who are deeply embedded in capitalist networks (Fairhead et al., 2012, p. 239). Green grabbing is now also associated with climate mitigation. As Stensrud and Eriksen (2019) note, policy designers outline

the market as the best way to regulate environmental degradation, making the environmental problem a question of market management (p. 9-10). Such climate change mitigation policies can come with dire consequences for already vulnerable populations (Marino and Ribot, 2012, p. 2).

To place the above in the context of this research, we return to the notion of development. Escobar (2001) identifies development as a historically singular experience, with three axes defining it: the forms of knowledge through which it comes into being, the system of power that regulates its practice, and the forms of subjectivity through which people come to recognise themselves as developed or underdeveloped (p. 10). To relate this, it is crucial to recognise that as Hodgson (2011) remarks, despite the centuries of preceding political formations, Africa's current key political struggles (albeit translating to the continent's diverse contexts) are products of the colonial construct: the organising principle of governance is the *state*, is complemented by the modernist ideal of *nation*, the collective identification and tool of mobilisation - *ethnicity*, *property* – as the legal framework of resource use, *development* – the self-legitimizing goal followed by African leaders, and an aspiration shared by leaders and people: *modernity* (p. 9). In this framework, development is seen as an ultimate goal of countries, in each instance presupposing that 'underdeveloped' countries can catch up with the 'developed' ones by following the latter's policies – and when unsuccessful, it is perceived as their own fault (Antunes de Oliveira, 2019, p. 2). It is this complex matrix within which have been contemporary Kenya, the Kenyan government, the *Mau Forest Complex*, and the Ogiek situated, pressed to – and against – the national and international actors, and the numerous forces present. In this, notions of development, productive land use, commodification of nature, conservation and climate mitigation policies and political marginalisation have each complex consequences for both the Ogiek – and the *Forest*.

Referring to the Canadian Idle No More movement,²⁰ Woons outlines that in order to counteract colonialism and its legacy structures, indigenous peoples seek to create a space for political, social, economic, cultural and physical expression of their worldviews through improving indigenous-state relationships. Thanks to this, they will find a way to resume living on harmonious terms with wider societies (Woons, 2020, p. 6). In the African context, the continent's long-marginalised populations are seeking to find a space in a restructured political field, which brings new

²⁰ Idle No More: Canada's indigenous people are demanding a better deal (Charleyboy, 2013).

constraints and opportunities of political action. The indigenous peoples' movement is one of the important transnational movements that emerged in this space (Hodgson, 2011, p. 1-2).

The contested notion of indigenusness in African countries has been elaborated on in previous sections. Beyond this contestation, according to Li, to be recognised, indigenous groups must fit into a place of recognition provided by others, which may be predetermined by national and transnational aims. It uses the dominant language and ideas, while negotiating space in a bureaucratic and other power-dominant space – even if they aim to reshape – or invert such spaces. The paradox is, that such recognition is sought from the very nation-states which contributed to their marginalisation (Li, 2001, p. 653). To Woons (2020), “being indigenous and asserting peripheral normativities go hand-in-hand” (p. 19). In this regard, examining the example of Latin America - but noting that this applies to much of the globe, Walsh (2007) highlights the colonial and imperial designs, as well as the creation of a geopolitics which laid foundations to the universalisation of European thought as scientific truths while invisibilising other epistemes (p. 224). Our hypothesis is grounded precisely in the above invisibilisation of Ogiek cosmologies. Francis (2020) notes that the foundations of the colonality of nature, which constitutes of the commoditisation of nature resulting exploitation – while dismissing its multitude of values, including cultural and epistemic, for the subaltern – continue to shape current discourses that contribute to the oppression of people and nature. Contemporary destruction of peoples and nature is, according to the author, perpetuated by the combination of the imposition of hegemonic Western scientific conservation knowledge and Euro-American ecology viewpoints, and a consequent dismissal of indigenous peoples' role in knowledge-production on nature – and their connection with their livelihood (p. 43; 46-47).

As per Pokhrel (2011), alterglobalisation (also altermundialisation – or the global justice movement) refers to a set of social movements with the goal to resist the negative impacts of neoliberal globalisation, namely the consequences it has on the social, political, economic, and environmental realities. In this regard, the alterglobalisation movement calls for alternative forms of globalisation which center the values of democracy, social justice, human rights, and environmental concerns – all without disregarding globalisation at large. It is rather aiming at finding ways to resisting or transforming neoliberal globalisation, and harnessing the possibilities of the phenomenon such as technological advance and organization, or global solidarity (p. 30-31).

As Boaventura de Sousa Santos outlines in an interview for Dale and Robertson (2004), one must not talk about one globalisation – but globalisations, and not just from the centre or above, but from below. Consequently, there is no genuinely global condition: what we call globalisation is a particular localism, which was successfully globalised. Hegemonic globalisation brings transnational interactions from above, a counter-hegemonic globalisation does so from below – from the victims, exploited, excluded – and their allies (p. 147; 149-150). A cosmopolitan world would, therefore, mean the coexistence of many local cultures - and their interactions and mutual learning (Shiva, 1993, p. 52). Francis (2020) notes that in this understanding, a decolonial turn means the analysis of human-nature relations from the point of the excluded “others” and their lived experiences. This, according to the author, does not require the rejection of modern science and Western environmental discourses, but a removal of the Euro-American viewpoint’s violence and injustice. In this way, indigenous people should be free to apply employ their own knowledge and consequently extract ideas from Western knowledge to enhance their understanding, without adopting the perspectives informing them. As opposed to an universalising viewpoint, a transcultural experience of sharing will allow subaltern groups to draw from each other’s experiences while expressing their own realities (p. 52; 55).

It is within this theoretical framework our research is situated, by which the *African Court on Human and Peoples’ Rights’* court ruling on application number 006/2012 delivered on 26 May 2017, which brought a landslide victory to the Ogiek of the *Mau Forest*, was not only a ruling between an indigenous community and the state – the Ogiek and the Kenyan government. What was ultimately at stake is a weighing on two opposing worldviews: one grounded in the progress of neoliberal globalisation and the modernisation theory – and the other in the translating of alterglobalisation.

5. ANALYSIS

All developing societies are caught in a time warp where they can never really 'catch up' with the West. The present of the non-West is the past of the West [...], the future of the developing countries is the present of the West. When the non-West reaches the point of arrival where it becomes 'developed', it has already become the past of the West. [...] The non-West thus has no real future "since its future is already known to Europe and America". (Sardar, 1999, and Lal, 1997, cited in Sardar, 1999, p. 46)

5.1. Introduction

This part of the research is informed by the theoretical framework which led us to the available secondary sources and the research tools outlined in the above sections. As noted, the primary research period constituted of a two-month research period in Kenya, with frequent stays in the *Mau Forest Complex*. Through its course, we, as previously elaborated on, used a mixed methodology including participant observation, semi-structured interviews, photography, and visual research methods.

As West (2006) notes, "all stories that recount history are complex, messy, and intensely political. They ebb and flow over time within oral traditions and in people's minds" (p. 125). When retelling history, people choose what they tell - and how. This also means including and excluding information as per their preferences and intentions (Braudel, 1982, p. 27). Just as in West (2006) respondents of the *Crater Mountain Wildlife Management Area* chose the events and connections to convey during the research stay (p. 125) – and based on the narrative reconstructions, we are now similarly choosing what to convey to the viewers and readers. Although publications and reports purport to expose considerable time-depth, they reconstruct a history of events that is both fractured and incomplete (Johnson, 1997, p. 397–399 and Pearl, 1994, p.198–201, cited in West, 2006, p. 126). Following West's (2006) thread, we do not disagree with Spivak's (1988) statement that once a group of people is constituted as a 'they' by Western social science, their voice is fundamentally altered (cited in West, 2006, p. 126). With the above in mind, we present our findings and contextualise them in light of the *African Court on Human and Peoples' Rights'* court ruling on application number 006/2012 delivered on 26 May 2017. As per the research question, our main focus is on the Ogiek community's land rights and the right to development.

Given the complex historical and social context surrounding the case and the ruling, we also argue that it is important to dedicate space to the analysis of the decisions leading to reliance on the power of law, the context of the *African Court on Human and Peoples' Rights* as well as the ruling, and the concept of indigenesness.

5.2. The Court and the landmark ruling

As outlined in earlier sections, the Ogiek's resistance to marginalisation has taken many shapes throughout history. This resistance included legal pathways: however, it was the ruling of the *African Court on Human and Peoples' Rights* in Arusha, Tanzania, which brought a breakthrough in the community's cause. The case was submitted in 2012 through the *Kenyan Ogiek Peoples' Development Programme*, with the support of United Kingdom-based *Minority Rights Group International* (MRG), and Kenyan non-governmental organisation *Centre for Minority Rights Development* (CEMIRIDE).

Seated in Arusha, Tanzania, the *African Court on Human and Peoples' Rights* is an international court established by *African Union* member states – one of the only three regional human rights courts – which has been operating since 2006. According to the *Open Society Justice Initiative* (2013), it was established by the *Protocol to the African Charter on Human and Peoples' Rights*: this was adopted by *African Union* member states in Ouagadougou, Burkina Faso, in 1998, following intense negotiations and compromises. Elected judges serve a six-year term, with a possibility of one re-election, with the court's jurisdiction extending to all disputes concerning the interpretation of the Charter (p. 1). Kenya is among the member states that ratified the *Protocol*²¹. In a study of resistance to the *African Court on Human and Peoples' Rights*, Daly and Wiebusch (2018) concluded that while levels of such resistance vary and have to be perceived in the context of the fact that the court is young, one of the most important form of resistance appears to be the strategy of ignoring the court by not allowing it to exercise its full authority. Following the same authors, other forms of resistance are more ambiguous, such as low visibility to key audiences,

²¹ A detailed analysis of the Court is beyond the scope of this research, however, authors such as Wachira (2008) or Juma (2007) provide a comprehensive view of the challenges and opportunities of the Court's mandate and functioning.

lack of financial resources invested in the Court's development, or resistance from national courts as gatekeepers (p. 13-14; 31).

On 26 May 2017, the Court delivered a landmark ruling in favour of the Ogiek community in Kenya on application number 006/2012 where the applicant was the *African Commission on Human and Peoples' Rights* (hereinafter the Applicant), in a case against the Republic of Kenya (hereinafter the Respondent). Setting a major precedent for indigenous peoples' rights, the Court declared that the Respondent violated Articles 1, 2, 8, 14, 17 (2) and (3), 21 and 22 of the Charter, and ordered the Respondent to take measures to remedy all violations. Of these, Article 2 relates to every individual's enjoyment of rights and freedoms, Article 4 to the human beings' integrity, Article 8 to freedom of conscience, and free practice of religion, Article 14 relates to the right to property, Article 17 (2) and (3) to the right to take part in a community's cultural life, and to the protection of morals and traditional values, Article 21 to peoples' right to dispose of their wealth and natural resources, and Article 22 to peoples' right to their economic, social and cultural development, freedom – and identity (African Court on Human and Peoples' Rights, 2017, p. 33-68).

In our analysis, we firstly turned to the Court case and ruling itself in a bid to understand why the Ogiek community chose the legal power – the power of law. In an interview conducted in person on 22 February 2022, Respondent 1 elaborated on the use of legal tools as a necessity in standing against a powerful opponent, which is the state:

[...] We had no other option. We did not have the guns, we never had the numbers to fight, because we are fighting with the mighty people. [The] government is a mighty group. And you cannot fight using any other means apart from the law. So that is why we ended up with law because we had never had any other option. And even now as we are talking about waiting for implementation. And we are still begging the same government, lobbying - and - doing still advocacy, but our spirit is still alive. We are not dying. The spirits are not dying. But one day the Ogiek must have their rights. So, we would have used to do other means. (Respondent 1, in-person interview, 22 February 2022)

Similarly, Respondent 5 noted that the aim was to avoid any clashes: the community wanted a “straight ruling to be given in a straight way as other people were given” (in-person interview, 9

March 2022). As such, these responses align with the above²² elaborated approaches to creating a space for the expression of indigenous worldviews (Woons, 2020, p. 6) while paradoxically, to be acknowledged in a power-dominant space – even if they aim to reshape or subvert it, indigenous communities must seek recognition from the very nation states that contributed to their marginalisation (Li, 2001, p. 653). In this process, however, the court ruling remains largely unimplemented more than five years after the decision. In that regard, Respondent 4 expressed disappointment with following through the legal, ‘officially recognised’ process, yet not seeing its translation into tangible change:

[...] And that is why the *Council of Elders* is there to fight for our rights. Because the government, they seem, they seem they ignore to give us our right. Yes. It seems like they are ignoring. And we do not know why. Because we - our parents, and those who are before them went to court, followed all the process, legal process until the court ruled in the favour of this community. But to act on that ruling, which is supposed to be acted by the government, it has been delayed, of which we do not know what next. This is because we are lacking representation. From, from right down here, MCA [Member of County Assembly] all the way to the to the Members of Parliament. We do not have any representation for now. (Respondent 4, in-person interview, 9 March 2022)

The disillusionment of the lack of court ruling implementation was echoed by six out of nine respondents. However, when inquiring about the legal process itself, respondents did not question this way of resistance: they saw the court proceedings as necessary and recognised the positive outcome of the decision. Respondent 4 for instance highlighted the act of feeling represented – as opposed to previous marginalisation – as the *Council of Elders* was present (Respondent 4, in-person interview, 9 March 2022). In fact, the three elders who were our respondents for this research in all instances recounted a precise timeline of governing political regimes, the accounts of marginalisation and the proceedings which were undertaken to avert this aspect, eventually reaching the point of the landmark ruling. As such, this signals the community elders’ detailed knowledge of the opposing side, including the intricacies of the political and legal system it represents.

²² See the *Methodological framework* section.

5.3. The Ogiek as an indigenous population

The court's assessment included the elaboration on whether the Ogiek are an indigenous population. This has been highlighted as central to the case given that the Applicant's allegations were based on the premise that the Ogiek should be recognised as indigenous people as the community has been living in the *Mau* since time immemorial. Woons (2020) notes that the majority of indigenous people essentially seek to have the right and ability to self-determine – and to do so without interference, adapting their values and lifestyles with a consent-base. This is especially relevant in the context of interacting with Western thought and practices. It is important to underline that in recent centuries, such ability of indigenous peoples has been drastically reduced due to entering into a global era, which is dominated by both states and state-centric organisations. Consequently, the author also underlines that the majority of indigenous people believe that their strong survival entails re-centring relationships between themselves as indigenous groups, and involves the promotion of counter or alternative visions on international and multinational societies (Banks, 2001). As such, this positioning aligns with the aspects of alterglobalisation we elaborated on in our methodological framework. In an overarching view of the court case – and ruling itself, Rösch states that the notion of indigenousness is quite new to the system of African human rights. The negotiations of this term were shaped by transnational indigenous rights spheres dominated by non-African actors, and marginalisation of certain communities in Africa. The judgement, therefore, highlights the challenges of navigating the above in order to develop a position on indigenousness (Rösch, 2017, p. 243), and should be seen in recognition of this aspect.

In the course of the hearings, the Respondent first stated that the Ogiek are a mix of various ethnic communities, however, during the public hearing, the position was changed: the Respondent admitted that the Ogiek are an indigenous population of the *Mau*, but argued that the community's lifestyle changed and differs from the Ogiek of the 1930s and 1990s and therefore, the group's distinction does not exist anymore as they now live a modern life like all other Kenyans. Therefore, by abandoning the hunting-gathering lifestyle, they cannot be said to conserve the environment. The Court examined the above and stated that there is no universal definition of indigenous population, however, based on the *Commission's Working Group on Indigenous Populations/Communities'*, as well as based on the *United Nations Special Rapporteur on*

Minorities criteria, the Court recognised the Ogiek as an indigenous population. This was elaborated on through self-identification, a state of marginalisation and exclusion, priority in pre-invasion and pre-colonial time with regards to space occupation, a strong attachment to nature and natural environment, and a determination to preserve and transmit community identity and territories to future generations (African Court on Human and Peoples' Rights, 2017, p. 29-33; 52). With respect to the Ogiek, the Court also highlighted that they have their own social norms and forms, and distinct subsistence, which is also recognised by neighbouring communities, with which they have regular interactions as distinct 'neighbours' (p. 29-33; 52).

Respondent 9 also reaffirmed that the State of Kenya did not deny that the Ogiek are indigenous: they accepted this, as well as the *Mau Forest* being their ancestral land. The argument around indigeneity and special protection was not prominent in the Ogiek case (Online interview, 11 June 2022). It is, however, particularly interesting to note that the Government of Kenya's argument on the Ogiek not being a distinctive community mimics the description of popular misconceptions which were debunked by authors such as Blackburn (1974), later also highlighted by Yeoman (1993).²³ The second argument of the changed lifestyle presents a view, which assumes that the Ogiek community is *static*, relies only on hunting and gathering, and is somewhat conserved in time. It creates an interesting irony of the community not being perceived by the Kenyan Government as a distinct population because it is expected that it manifests a state of permanent hunter-gatherer lifestyle, without contemporary elements, which has been caused by outlawing and limiting the very same lifestyle. Notably, hunter-gatherer studies contributed to the re-evaluation of such communities' perceived isolated way of living²⁴.

Not to omit the contemporary reality, a transforming lifestyle does not affect only the Ogiek: as Micheli (2014) states, aspects such as consumerism and an influx of goods into cities are a real challenge which affects other traditionally living tribes in Kenya, too (p. 202). Consequently, the flexibility and adaptability of the Ogiek community has been highlighted on numerous occasions,

²³ Blackburn (1973) notes that while generally misunderstood and in Kenya as a remnant group of backward hunting people, the Ogiek are not only distinct and the earliest present-living inhabitants of the highlands forests, there is also a consensus between other tribes in central Kenya that the community was occupying this space prior to the arrival of any presently living communities in the country (p. 55).

²⁴ Micheli (2014) quotes the monumental work *Hunters and Gatherers* (1988), edited by Ingold, Riches and Woodburn, which renewed scholarly interest hunter-gatherer communities.

whether through the bilingualism of many of its members, its relationship with neighbouring people, or adjustability of moving within cultures. Micheli (2014) also elaborates on the extreme flexibility of the Ogiek – and how it has been a conscious choice which contributes to the community retaining its distinctiveness. The current increase in other communities' migration to the *Mau Forest* areas however results in, according to the author, rendering the Ogiek adaptation as ineffective – and the only viable strategy of survival as a distinct community is the claim of indigenesness. But this brings the risk of translating the flexibility into an “improbable mythological uniqueness”, which is monolithic (p. 189). Rösch (2017) also adds to the above, noting that with ethnicity being a perquisite of a group claiming indigenesness comes a risk of an essentialist understanding of culture as strictly different from other groups or from mainstream culture, which can fuel contestations if not all members align to this culture, or if states conclude that there is no such a distinct culture anymore (p. 250; 252).

5.4. The Ogiek's resistance to land pressure

As outlined in the above chapters, the Ogiek are believed to inhabit the *Mau Forest Complex* since time immemorial. In the court application, the Applicant stated that when issuing a 30-day eviction notice in October 2009, the action did not consider the importance of the *Mau Forest* for the survival of the Ogiek community. The Applicant also prayed the Court to recognise the Ogiek community's historic land and ancestral home, to ensure communal ownership of property, to pay compensation for the loss of property, but also development, natural resources and right to practice their culture and religion. The Respondent's prayer had a single focus – and that is, the inadmissibility of the Application and the Court's proving of no violations affecting the Ogiek (African Court on Human and Peoples' Rights, 2017, p. 3; 9-10; 13). For forest-dependent communities, the division between human and nature is non-existent: they perceive their environment as an integral part of their identity. Ogiek community members who were our respondents all depicted the *Forest* as an ecosystem vital for the community's survival. For instance, Respondent 7 outlined the multifaceted ways in which the Ogiek perceive their habitat:

So when I see the *Forest*, I see a livelihood that is tied to the Ogiek. We depend on the *Forest* for honey, for hunting wild game, for medicinal and herbal medicine. We did not have any hospital back then: we only depended on herbal medicine from the *Forest*. Our

fathers and mothers used to feed us with everything that sources from the *Forest*. For us to drink tea, for us to eat, for us to survive - all was dependent on the *Forest*. But now we see people getting in and evicting us. It is not right to be evicted. We are tied to the *Forest*, and we need to conserve it. So, for our children to survive, we need to conserve the *Forest*. We need to keep it at ease now. You do not want encroachers to get in and destroy our *Forest*. Because it is what, where we get everything for our children. (In-person interview, 15 March 2022)

In the outlook, Respondent 7 noted the importance of reversing forest destruction by restoring indigenous species, including those that became extinct, and, by that conserving the forest area for the community, also in light of the decrease in rain (in-person interview, 15 March 2022). The need to conserve the *Forest* – and concerns about the decrease in its spatial area were echoed through our Ogiek respondents. A very different conservation pretext was outlined by the Respondent in the court case: one that materialises in restricting access to the *Forest*, and in evicting Ogiek community members under the notion of protecting the important water catchment area. The Respondent exclaimed the connection of such policies with the colonial framework directly:

The Respondent avers that since the colonial administration it was communicated to the Ogieks that the *Mau Forest* was a protected conservation area on which they were encroaching upon and that they were required to move out of the forest. (African Court on Human and Peoples' Rights, 2017, p. 35)

With regard, to the point on discrimination, the Court noted that the Respondent's pre-2010 national laws, including the Constitution of Kenya, recognised only the concept of ethnic groups or tribes. Some of these laws were enacted during the colonial time, and the Respondent kept them with few changes even after the independence. Based on records available, the Ogiek's request for recognition goes back to the colonial period as it was rejected in 1933 by the *Kenya Land Commission*, displaying the Ogiek as a barbaric people who were not deserving of a tribal status, but should be instead assimilated to other tribes. This recognition request denied them access to their own land, because only those with a tribal recognition were located in the "special reserves" or "communal reserves". This has been continuing after independence, too. Therefore, if the community is in the same category as, for instance, the Maasai, the Respondent's refusal to

grant the same rights (such as land rights) to the Ogiek is violating Article 2 of the Charter (African Court on Human and Peoples' Rights, 2017, p. 41-43). The above, in our view, captures the complexity and historical trajectory of the land restrictions directed towards the Ogiek, and the continuation of these in the post-independence period, demonstrating the prolongation of the systems put in place during colonial rule.

Consequently, the Respondent's exclamation of the colonial administration's need to conserve the *Forest* – and do so by removing the Ogiek – leads back to, as stated by Wilhite and Salinas (2019), effectively invisibilising the lives of forest-dependent peoples in appropriating forests first as a resource to be plundered in the name of economic development, then regulated in the name of environmental protection (p. 159). Notably, what is regarded as part of the *Forest* by the Ogiek is the indigenous forest (also called “black forest”): a lush and dense space which has, depending on its section, diverse fauna and flora: a space in sharp contrast with the plantations. Escobar (2008) elaborates that the colonality of nature is located in a view of essentialising nature as outside the human domain, seeing the products of the earth as results of labour only, and the subalterisation of particularly those regimes that rely on continuity between natural, human and supernatural worlds. It is precisely this integration that modernity rejects, which leads to a different cultural regime: the capitalist nature, which is demonstrated in the plantation: the objectification and commodification of nature – and its externalisation to humans (p. 121; 144). As Wilhite and Salinas (2019) note, the independence of African countries provided a great opportunity to improve the treatment of indigenous peoples in conservation, but hostile policies continued in many African contexts (p. 158). With this regard, the Respondent's formulation echoed the separation - and legal regulation of these entities with the title for all forest land in Kenya (other than private and local authority forest) being vested in the State, and through its laws that recognise community land ownership and have mechanisms through which communities can participate in forest conservation and management. It is via the above that community forest users can collect medicinal herbs and harvest honey, among other points (African Court on Human and Peoples' Rights, 2017, p. 35). As such, the above is evidence of two differing perceptions of nature and conservation, where the Government of Kenya's approach is in line with the progress of modernisation theory – and the Ogiek's of stemming from their epistemes.

Our research involved areas that are variously affected by encroachment and by other communities inhabiting the same – or adjacent – space, such as Nessuit or Mariashoni, *Eastern Mau*. Despite the evictions and limitations placed on practising the Ogiek lifestyle, the collecting of herbs, placing beehives and collecting honey, and hunting by the community continues. As such, these are combined with – and complemented by – the produce acquired from farming²⁵. Changes were, however, expressed in the accessibility of the above: stated in an in-person interview, Respondent 6 now has to cover a much larger distance (several kilometres) from home in order to collect medicinal herbs. This was attributed to the destruction of the *Forest*. When inquiring about whether herb and plant collection is restricted by the authorities, Respondent 6 stated that it is tolerated (in-person interview, 7 March 2022). Hunting is, according to Ogiek members²⁶, facing a much more restrictive environment – but it is still in existence. Hunting activities require a cooperation of a group – or at least two persons (in case of a hyrax, which is a small prey). On the occasion of an overnight stay within the broader area of Mariashoni on 11-12 March 2022, the Ogiek family we stayed with stated that they never buy meat – and eat meat only when an animal is hunted. With regards to conservation policies, the Ogiek have historically regulated hunting by sub-dividing the forest area to territorial units and specifying which animals can be hunted – and which are, for example, sacred. Ronoh et al. (2016) outline how hunting apprenticeship as an indigenous form of education laid out the rules and regulations governing hunting, which also contributed to the conservation of the *Forest*.

We argue that in this context, the continuation of activities such as collecting herbs, hunting, or visiting cultural sites, can be understood as an act of resistance to the state structures – especially given the logging and other aspects contributing to forest encroachment, which are legalised. Finally, the Court ruled that the eviction of the community was in violation of the Ogiek's right to land. Elaborating on this, it stated that while the Respondent justified the eviction of the Ogiek on the grounds of the preservation of the natural ecosystem, the Respondent did not provide any evidence of the Ogiek's continued presence being the main cause of the depletion of natural environment. Based on reports, the main causes of such degradation are encroachment by other

²⁵ Observations from Nessuit, Eastern Mau (9 March 2022), Mariashoni, Eastern Mau (7 March 2022).

²⁶ Observations from the wider Mariashoni area (12 March 2022).

groups, and government excisions for settlement, as well as logging concessions (African Court on Human and Peoples' Rights, 2017, p. 36-38).

5.5. The Ogiek's right to development

The Applicant submitted that the Ogieks and other indigenous and minority groups in Kenya have been unlawfully discriminated against through not respecting their property rights, religious and cultural rights, rights to life, natural resources, and development. As such, the Respondent has since independence pursued a policy of assimilation and marginalisation, which can be attributed to the notion of 'national unity' and, in case of land, to the conservation of the *Forest*. The Respondent submitted that there has been no discrimination against the Ogiek (African Court on Human and Peoples' Rights, 2017, p. 38-39).

In another point, the Applicant argued about the complexity of culture, which includes a spiritual and physical alignment with one's land, knowledge, beliefs, morals, and customs, among others – and that the Ogiek's cultural rights have been violated through limiting access to the *Complex*, as well as through limiting the hunter-gatherer lifestyle. The Applicant also highlighted the importance of Ogiek's own determination of what culture is good for them, as opposed to the Respondent's order. The Respondent reaffirmed Kenya's commitment to the promotion of Kenya's indigenous people's cultural rights, however, this has to be in balance with environmental conservation. Again, the Respondent highlighted that the Ogiek's lifestyle changed (or better said, does not exist anymore), and the group therefore cannot claim any cultural rights. Based on the above, the Court noted that the Ogiek have a distinct way of life which they carry on with, despite the limitations and evictions. As a reaction to the Respondent's claims, the Court stated that “the existence of a static way of life is not a defining element of culture” – change is natural, and it is often the invisible traditional values that remain unchanged, which has been the case demonstrated by witnesses. Also, some of the demonstrated changes have been caused by the Respondent (African Court on Human and Peoples' Rights, 2017, p. 53-56). Moreover, the Court found that the Ogiek's right to culture was violated by the Respondent by evicting the community from the *Forest* and by restricting its members from exercising their cultural activities. The Ogiek's economic, social, and cultural development was also negatively impacted by the evictions in a

context where the right to development should have been ensured by the state (African Court on Human and Peoples' Rights, 2017, p. 53-57; 63-64).

On the account of the changed lifestyle, as outlined by the Respondent – and as elaborated on in previous sections of this research, the Ogiek lifestyle shall not be perceived as static and homogenous for the community as whole. We deem it is important to reflect on these changes: large part of previous research concerning the Ogiek of the *Mau Forest Complex* highlights the activities and mode of living directly tied to the *Forest*. This is rightly so given the importance of the above both for the Ogiek identity and culture – and for the broader public, in order to present a worldview in which, as Francis (2020) outlined, the perception of human-nature relations from the point of the excluded “others” and their lived experiences have space (p. 52). However, this does not mean omitting the complexity as such, which would signal contributing to a construction of the “improbable mythological uniqueness” Micheli warned about (2014, p. 189). It is important to understand the Ogiek identity beyond dualistic terms, taking into account the community’s complex living environment, historically documented coexistence and co-dependence on its neighbours, the powers of globalisation which have left a negative mark on the *Forest Complex*, and also the Ogiek multiple identities that coexist in different communities. According to Respondent 9, this point around culture was prominent throughout the court case, where in the cross-examination questions were asked by the Respondent such as how is this Ogiek person still indigenous if she has access to education now? How she had a mobile phone? So how could she still have a culture? (Online interview, 11 June 2022). With the words of Respondent 4:

As we move forward there are some changes which we are meeting us the community. But we do not want to lose our culture, even though things are changing, we are still managing that culturality. That is why we sometimes we need *Forest* - we have, we are now even planting ours, to not lose that culturality. (In-person interview, 9 March 2022)

Such highlighted changes frequently refer to subsistence farming which was, according to Respondent 1, a lifestyle shift that took place in the early 90s, noting that when growing up, planting maize, potatoes and similar crops was not common (in-person interview, 22 February 2022). The sedentary lifestyle is, however, complemented with a strong connection to the *Forest Complex*, and a continuation of reliance on it. Consequently, another change, which was positively

highlighted by Respondent 3 was an increased prioritisation of schooling and education (in-person interview, 24 February 2022).

Throughout our research period, we spent time in various areas of the *Forest* – and we have seen settlements both with a more concentrated human presence (such as Mariashoni) and less prominent human presence (Nkareta, *Maasai Mau*). In both cases, Ogiek homes were meant for permanent settlement, and livestock, farming, as well as growing fruit trees were noted. As outlined in earlier sections, this does not mean a disconnection from the *Forest* – rather a complimenting part of their subsistence. As Spruyt and Stroeken (2011) outline, the very definition of hunter-gatherer societies resulted in misconceptions: these communities often pursued other ways of subsistence – but these were regarded as unimportant as, according to this orthodox idea, they do not constitute a truly hunter-gatherer way of life. Most contemporary hunter-gatherer communities, including the Ogiek, shift between these two types of lifestyles, and this includes hunting-gathering, farming, keeping livestock – or waged labour. This duality has been observed since the colonial times and influenced by neighbouring communities as well as societal changes (p. 57-60).

Access to the *Forest* – and its limitations – were elaborated on in the section concerning the right to practice one's religion. Here, the Applicant stated that under the *Forest Act*, the community has to pay for annual forest licenses to access religious sites of their ancestral lands. The expert witness of the Applicant, Dr. Liz Alden Wily asserted that hunter-gatherer livelihoods depend on a social ecology where the whole existence, including spiritual life, depends on the forest. In this instance, culture and religion are intertwined, and contrary to the perception that culture can be dissolved where such communities 'have been assimilated by modernism', this is not accurate (African Court on Human and Peoples' Rights, 2017, p. 47-48). The Respondent argued with the Ogiek's adoption of Christianity, and with religious practices threatening law and order. Consequently, the Respondent noted that community members are supposedly free to enter the *Forest*, except between 6 PM and 9 AM. They are also prohibited to carry out activities that require a license, if they do not have one (African Court on Human and Peoples' Rights, 2017, p. 48).

This brings us back to the converging issues surrounding restrictions on entering the *Mau* as well as doing anything in the *Mau* in line with the rhetoric of conservation and seeing humans as

external to nature. As McEwan (2019) underlines, development modernisation theories envisaged rational bureaucracies, legal systems, institutions – however, calling this development hides the violence of not allowing for the evolution of other alternatives (p. 162). Such a view arguably fails to recognise how integral is the *Forest* to the Ogiek's identity and livelihood. For instance, traditional methods of apiculture have been highlighted as an integral – if not main part of Ogiek culture which is tied to the *Forest* both during the Court hearings – and the research stay. Ogiek honey is not only a staple food for the community – it is also used in traditional ceremonies, in preparation of brews, and as a medicine. Moreover, it is also marketed and sold to neighbouring communities – or visitors. Chabeda-Barthe and Haller (2018) highlight the different level and networks of marketing honey in *Eastern Mau* and *Western Mau*, where in *Eastern Mau*, these networks are well-defined and relatively established (p. 14). When asked about the most defining elements of Ogiek identity, Respondent 1 indeed highlighted apiculture:

Well, I will highlight that Ogiek and honey is one thing because it is the only remaining aspect of Ogiek which have survived generation. Most aspects which have happened like hunting, like berries, they have gotten almost extinct because we no longer hunt much. Very few people go into the *Forest* for berries or for tubers, but we are still doing beekeeping - is still honey with us. Even myself, I have more than 15 beehives, because we still feel that if I don't have a beehive as an Ogiek, I find myself I am not part of Ogiek (...).
(In-person interview, 22 February 2022)

Ogiek beehives are indeed associated with identity and wealth. The whole process of beehive preparation, beekeeping and honey harvesting relies on material from the *Forest* as trunks of fallen trees, barks of trees, leaves, lianas, and special dry plants are used. Beehives are placed high in the (often branchless) trees by Ogiek men, who also do the honey harvesting. Hives are owned individually - and placed in designated areas which are, again, allotted. Harvesting someone else's honey is taboo. Ogiek apiculture, therefore, takes place – and relies on – entirely in the indigenous forest: exotic plantations are not suitable for any of the above as they lack suitable trees – and natural richness in general.

As per the Applicant, the Respondent failed to recognise the community's right to development as indigenous people, namely the right to determine development priorities and strategies as well as

their right to be actively involved in developing economic and social programmes that affect them and, as possible, administering such programmes (African Court on Human and Peoples' Rights, 2017, p. 62). As outlined in previous sections, the notion of development, which is placed in a modernist frame, relies on “progress” from this perspective. In allowing the Ogiek to define the development on their own terms, their cosmologies are given prominence, and, as Francis (2020) states, the violence and injustice of the Euro-American viewpoint is removed, so that indigenous people can employ their own knowledge and consequently extract ideas from Western viewpoints, without adopting the perspectives informing them (p. 52; 55). Respondent 1 elaborated on the right to development for the Ogiek as following:

The Ogiek right to development can be achieved by allowing for self-determination by Ogiek themselves. For them to decide what they want, and for them to decide - and have their own strategic plan, have their own parameters on how they want to work. And secondly, it will be achieved through allowing proper conservation strategies to be in place - because we do not want to destroy a forest, we want the forest - and maybe rehabilitate it, make it habitable - and also have what, we call, mitigate climate change - and any other issues which might be negative to rehabilitation or morphers complex - because development comes when the right things are done right. Because development is not planting maize, is not planting potatoes, or having a tarmac road alone. If you have a tarmac road and there is no food to eat, that's no development to me. Because what will they do to you if there is no food. So, there is a very holistic approach which must be here. So, they must be given right to their self-determination in terms of deciding for themselves what they want, not being imposed to do things. Look for the benefit of those who are enforcing. (In-person interview, 22 February 2022)

Consequently, Respondent 5 also reflected on the outlook of development, encapsulating a different reality for the *Mau Forest*, enabling the re-translation of such notions to stem from the Ogiek's epistemes:

To me, what I can recommend is that all young men, we shall sit down together and educate them of caring for forest, living in a good and nice environment. And have the niche, the community peacefully without any quarrel between the other communities - and the other on the other side. We care for forest. Yeah. (In-person interview, 9 March 2022).

5.6. Analysis through visual lenses

Suddenly, a specific photograph reaches me; it animates me, and I animate it. (Barthes and Howard, 1980, p. 20)

Stemming from the tools and processes outlined in the Research methodology section, we worked with digital photography considering its accessibility and provision for an attainable analysis in the research setting. This setting informed both the continuation of the research process, as well as the proceedings of collaborative aspects. Throughout the research stay, 6 500 photographs were collected as a reflective of the engagement with the Ogiek's epistemes. These were both an outcome of the empathetical relation of the photographer with the reality, and the visible and invisible (to an extent in which they were shared) aspects of the theme that have been articulated by Ogiek community members. Photographs were taken both in a setting of activities that were by community members presented as a cornerstone of Ogiek identity, and in a setting of the everyday life and environment surrounding the Ogiek. Portrait photographs were created with a participation of those portrayed, who within some occasions determined the place to be portrayed at; or this was further shaped by us based on light and technical conditions. Figurative photographs – as well as photographs that were possibly relevant for the collaborative aspects – were shown to community members upon creation. Ogiek artists fully determined the selection of images to alter, while the selection of documentary images was done by us. Once returned to the academic environment, we analysed the images in a more formal approach. Following Collier (2004), in this stage, we revisited the complete visual record and responded to the data in an open manner, placing the details from a structured analysis in the context of its significance. By laying out photographs and collaborative artworks, we viewed images as an entirety (p. 43). In this action of re-evaluating the visual material, we focused on how they respond to a set of questions, as outlined by Weber (Weber, n.d., cited in Liebenberg, 2009): i) What are the stories the images tell? ii) What main 'text' or messages are conveyed by the images? iii) What implicit messages are detected in the images? iv) Who has power, or how is power distributed or used? v) What is the relationship between the image-text and status quo? (p. 146).

Informed by the research design, methodological framework, as well as the sub-sections above, we integrated the dataset portions which constitute of photographs and artworks, into the

analysis. We did so with a primary focus on the two main aspects guiding this research: the Ogiek community's land rights, and right to development in the *Mau Forest Complex*. In this section, we bridge these two aspects as they are interwoven in the complex reality surrounding the community and the *Forest*. While the above parts of analysis deal with the research questions from the perspective of semi-structured interviews and participant observation, all of this in a textual form, in this sub-section, we present the visual outputs in the form of a photographic essay. According to Banks (2001), in a format making the images dominant in conveying the argument or analysis while reducing text to a minimal extent, drawing partially on film, the photographic essay is driven by a strong narrative linking images in a sequence, either more – or less chronologically, or through a more abstract association of ideas. While the narrative derives from the individual images, it transcends their internal narrative (p. 145). Beside this, as noted above, following Prosser and Schwartz (2005), we built on the unique capacity of photography to represent a specific moment in time and space (p. 105). The selection of the set of photographs was driven by, at first, individually choosing images that both engage with the above questions, are technically sound (in a meaning that does not necessarily translate into sharpness or strictly measured exposure – but rather to the intentional determining of those aspects), but, moreover, move beyond the literal meaning of what is seen first-hand. We, therefore, sought to respond to the research theme – and provide for more than one layer of reading, when possible, for a metaphoric character. Once having a set of such photographs and collaborative artworks, we set out to construct the photographic essay. Considering the theme and the manifold character of the material, we did not follow a chronological order. We aimed to construct a strong narrative in which artworks, and figurative and non-figurative photographs are combined into one sequence. In the context of the research theme, this also translated into selecting images that speak of the transformations of Ogiek way of life – and surroundings, and to a whole that translates into an open association of ideas.

Denzin and Lincoln (2012) note that art-based methodologies create beyond-text sensations to access highly sensory phenomena invisible through conventional text-based methods (p. 195). How people “see” is a combination of nature and nurture, which is governed by perception, a sensory mode governed by physiology, culture, and history. *Visual* is not about an image or object itself – but it is more concerned with the meanings that are attributed to them (Denzin and Lincoln,

2012, p. 177). One of the strengths of visual research is, therefore, its space in terms of possibilities, and the capacity to harness the creativity of researchers and participants. What is also important, art is vital in social sciences because more thought and imagination is needed in academic debate. Art does not need to be linear, and can contain complexity and contradiction, as well as evoke emotions (Denzin and Lincoln, 2012, p. 195). Noting that throughout analysis, all parts of images may be perceived as important sources of knowledge, Collier (2004) states that

The challenge is to responsibly address the many aspects of images, recognizing that the search for meaning and significance does not end in singular 'facts' or 'truths' but rather produces one or more viewpoints on human circumstances, and that while 'reality may be elusive, 'error' is readily achieved. (p. 37).



Figure 1
View of an indigenous forest in the *Mau Forest Complex*.
Source: the author, February 2022.



Figure 2

Newpin Sandiko is looking for a hyrax in a tree hollow in Nkareta, *Mau Forest Complex*.

Source: the author, March 2022.

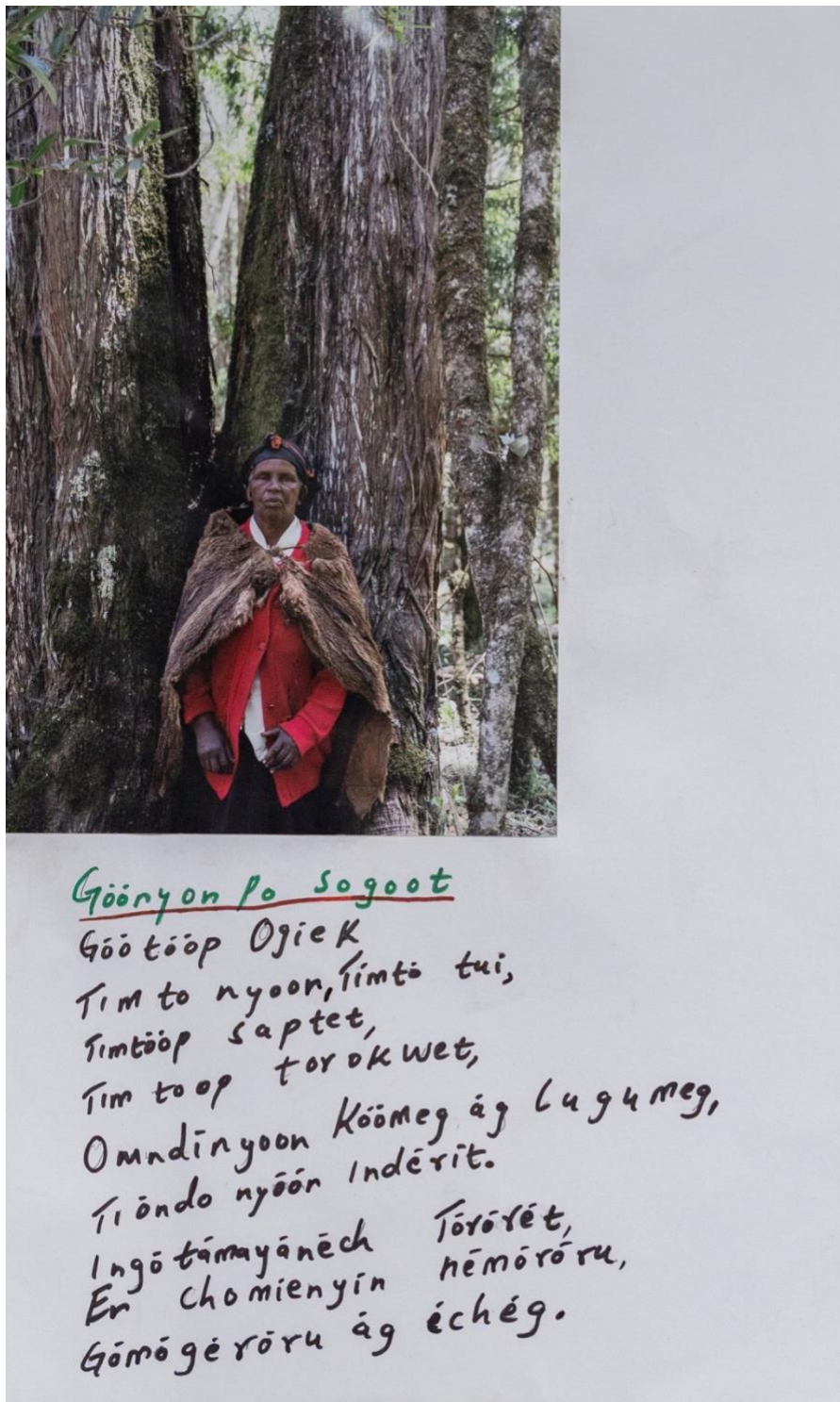


Figure 3

Artwork using a portrait photograph of herbalist Margaret Chemutai Arusai, combined with a poem by poet Dancan Nonosa, April 2022. The poem is written in Ogiek, translating as following:

Ogiek home / Our forest, black forest / Our forest made of African Cedar / Our food honey and honey juice / Our animal hyrax. / May / almighty God bless us / With His sufficient love / That we may multiply.

Source: Dancan Nonosa and the author, April 2022.



Figure 4

Ogiek elder Kurongurik Sandiko is burning Kongntaap maata used for harvesting wild honey in Nkareta, *Mau Forest Complex*.

Source: the author, March 2022.



Figure 5

Perekeyiat branches in Nkareta, *Mau Forest Complex*.

Source: Katais Nadunguenkop, Leah Nagol, Naoroi Sandiko, Hilda Nagol, and the author, April 2022.



Figure 6

Night view from a garden within the *Mau Forest Complex*.

Source: the author, March 2022.



Figure 7

***Mau Forest Complex*-inspired artwork.**

Source: Teresa Chemutai Kingori, April 2022.



Figure 8

Katais Nadunguenkop, craftswoman and herbalist in Nkareta, *Mau Forest Complex*.

Source: the author, March 2022.



Figure 9

Tapararuet leaf in Nkareta, *Mau Forest Complex*.

Source: Katais Nadunguenkop, Leah Nagol, Naoroi Sandiko, Hilda Nagol, and the author, April 2022.



Figure 10

Leina Nadunguenkop milks one of her cows in Nkareta, *Mau Forest Complex*.

Source: the author, March 2022.



Figure 11

Wesly Kamau is preparing his plot of land in Mariashoni, *Mau Forest Complex*, for a new cycle of planting.

Source: the author, March 2022.

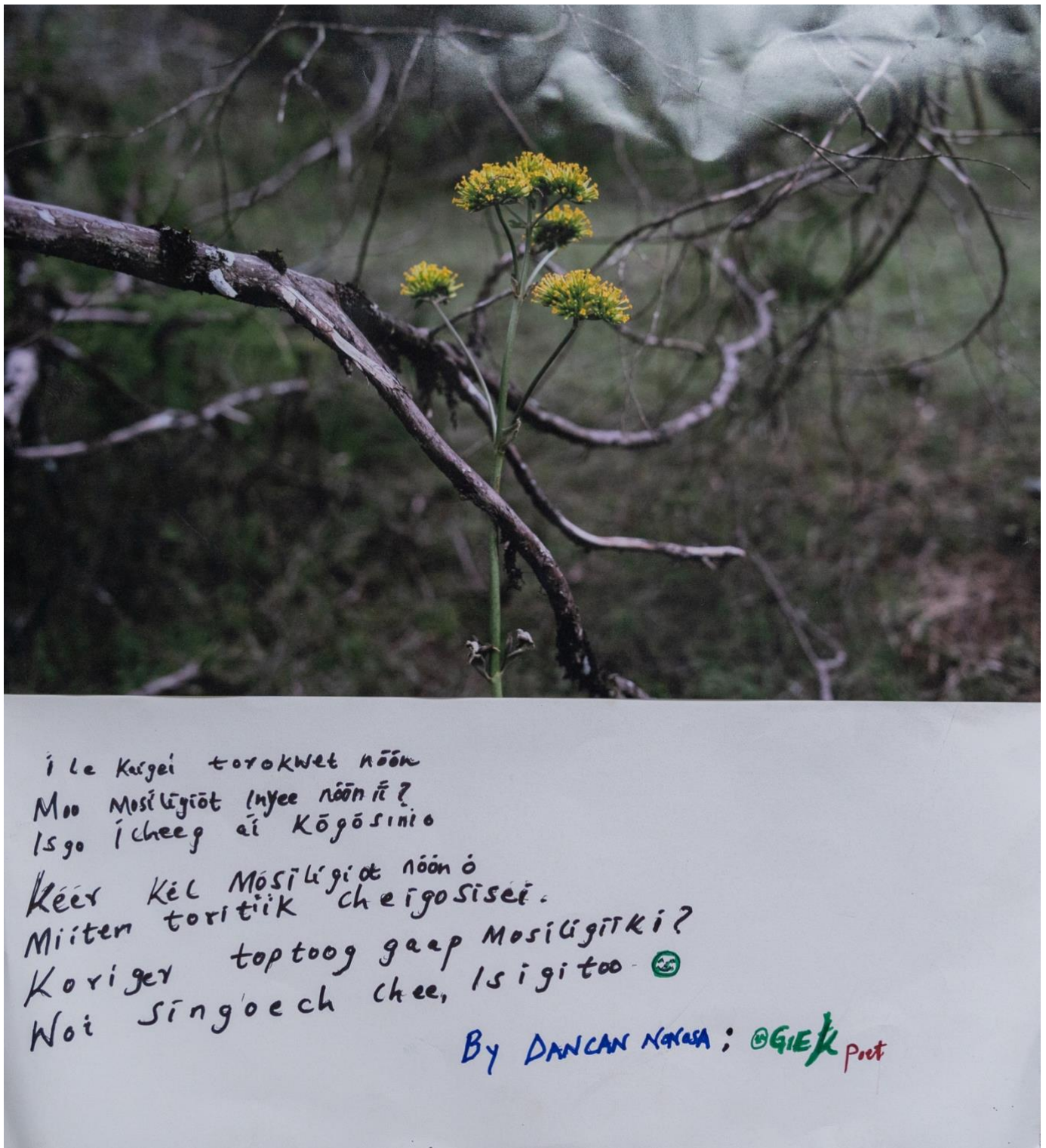


Figure 12

Artwork using a photograph of the indigenous forest, combined with a poem by poet Dancan Nonosa, April 2022. The poem is written in Ogiek, translating as following:

Talk about the relationship between / African Cedar and the green plant / They look beautiful together.

Source: Dancan Nonosa and the author, April 2022.



Figure 13

Herbalist Margaret Chemutai Arusai is cutting off part of a tree bark used in traditional herbal medicine.

Source: the author, March 2022.



Figure 14

Portrait of Cherop Kalegu, community member, surrounded by the remnants of the *Forest in Eastern Mau*.

Source: the author, December 2018.



Figure 15

Chepmurmuriet leaves in Nkareta, *Mau Forest Complex*.

Source: Katais Nadunguenkop, Leah Nagol, Naoroi Sandiko, Hilda Nagol, and the author, April 2022.



Figure 16

Weldon Kiplangat is arranging his arrows at his home in Mariashoni, *Mau Forest Complex* prior to leaving to the *Forest* for hunting.

Source: the author, March 2022.



Figure 17

Ogiek elders wearing hunting clothing made of hyrax skin in Mariashoni, *Mau Forest Complex*.

Source: The author, December 2018.



Figure 18

Perekeyiat branches in Nkareta, *Mau Forest Complex*.

Source: Katais Nadunguenkop, Leah Nagol, Naoroi Sandiko, Hilda Nagol, and the author, April 2022



Figure 19

Selele Nadunguenkop in the process of harvesting honey in Nkareta, *Mau Forest Complex*.

Source: the author, March 2022.



Figure 20

***Mau Forest Complex*-inspired artwork.**

Source: Teresa Chemutai Kingori, April 2022.



Figure 21

A sheep crosses a wooden fence in the transformed landscape of *Eastern Mau*.

Source: The author, December 2018.



Figure 22

Maarat leaves in Nkareta, *Mau Forest Complex*.

Source: Katais Nadunguenkop, Leah Nagol, Naoroi Sandiko, Hilda Nagol, and the author, April 2022.



Figure 23

Manson Kibulbul at his home in the broader area of Mariashoni, within the *Mau Forest Complex*.

Source: the author, March 2022.

Conclusion

This research set out to examine how can forest preservation and the Ogiek's right to development be achieved amid the land pressure surrounding the *Mau Forest Complex*. It investigated the above through the *African Court on Human and Peoples' Rights* landmark ruling in favour of the Ogiek community while building on the theoretical grounding informed by the concepts of modernisation theory, land grabbing, and alterglobalisation. Based on the literature review, the empirical data collected in the research period from 16 February until 14 April 2022 qualitatively through participant observation, semi-structured interviews, documentary photography, and collaborative visual practices, we draw the following conclusions:

The research reiterates the Ogiek's integral connection with the *Forest* – and that this connection is differing from modernity's division between human and nature, which is based on commodification and extraction. Such an approach also overlooks nature's multitude of values – whether cultural or epistemic – for the community. The Ogiek's livelihoods depend on a social ecology wholly intertwined with the *Forest* as the community draws on its members' deep knowledge of fauna and flora, climate, or cultural and religious sites – and on transmitting the values concerning this from generation to generation through community land tenure. The study also demonstrates how, as Francis (2020) outlines, currently employed conservation practices stem from Western frames which evolved in a particular spatiality, but assumed a dominant status in the articulation of nature-related discourses (p. 40). These aim to restrict access to the *Forest* and to the Ogiek in a bid to reverse human-caused natural degradation, translating into a continuation of practices which originated in the colonial period. As such, this approach is rendering the community's conservation practices invisible, and hinders the Ogiek's participation in forest conservation. In the context of the *Mau*, this narrative of conservation is also intertwined with the reality of the politization of land allocation, and an increase in population pressure.

As the community's epistemes encompass the *Forest* as a whole, development is also perceived in a holistic way, contrasting to the dominant model of development which has its origins in the modernisation theory, which is based on a linear process of 'progress'. As per our study, this materialises in forest protection and regeneration, peaceful coexistence with other communities, access to formal and non-formal education, infrastructure, or food security also drawing from a

sedentary lifestyle incorporating farming or keeping livestock. The above also emphasises a non-essentialist view of Ogiek culture and identity, as a contrast to perceptions that view indigenous groups within a static culture and a predefined set of characteristics – or differences that set them apart from other groups. In its holistic approach, it also delineates a way through which forest preservation and the Ogiek's right to development can be achieved amid the existing land pressure in the *Forest*. An opposing, essentialist view of the community was deployed by the Republic of Kenya as part of the court case; however, it was dismissed by the Court.

We argue that the wealth of knowledge and Ogiek cosmologies require re-examining research approaches, and we invite researchers to step away from conservative methods which, again, have their base in the Western notions of what constitutes scientific knowledge – and how is research done. To quote Sardar (1999), both the structure of modern knowledge, as well as its divisions into various disciplines, are a direct reflection of the Western worldview (p. 51). The experience of the world goes much beyond the Eurocentric idea: what is known in the Global South is an inexhaustible source of knowledge, innovations, and celebrations of difference (Santos and Meneses, 2020, p. iv). Such a turn will contribute to, as alterglobalisation envisages, creating a dialogue between epistemologies coming from different local contexts, leading to mutual learning. Albeit from a different field, a great example of such restructuring in the context of re-examining human-nature relations is the participatory mapping of Ogiek ancestral territories (Rambaldi et al., 2007), which is community-developed, and through the use of modern Geographic Information Technologies allows for expressing local spatial knowledge in a manner that contrasts with the dominant framework presented on 'official' maps. A result of this several-months long effort revealed a conceptual system closely tied to predictive hunting and gathering, and, unlike in the agricultural or industrial understanding of a physical transformation of landscape in order to create a meaning, a reliance on memory and species information as a tool to mark intangible heritage (p. 113-114; 121). Through initiatives like this which translate into, as Francis (2020) outlines, drawing from both indigenous knowledge and extracting ideas from Western knowledge, without adopting the violent perspectives informing them (p. 52; 55), we can reimagine the way we conceptualise land, nature, development, knowledge and so on, and employ this as an approach of globalisation from below. While this research takes a step in this direction through the involvement of collaborative visual practices and, through these, providing the Ogiek's knowledge production with

an additional way of expression – and platform, we recognise the need to continue this thread – and further enhance it through seeking more avenues that dismantle barriers created by power structures in place.

We also note the limitations of this study in two points: firstly, more time is needed to seek optimal ways of collaboration which could centre Ogiek voices more, in a way and format they deem relevant and most expressive. A larger time frame would also enable us to deepen connections and trust. In this regard, we aim to build on the acquired knowledge that constitutes the body of this research, as well as on the network of community members, to forward this project in the future. For instance, throughout this research, we applied still images only. We contend that while other mediums such as moving images or sound recordings could open new areas of collaboration and add to the research theme, this would also require significantly more time, resources, technical tools and skills – and an approach that integrates these mediums. We hope to address this in future stages of deepening the research. Secondly, we recognise that photographs, in their ambiguity and stimulating character, can also lead to different interpretations by different audiences. We aim to bring back the essay as a whole to the Ogiek community and to examine reactions, comments and the impact of images in relation to the research theme. With regards to viewers outside the Ogiek community, to which the outcome of this study is also directed, the assessment will firstly require a public showing to various audiences, in which, we contend, the photographs may be accompanied with a succinct text outlining the theme and the study. For instance, as Kratz (2002) notes, her photographs of Ogiek initiation were for community members personal reminiscence, for American audiences an exotic rite. With the aim of challenging stereotypes with her body of work, in Kenya, Kratz's series was set in a country-context where stereotypes about the Ogiek exist; for American audiences, these were irrelevant – and the stereotypes were more related to Africans, based around race rather than ethnicity. There were, however, some strikingly similar negative points in both Kenyan stereotypes of the Ogiek, and American stereotypes of Africans, and these were: uncivilised, backward, primitive. The reasonings of this is complex and might differ, but, according to Kratz, contemporary Kenyan categories are also a product of varied interactions with European ideologies of race, ethnicity, class, gender. Here, colonial and post-colonial ideologies also meet around the notion of “development” (p. 96; 106-107). In a telling example, in Kratz's (2002) work, the author is quoting two respondents,

Kirutari Meitukut and Moseiti Oldio from 1989 as they look at the author's photograph of Kokeny'in, an old Ogiek woman wearing a hyrax fur cape:

KIRUTARI: These are the people of long ago. These are the [pictures] that are wanted, friend.

MOSEITI: Those colonial ones.

KIRUTARI: Yes. These are the ones that are wanted, not the fancy ones [with people in modern clothes]. These. This is the kind that is wanted.... And this thing will continue forever and ever until the country is overturned. They [Europeans] will come to search and say, "Where are those people from long ago?" This is the one that is wanted. (p. 88)

We deem it important to recognise this point and not to omit that while the aim of this research is also to advance a cause, viewers' interpretations are also informed by constructed stereotypes and by deployed imaging of these. As Kratz (2002) adds, "stereotyping is but one example of how the politics of representation can arrest interpretative processes" (p. 217). In our visual research practices, we aimed to show the Ogiek's perspective on their ancestral home in the context of land rights and development – but we also contend that a more complex look at the visibility of how we perceive development, modernity - but also what constitutes harm to a forest (such as removal of plants for herbal medicine) or forest degradation, is needed to be taken into account throughout future research.

Bibliographical References

- Africa Centre for Open Governance. (2003). *Mission Impossible? Implementing the Ndung'u Report*. Retrieved June 25, 2022, from <https://africog.org/mission-impossible-implementing-the-ndungu-report/>
- African Court on Human and Peoples' Rights. (2017). *African Commission on Human and Peoples' Rights v. Republic of Kenya, Application 006/2012 – Judgment*. Retrieved July 10, 2022, from <https://africanlii.org/afu/judgment/african-court/2017/28>
- Albertazzi, S., Bini, V., Lindon, A., Trivellini, G. (2018). Relations of power driving tropical deforestation: A case study from the Mau Forest (Kenya). *Belgeo. Revue Belge de Géographie*, 2, Article 2. <https://doi.org/10.4000/belgeo.24223>
- Alden Wily, L. (2018). The Community Land Act in Kenya Opportunities and Challenges for Communities. *Land*, 7(1), 12. <https://doi.org/10.3390/land7010012>
- Alfonso, A. I., Kurti, L., Pink, S. (2004). *Working Images: Visual Research and Representation in Ethnography*. Routledge.
- Andreasson, S. (2005). Orientalism and African Development Studies: The 'reductive repetition' motif in theories of African underdevelopment. *Third World Quarterly*, 26(6), 971–986. <https://doi.org/10.1080/01436590500089307>
- Antunes de Oliveira, F. (2020). Development for whom? Beyond the developed/underdeveloped dichotomy. *Journal of International Relations and Development*, 23(4), 924–946. <https://doi.org/10.1057/s41268-019-00173-9>
- Azoulay, A. (2008). *The Civil Contract of Photography*. Zone Books.
- Azoulay, A. (2010). What is a photograph? What is photography? *Philosophy of Photography*, 1(1), 9–13. <https://doi.org/10.1386/pop.1.1.9/7>

Azoulay, A. (2019). *Potential history: Unlearning imperialism*. VERSO.

Banks, M. (2001a). *Visual methods in social research*. SAGE.

Banks, M. (2001b). *Visual Methods in Social Research*. SAGE Publications, Ltd.

<https://doi.org/10.4135/9780857020284>

Banks, M., Morphy, H. (Eds.) (1997). *Rethinking Visual Anthropology*. New Haven, CT: Yale University Press.

Barthes, R., Howard, R. (1981). *Camera lucida: Reflections on photography*. New York: Hill and Wang.

Bennun, L. and Njoroge, P. (2001). Kenya. In L. D. C. Fishpool and M. I. Evans (Eds), *Important Bird Areas in Africa and associated islands: Priority sites for conservation* (pp. 411–464). Newbury and Cambridge, UK: Pisces Publications and BirdLife International (BirdLife Conservation Series No. 11).

Blackburn, R. H. (1973). Okiek Ceramics: Evidence for Central Kenya Prehistory. *Azania: Archaeological Research in Africa*, 8(1), 55–70.

<https://doi.org/10.1080/00672707309511572>

Blackburn, R. H. (1974). The Okiek and Their History. *Azania: Archaeological Research in Africa*, 9(1), 139–157. <https://doi.org/10.1080/00672707409511720>

Bogre, M. (2020). *Documentary Photography Reconsidered: History, Theory and Practice*. Routledge.

Boone, C. (2012). Land Conflict and Distributive Politics in Kenya. *African Studies Review*, 55(1), 75–103. <https://doi.org/10.1353/arw.2012.0010>

Braudel, F. (1982). *On History*. University of Chicago Press.

- Brinkmann, S. (2014). Unstructured and Semi-Structured Interviewing. In Leavy, P. (Eds.), *The Oxford handbook of qualitative research* (pp. 277-299). Oxford University Press.
- Brosius, J. P. (1999a). Locations and representations: Writing in the political present in Sarawak, East Malaysia. *Identities*, 6(2-3), 345-386.
<https://doi.org/10.1080/1070289X.1999.9962648>
- Brosius, J. P. (1999b). On the practice of transnational cultural critique. *Identities*, 6(2-3), 179-200. <https://doi.org/10.1080/1070289X.1999.9962642>
- Camas Baena, V., Martinez Perez, A., Munoz Sotelo, R. and Ortiz Mateos, M. (2004). Revealing The Hidden: Making Anthropological Documentaries. In Alfonso, A.I., Kurti, L., Pink, S. (Eds.), *Working Images: Visual Research and Representation in Ethnography* (1st ed.) (pp. 131-146). Routledge. <https://doi.org/10.4324/9780203769362>
- Campbell, D. (2022, May 25). *Ethics in Visual Journalism*. Seminar presented in the framework of the VII Academy Level 2 Seminar in Photojournalism and Documentary Storytelling with Stefano De Luigi. Zoom. https://us06web.zoom.us/rec/play/xLK9ybXZjOUAHe819dzvt-FIndjTAU3IPhpJko87C7lcygGcyMJ6AiMmQoIIX6_friZEazhk3GpiD6be.QiE0ZvbKVFfaCeBr2?c=continueMode=true&_x_zm_rtaid=eYn0IPI8QdiOdURm074w9g.1655909574941.4a78f4db-e41485c0f2f5884ef101f996&_x_zm_rtaid=990
- Chabeda-Barthe, J., Haller, T. (2018). Resilience of Traditional Livelihood Approaches Despite Forest Grabbing: Ogiek to the West of Mau Forest, Uasin Gishu County. *Land*, 7(4), 140.
<https://doi.org/10.3390/land7040140>
- Charleyboy, L. (2013, January 11). Idle No More: Canada's indigenous people are demanding a better deal. *The Guardian*.

- <https://www.theguardian.com/commentisfree/2013/jan/11/canada-indigenous-people-demand-better-deal>
- Claridge, L. (2018). Litigation as a Tool for Community Empowerment: The Case of Kenya's Ogiek. *Erasmus Law Review*, 11(1), 57–66. <https://doi.org/10.5553/ELR.000095>
- Colberg, J. (2020). *Power, Consent, and Obligations in Photography*. Conscientious Photography Magazine. Retrieved June 10, 2022, from <https://cphmag.com/power-consent-obligations/>
- Collier, M. (2004). Approaches to analysis in visual anthropology. In Van Leeuwen, T., Jewitt, C., *The handbook of visual analysis* (pp. 35-60). SAGE Publications Ltd, <https://dx.doi.org/10.4135/9780857020062.n3>
- Dalea, R., Robertson, S. (2004). Interview with Boaventura de Sousa Santos. *Globalisation, Societies and Education*, 2(2), 147–160. <https://doi.org/10.1080/14767720410001733629>
- Daly, T. G., Wiebusch, M. (2018). The African Court on Human and Peoples' Rights: Mapping resistance against a young court. *International Journal of Law in Context*, 14(2), 294–313. <https://doi.org/10.1017/S1744552318000083>
- Daniel, S., Mittal, A. (2009). *The great land grab. Rush for world's farmland threatens food security for the poor*. The Oakland Institute, Oakland, USA.
- Denzin, N. K. (2018). *The Qualitative Manifesto: A Call to Arms*. Routledge. <https://doi.org/10.4324/9780429449987>
- Denzin, N. K., Lincoln, Y. S. (2012). *Collecting and Interpreting Qualitative Materials*. SAGE Publications.

- Di Matteo, F. (2017). *Community land in Kenya: Policy making, social mobilization, and struggle over legal entitlement* (Working Paper No. 17–185). Working Paper Series.
<https://www.econstor.eu/handle/10419/224811>
- Domínguez, L., Luoma, C. (2020). Decolonising Conservation Policy: How Colonial Land and Conservation Ideologies Persist and Perpetuate Indigenous Injustices at the Expense of the Environment. *Land*, 9(3), 65. <https://doi.org/10.3390/land9030065>
- Driscoll, D.L. (2011). Introduction to Primary Research: Observations, Surveys, and Interviews. *Writing spaces: Readings on writing 2*, 153-174, 2011.
- Escobar, A. (2001). *Encountering Development: The Making and Unmaking of the Third World*. Princeton University Press.
- Escobar, A. (2008). *Territories of Difference: Place, Movements, Life, Redes*. Durham and London: Duke University Press.
- Fairhead, J., Leach, M., Scoones, I. (2012). Green Grabbing: A new appropriation of nature? *Journal of Peasant Studies*, 39(2), 237–261.
<https://doi.org/10.1080/03066150.2012.671770>
- Fluehr-Lobban, C. (1994). Informed Consent in Anthropological Research: We Are Not Exempt. *Human Organization*, 53(1), 1–10.
<https://doi.org/10.17730/humo.53.1.178jngk9n57vq685>
- Fluehr-Lobban, C. (2015). Ethics. In Bernard, H. R. (Eds.), *Handbook of methods in cultural anthropology (Second edition)* (pp. 131-150). Rowman & Littlefield.
- Francis, R. (2020). The Tyranny of the Coloniality of Nature and the Elusive Question of Justice. In Benyera, E. (Eds.), *Reimagining Justice, Human Rights and Leadership in Africa:*

- Challenging Discourse and Searching for Alternative Paths* (pp. 39-58). Springer International Publishing. <https://doi.org/10.1007/978-3-030-25143-7>
- Government of Kenya (2010). *Kenya's Constitution of 2010*. Constitute Project. Retrieved May 24, 2022, from https://www.constituteproject.org/constitution/Kenya_2010.pdf
- Government of Kenya (GoK), UNEP. (2008). *Mau complex and Marmanet forests, environmental and economic contributions*. Briefings notes, UNEP.
- GRAIN, Martinez-Alier, J., Temper, L., Munguti, S., Matiku, P., Ferreira, H., Soares, W., Porto, M. F., Raharinirina, V., Haas, W., Singh, S. J., Mayer, A. 2014. The many faces of land grabbing. Cases from Africa and Latin America. *EJOLT Report No. 10*.
- Harvey, D. (2007). *A Brief History of Neoliberalism*. OUP Oxford.
- Harper, D. (2005). An Argument for Visual Sociology. In Prosser, J. (Eds.), *Image-Based Research: A Sourcebook for Qualitative Researchers* (pp. 20-35). Taylor & Francis e-Library.
- Hodge, J. M. (2010). British Colonial Expertise, Post-Colonial Careerism and the Early History of International Development. *Journal of Modern European History*, 8(1), 24–46.
https://doi.org/10.17104/1611-8944_2010_1_24
- Hodgson, D. L. (2011). *Being Maasai, becoming indigenous: Postcolonial politics in a neoliberal world*. Indiana University Press.
- Home, R., Kabata, F. (2018). Turning fish soup back into fish: The wicked problem of African Community land rights. *Journal of Sustainable Development Law and Policy (The)*, 9(2), 1–22. <https://doi.org/10.4314/jsdlp.v9i2.2>
- Holm, G. (2014). Photography as a Research Method. In Leavy, P. (Eds.), *The Oxford handbook of qualitative research* (pp. 380-402). Oxford University Press.
- Ingold, T., Riches, D., Woodburn, J. (1988). *Hunters and Gatherers*. Routledge.

- Juma, D. (2007). Access to the African Court on Human and Peoples' Rights: A Case of the Poacher Turned Gamekeeper? *SSRN Electronic Journal*.
<https://doi.org/10.2139/ssrn.1391482>
- Kahura, C. (n.d.). *The Ogiek Evictions in Kenya – a failed legal solution*. OHRH. Retrieved May 10, 2022, from <https://ohrh.law.ox.ac.uk/the-ogiek-evictions-in-kenya-a-failed-legal-solution/>
- Kanyinga, K. (2000). *Re-distribution from Above: The Politics of Land Rights and Squatting in Coastal Kenya*. Nordic Africa Institute.
- Kenya Forest Service (n.d.). *Mau Forest*. Retrieved April 18, 2022, from http://www.kenyaforestservice.org/index.php?option=com_content&view=article&id=699:mau-forest&catid=183&Itemid=695
- Kibii, E. (26 May 2022). *Ogieks ask state to implement African Court judgment*. The Star. Retrieved July 8, 2022, from <https://www.the-star.co.ke/news/2022-05-26-ogiek-ask-state-to-implement-african-court-judgment/>
- Kimaiyo, T. J. (2004). *Ogiek Land Cases and Historical Injustices*. Retrieved December 29, 2021, from <https://freeafrica.tripod.com/ogiekland/book.htm>
- Kish Z. (2011) Land Grab. In: Chatterjee D.K. (Eds), *Encyclopedia of Global Justice* (pp. 628-630). Springer, Dordrecht. https://doi.org/10.1007/978-1-4020-9160-5_744
- Klopp, J. M. (2012). Deforestation and democratization: Patronage, politics and forests in Kenya. *Journal of Eastern African Studies*, 6(2), 351–370.
<https://doi.org/10.1080/17531055.2012.669577>
- Klopp, J. M., Lumumba, O. (2017). Reform and counter-reform in Kenya's land governance. *Review of African Political Economy*, 44(154), 577–594.
<https://doi.org/10.1080/03056244.2017.1367919>

- Klopp, J., Sang, J. (2011). *Maps, Power, and the Destruction of the Mau Forest in Kenya*.
- Kratz, C. (1980). Are the Okiek really Masai? Or Kipsigis? Or Kikuyu? *Cahiers d'Études Africaines*, 20(79), 355–368. <https://doi.org/10.3406/cea.1980.2340>
- Kratz, C. A. (2002). *The ones that are wanted: Communication and the politics of representation in a photographic exhibition*. University of California Press.
- Leavy, P. (Ed.). (2014). *The Oxford handbook of qualitative research*. Oxford University Press.
- Li, T. M. (2022). *Masyarakat Adat, Difference, and the Limits of Recognition in Indonesia's Forest Zone*. 33.
- Liebenberg, L. (2009). 5. The Use of Image-Based Methods in Research with Youth. In L. Liebenberg, M. Ungar (Eds.), *Researching Resilience*. University of Toronto Press. <https://doi.org/10.3138/9781442697669-007>
- Lowe, C., Zemliansky, P. (2011). *Writing Spaces 2: Readings on Writing*. Parlor Press LLC.
- Manji, A. (2012). The grabbed state: Lawyers, politics and public land in Kenya. *The Journal of Modern African Studies*, 50(3), 467–492. <https://doi.org/10.1017/S0022278X12000201>
- Marino, E., Ribot, J. (2012). Special Issue Introduction: Adding insult to injury: Climate change and the inequities of climate intervention. *Global Environmental Change*, 22(2), 323–328. <https://doi.org/10.1016/j.gloenvcha.2012.03.001>
- Marshall, P. L. (2003). Human Subjects Protections, Institutional Review Boards, and Cultural Anthropological Research. *Anthropological Quarterly*, 76(2), 269–285. <https://doi.org/10.1353/anq.2003.0028>
- McEwan, C. (2019). *Postcolonialism, Decoloniality and Development*. Routledge.
- Micheli, I. (2014). The Ogiek of the Mau Forest: Reasoning between identity and survival. *La Ricerca Folklorica*, 69, 189–204.

- Minority Rights Group International. (2020). *Kenya Flouts African Court Judgment, Continues to Evict Ogiek in the Midst of COVID-19 Pandemic*. Retrieved July 01, 2022, from <https://minorityrights.org/2020/07/17/ogiek-evictions/>
- Moore, J. W. (2000). Environmental Crises and the Metabolic Rift in World-Historical Perspective. *Organization & Environment*, 13(2), 123–157. <https://doi.org/10.1177/1086026600132001>
- Morgan, W. T. W. (1963). The “White Highlands” of Kenya. *The Geographical Journal*, 129(2), 140. <https://doi.org/10.2307/1792632>
- Munck, R. (2006). *Globalization and Contestation*. Routledge. <https://doi.org/10.4324/9780203962374>
- Musante, K. (2015). Participant Observation. In Bernard, H. R. (Eds.), *Handbook of methods in cultural anthropology* (Second edition) (pp. 251-292). Rowman & Littlefield.
- Mwangi, E. (1998). *Colonialism, self-governance and forestry in Kenya: Policy, practice and outcomes*. Research in Public Affairs Working Paper V 590. Kenya, 1-28.
- Nkako, F., Lambrechts, C., Gachanja, M., Woodley, B. (2005). *Maasai Mau Forest Status Report 2 005*. Narok, Ewaso Ngiro South Development Authority.
- Obare, L. and Wangwe, J.B. (1998). *Underlying Causes of Deforestation and Forest Degradation in Kenya*. World Forest Movement.
- Ofcansky, T. P. (1984). Kenya Forestry under British Colonial Administration, 1895–1963. *Journal of Forest History*, 28(3), 136–143. <https://doi.org/10.2307/4004697>
- Oliveira, G. de L. T., McKay, B. M., Liu, J. (2021). Beyond land grabs: New insights on land struggles and global agrarian change. *Globalizations*, 18(3), 321–338. <https://doi.org/10.1080/14747731.2020.1843842>

- Open Society Justice Initiative. (2013). *African Court on Human and Peoples' Rights*. Retrieved June 10, 2022, from www.justiceinitiative.org/publications/african-court-human-and-peoples-rights
- Pauwels, L. (2008). Taking and Using. *Visual Communication Quarterly*, 15(4), 243–257.
<https://doi.org/10.1080/15551390802415071>
- Pauwels, L. (2011). An integrated conceptual framework for visual social research. In E. Margolis, L. Pauwels, *The SAGE handbook of visual research methods* (pp. 3-23). SAGE Publications Ltd, <https://dx.doi.org/10.4135/9781446268278.n1>
- Pink, S. (2006). *The Future of Visual Anthropology: Engaging the Senses*. Routledge.
<https://doi.org/10.4324/9780203003596>
- Pink, S. (2012). *Advances in Visual Methodology*. SAGE Publications. Retrieved June 24, 2022, from <https://www.perlego.com/book/861874/advances-in-visual-methodology-pdf>
- Pokhrel A.K. (2011). Alterglobalization. In: Chatterjee D.K. (Eds), *Encyclopedia of Global Justice* (pp. 30-35). Springer, Dordrecht. https://doi.org/10.1007/978-1-4020-9160-5_572
- Prosser, J. and Schwartz, D. (2005). Photographs within the Sociological Research Process. In Prosser, J. (Eds.), *Image-Based Research: A Sourcebook for Qualitative Researchers* (pp. 101-115). Taylor & Francis e-Library.
- Rambaldi, G., Muchemi, J., Crawhall, N., Monaci, L. (2007). Through the Eyes of Hunter-Gatherers: Participatory 3D modelling among Ogiek indigenous peoples in Kenya. *Information Development*, 23(2–3), 113–128.
<https://doi.org/10.1177/0266666907078592>

- Ronoh, T.K., Makori, G., Ayub, M.J. (2016). Hunting Apprenticeship as Indigenous Form of Education for Sustainable Conservation of Wildlife in Mau Forest of Kenya. *European Journal of Education Studies*, 1(2).
- Rösch, R. (2017). Indigenousness and peoples' rights in the African human rights system: Situating the Ogiek judgement of the African Court on Human and Peoples' Rights. *Verfassung in Recht Und Übersee*, 50(3), 242–258. <https://doi.org/10.5771/0506-7286-2017-3-242>
- Rose, G. (2016). *Visual Methodologies: An Introduction to Researching with Visual Materials*. SAGE.
- Rostow, W. W. (1959). The stages of economic growth. *The Economic History Review*, 12(1), 1–16. <https://doi.org/10.1111/j.1468-0289.1959.tb01829.x>
- Santos, B., Meneses, M. P. (2020). *Knowledges Born in the Struggle: Constructing the Epistemologies of the Global South*. New York: Routledge, Taylor & Francis Group.
- Sardar, Z. (1999). Development and the locations of eurocentrism. In R. Munck and D. O'Hearn (Eds.), *Critical development theory: Contributions to the new paradigm* (pp. 44-62). London: Zed Books.
- Schwartz, D. (2009). *Visual art meets visual methods: Making a case for making pictures*. Keynote photographer's address, 1st International Visual Methods Conference, Clothworkers' Hall, University of Leeds, Leeds, UK.
- Sena, K. (2006). Mau Forest: Killing the Goose but Still Wanting the Golden Eggs. *Indigenous Affairs*, 4, Logging and Indigenous Peoples, 2006, 1-6.
- Simons, H. (2014). Case study research: in-depth understanding in context. In Leavy, P. (Eds.), *The Oxford handbook of qualitative research* (pp. 455-470). Oxford University Press.

- Shiva, V. (1993). *Monocultures of the Mind: Perspectives on Biodiversity and Biotechnology*. Palgrave Macmillan.
- Southall, R. (2005). *The Ndungu report: Land & graft in Kenya*. 32, 142–151.
- Spruyt, C., Stroeken, K. (2011). *Changing Concepts of Nature and Conservation Regarding Eastern Mau Forest. A Case Study of the Mariashoni Ogiek*.
- Stake, R. E. (1995). *The Art of Case Study Research*. SAGE.
- Stensrud, A. B., Eriksen, T. H. (2019). Introduction: Anthropological Perspectives on Global Economic and Environmental Crises in an Overheated World. In Stensrud, A. B., Eriksen, T. H. (Eds.). *Climate, Capitalism and Communities: An Anthropology of Environmental Overheating* (pp. 1-21). Pluto Press. <https://doi.org/10.2307/j.ctvjnrw0q>
- Stewart, D. W., Ph.D, M. A. K., Kamins, M. A. (1993). *Secondary Research: Information Sources and Methods*. SAGE.
- Swart, R. (2016). *Monitoring 40 years of land use change in the Mau forest complex, Kenya: A land use change driver analysis*. CIFOR; Wageningen University. <https://www.cifor.org/knowledge/publication/5825/>
- Swynnerton, R. J. M. (1954). *A plan to intensify the development of African agriculture in Kenya*.
- Syagga, P. M. (2002). *Land Ownership and Use in Kenya: Policy Prescriptions from an Inequality Perspective*. 56.
- The Republic of Kenya. (2016). *Laws of Kenya - Community Land Act*. NO. 27 of 2016.
- Thurston, A. (1987). *Smallholder agriculture in colonial Kenya: The official mind and the Swynnerton plan*. African Studies Centre.

- Tucker, V. (1999). The myth of development: A critique of Eurocentric discourse. In R. Munck and D. O'Hearn (Eds.), *Critical development theory: Contributions to the new paradigm* (pp. 1-26). London: Zed Books.
- Vidal, J. (2008, February 13). The great green land grab. *The Guardian*.
<https://www.theguardian.com/environment/2008/feb/13/conservation>
- Wachira, G. M. (2008). *African Court on Human and Peoples' Rights: Ten years on and still no justice*. Minority Rights Group International.
- Wallerstein, I. (2004). *World-systems Analysis: An Introduction*. Durham: Duke University Press.
- Walsh, C. (2007). Shifting the geopolitics of critical knowledge: Decolonial thought and cultural studies 'others' in the Andes. *Cultural Studies*, 21(2-3), 224-239.
<https://doi.org/10.1080/09502380601162530>
- Wanjiru, K. M. (2014). *Challenges Faced by Kenya Forest service in strategy Implementation*.
- West, P. (2006). *Conservation Is Our Government Now: The Politics of Ecology in Papua New Guinea*. Duke University Press. <https://doi.org/10.2307/j.ctv1198x8f>
- Wilhite, H., Salinas, C. (2019). Expansive Capitalism, Climate Change and Global Climate Mitigation Regimes: A Triple Burden on Forest Peoples in the Global South. In Stensrud, A. B., Eriksen, T. H. (Eds.), *Climate, Capitalism and Communities: An Anthropology of Environmental Overheating* (pp. 151-170). Pluto Press.
<https://doi.org/10.2307/j.ctvjnrw0q>
- Woons, M. (2020). *Normativity, Power & Peripheral Nations*.
- World Bank. (2007). *Strategic Environmental Assessment of the Kenya Forests Act 2005*. Washington, DC.

Yeoman, G. (1993). High altitude forest conservation in relation to the Dorobo people. *Kenya Past and Present*, 25(1), 31–35.

Annexes

Annex 1: Interview guide

Interview guide for Ogiek community members:

- How would you define the Ogiek?
- What are some of the most important tangible/non-tangible elements of Ogiek heritage?
- What is your memory – and current definition of the area of the *Mau Forest Complex*?
- How would you define the societal changes taking place in the community?
- How do you perceive the court ruling and its current state of implementation?
- What is your wish for the future and for the next generations?

Interview guide for the human rights lawyer:

- Why was the reliance on the legal system the choice? Were there other options available?
- What are other strategies of resistance?
- Can you elaborate on the Court proceedings and the ruling, especially given obstacles and key moments?
- What were the happenings in the post-court ruling?
- How would you view the ruling in light of the contested question of indigenesness and distinct culture?
- What does the Respondent's current non-compliance with the court ruling mean in terms of outlook?