

A Green New Steal: New Land Commodities, Indigenous Displacement, and the New Violent Extractive Potential of the Global Carbon Market

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Abstract:

One of the most well-interrogated features of colonialism has been the extraction of value from lands by persons other than those who live in those lands, and the refusal to share that extracted value with the persons whose lands are made unlivable by the processes that accompany value extraction. This process persists into the present; indigenous populations are routinely displaced by those who want to access the mineral wealth under their territories. New social technologies like the carbon credit have now made it possible to extract new value from land, through the calculated addition and maintenance of carbon-sinks, like forest biomass, rather than through the physical removal of mineral wealth.

Unfortunately, this new mode of utility-extraction may be perpetrating the same violence of displacement: the Ogiek, an indigenous minority group in Kenya, have been repeatedly evicted by the Kenyan government so as to turn their ancestral land into forest reserves, while the Kenyan government has vociferously proclaimed their intent to go all-in on the new carbon economy. In what way does this new resource economy reiterate the violences of the resource economy that preceded it? And given that the Ogiek and other regional indigenous groups understand themselves to have been the stewards whose action maintained these forestlands, and given that their removal may result in more destruction of forestlands (which would thereby actually reduce those lands' sequestering capacity), in what way might these acts of removal frustrate or obviate their ostensible ends?

I. Trade Innovation; Old Exploitation

Across the world, indigenous groups are routinely displaced from their ancestral lands so that interloping populations can access the wealth of the land thereunder¹. This dynamic has unfolded for as long as the colonial encounter has occurred, and has persisted into the so-called postcolonial era. Mineral extraction made possible through local displacement and disenfranchisement has been put to use towards a broad menagerie of diverse and unrelated ends, all unified by the predicate understanding that the best way to extract use-value from land is to transform that land into a mutable commodity and inject that commodity into the global flow of capital and trade, even if that means removing the populations who had hitherto made their own local use-value from the land by simply living thereupon².

New technologies innovating trade, like carbon credits, have made it possible to extract new use-value from old lands, and to transform those lands into an exchangeable commodity, without removing a single stone³. Now, land *qua* carbon credit can be traded and arbitrated to contrive use-value and profit off of the ostensible sequestration of elements like carbon, contra the old-school extraction of elements like gold⁴. The old paradigm of value extraction has been turned on its head: now we wish to put things in the ground, where before we would have wished to take things out.

Yet in spite of this new use-value demanding no removal of mineral wealth, the new commodity form of land has still demanded the removal of indigenous populations who had the grave misfortune of living on a place that the world has decided to set apart⁵. And so new social technologies governed by domestic climate governance regimes like California's "cap and trade", and international climate governance regimes like Article 6 of the Paris Climate Accords, have given us new green commodities, new green markets, and new green trade⁶. These novel trade innovations have nevertheless resulted in the new

¹ See Deanna Kemp, John Owen & Kado Muir, *54% of projects extracting clean energy minerals overlap with Indigenous lands, research reveals*, THE CONVERSATION, <https://theconversation.com/54-of-projects-extracting-clean-energy-minerals-overlap-with-indigenous-lands-research-reveals-195438> (last visited on July 10, 2024).

² See *id.*

³ See Teresa Hartmann & Douglass Broom, *What are carbon credits and how can they help fight climate change*, WORLD ECONOMIC FORUM, https://www.google.com/url?q=https://www.weforum.org/agenda/2020/11/carbon-credits-what-how-fight-climate-change/&sa=D&source=docs&ust=1720604546162961&usg=AOvVaw0v_khouAyjc-4NCRILZzMp (last visited July 10, 2024).

⁴ See World Bank Group, *What You Need to Know About Article 6 of the Paris Agreement*, ECONOMIST WORLD BANK GROUP, <https://www.worldbank.org/en/news/feature/2022/05/17/what-you-need-to-know-about-article-6-of-the-paris-agreement> (last visited July 10, 2024).

⁵ See, eg, Claire Marshall, *Kenya's Ogiek people being evicted for carbon credits – lawyers*, BBC, <https://www.bbc.com/news/world-africa-67352067> (last visited June 3, 2024).

⁶ See *id.*; see also Caroline Jones & Katelyn Roedner Sutter, *As it enters its eleventh year, California's cap-and-trade program continues to raise revenue to fight the climate crisis*, ENVIRONMENTAL DEFENSE FUND, <https://blogs.edf.org/climate411/2024/02/22/as-it-enters-its-eleventh-year-californias-cap-and-trade-program-continues-to-raise-revenue-to-fight-the-climate-crisis/> (last visited July 10, 2024).

commission of an old form of violence, and have the potential to cause the displacement of old communities from ancient lands.

Kenya's Ogiek, the historical denizens of Kenya's Mau Forest complex, are experiencing the *avant-garde* of this technology of dispossession⁷. It has been alleged that the Kenyan government under William Ruto recently displaced members of the Ogiek community so that their ancestral land may be converted into carbon credits, pursuant to Ruto's declared aim to turn carbon credits into Kenya's "next significant export."⁸ Ruto denies this connection,⁹ but it is nevertheless the case that the Ogiek have been, and continue to be displaced pursuant to "conservation"¹⁰ in spite of repeated declarations from courts that their land should remain theirs.¹¹ Carbon Credit dealers based in the global north continue to tout their Kenyan acquisitions,¹² and Kenya's conservationist carbon economy is expected to continue its growth.¹³

⁷ See Claire Marshall, Kenya's Ogiek people being evicted for carbon credits – lawyers, BBC, <https://www.bbc.com/news/world-africa-67352067> (last visited June 3, 2024).

⁸ See *Could Carbon Credits be Africa's Next Biggest Export?*, THE ECONOMIST, (Nov. 3, 2023), https://www.economist.com/middle-east-and-africa/2023/11/30/could-carbon-credits-be-africas-next-big-export?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=17210591673&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gad_source=1&gclid=Cj0KCQjw7ZO0BhDYARIsAFttkCiahB7bMwOsOCQX87cSOJRSXRLwqK4MZ2JFKefH9recEIZI_LV-k_oaAqegEALw_wcB&gclsrc=aw.ds (last visited June 3, 2024).

⁹ See Leon Lidigu, *Kenya has not sold an inch of land to carbon credit dealers, Ruto swears*, NATION, (Dec. 1, 2023), https://nation.africa/kenya/news/kenya-has-not-sold-an-inch-of-land-to-carbon-credit-dealers-ruto-swears-4452038#google_vignette (last visited June 3, 2024).

¹⁰ See Namukabo Werungah, *Conservation versus human rights: Kenya's Ogiek Dilemma*, THE NEW HUMANITARIAN, (Apr. 24, 2024), <https://www.thenewhumanitarian.org/video/2024/04/24/conservation-versus-human-rights-kenya-ogiek-dilemma#:~:text=As%20Kenya's%20government%20grapples%20with,livelihoods%20is%20increasingly%20in%20doubt> (last visited June 3, 2024).

¹¹ See, e.g., Sofia Olofsson, *After Decades of Illegal Evictions – Indigenous Ogiek Win Reparations Ruling Against the Republic of Kenya*, HARV. INT'L L.J., (Jan. 19, 2023), <https://journals.law.harvard.edu/ilj/2023/01/after-decades-of-illegal-evictions-indigenous-ogiek-win-reparations-ruling-against-the-republic-of-kenya/#:~:text=Finally%2C%20on%2023%20June%202022,and%20%24491%2C295%20in%20material%20damages> (last visited June 3, 2024); see also *Ogiek Case: Protection of an Indigenous Community in Kenya*, AMNESTY INT'L, (June 25, 2023), <https://www.amnesty.org/en/latest/campaigns/2023/06/ogiek-case-protection-of-an-indigenous-community-in-kenya/> (last visited June 3, 2024).

¹² See Angela Dewan, *A UAE company has secured African land the size of the UK for controversial carbon offset projects*, CNN, (Nov. 23, 2023), <https://www.cnn.com/2023/11/22/climate/uae-cop28-adnoc-fossil-fuels-expansion-climate-intl/index.html#:~:text=The%20Dubai%2Dbased%20Blue%20Carbon,CO2%2C%20from%20entering%20the%20atmosphere> (last visited June 3, 2023); see also Lesia Buinoza, *Government of Kenya Accelerates Towards Compliance Market with UAE's Blue Carbon under Article 6*, PR NEWS OU, (Oct. 25, 2023), <https://www.newsfilecorp.com/release/185173/Government-of-Kenya-Accelerates-Towards-Compliance-Market-with-UAEs-Blue-Carbon-under-Article-6> (last visited on June 3, 2023).

¹³ See Simi Thami, *3 Reasons Why Kenya's Carbon Markets Can Be Expected To Grow*, FORBES, (May 29, 2024), <https://www.forbes.com/sites/simithambi/2024/05/29/3-reasons-why-kenyas-carbon-markets-can-be-expected-to-grow/> (last visited on June 3, 2023).

II. Green New Steal

Green economic transition in much of the “developed world” has surged demand for minerals necessary for the technologies enabling this green economic transition.¹⁴ The global threat of climate change has driven emissions-leading countries into a flurry of new technological development and economic transformation in a desperate attempt to stem the consequences of a century and a half of globally-pollutive industrial activity¹⁵. These new technologies have put a premium on the elements necessary to enable them. Precipitous increases in demand for minerals like copper,¹⁶ lithium¹⁷, and iron¹⁸ have resulted in a new wave mining exploration worldwide, with deposits frequently being found under the territories of groups whose political disenfranchisement makes it harder to push back against their own dispossession¹⁹. This mining exploration has driven extractivists once

¹⁴See, eg, Tina Teng, *Copper Surges Towards Record Highs Amid Optimistic Demand Outlook*, MSN, (May 14, 2024), [https://www.msn.com/en-us/news/other/copper-surges-towards-record-highs-amid-optimistic-demand-outlook/ar-BB1mpA6X#:~:text=Fundamentally%2C%20the%20global%20industrial%20shift%20towards%20renewable%20energy%2C,the%20clean%20energy%20transition%2C%20notwithstanding%20prevailing%20short-term%20apprehensions.%22,\(last%20visited%20on%20June%203%2C%202024\).](https://www.msn.com/en-us/news/other/copper-surges-towards-record-highs-amid-optimistic-demand-outlook/ar-BB1mpA6X#:~:text=Fundamentally%2C%20the%20global%20industrial%20shift%20towards%20renewable%20energy%2C,the%20clean%20energy%20transition%2C%20notwithstanding%20prevailing%20short-term%20apprehensions.%22,(last%20visited%20on%20June%203%2C%202024).)

¹⁵ See, eg, discussions about the United States’ potential “Green New Deal”: Lisa Friedman, *What Is the Green New Deal? A Climate Proposal, Explained*, THE NEW YORK TIMES, <https://www.nytimes.com/2019/02/21/climate/green-new-deal-questions-answers.html> (last visited July 10, 2024).

¹⁶Consider the embattled Resolution Copper mine, a Rio Tinto venture in Oak Flat Arizona touted for its ability to meet 25% of the United States’ copper demand See Ryan Sistad, *Opinion: Support domestic mining to advance a secure, responsible US mineral supply*, THE HILL, (May 31, 2024), <https://thehill.com/opinion/4694585-support-domestic-mining-to-advance-a-secure-responsible-us-mineral-supply/> (last visited June 3, 2024) which has faced legal challenges from indigenous groups that have recently been elevated to the United States’ Supreme Court. See Debra Utacia Krol, *Oak Flat copper mine lawsuit is headed to the Supreme Court after 9th Circuit Ruling*, AZ CENTRAL, (May 14, 2024), <https://www.azcentral.com/story/news/local/arizona-environment/2024/05/14/apache-stronghold-to-appeal-resolution-copper-case-to-supreme-court/73688120007/> (last visited on June 3, 2024).

¹⁷ See, e.g., Alice Baxter, *Bolivian Indigenous People Lose Out on Lithium*, HUMAN RIGHTS PULSE, (Aug. 29, 2020), <https://www.humanrightspulse.com/mastercontentblog/bolivian-indigenous-people-lose-out-on-lithium#:~:text=The%20Bolivian%20government%20has%20been%20accused%20of%20ransacking,75%25%20of%20the%20world%E2%80%99s%20known%20supply%20of%20lithium> (last visited June 3, 2024).

¹⁸Rio Tinto has touted its new “BioIron” as a new “green” method for creating iron and steel products that has the potential to be “carbon negative” See *Rio Tinto’s BioIron™ proves successful for low-carbon iron making*, RIO TINTO, (Nov. 23, 2022), <https://www.riotinto.com/en/news/releases/2022/rio-tintos-bioiron-proves-successful-for-low-carbon-iron-making> (last visited June 3, 2024). Unfortunately, Rio Tinto has also discerned that the best iron for this process comes from their Pilbara mining site, a site where Rio Tinto was responsible for destroying a 46,000 year old Aboriginal Australian sacred site. See Calla Calla, *Rio Tinto blasts 46,000-year-old aboriginal site to expand iron ore mine*, THE GUARDIAN, (May 26, 2020), <https://www.theguardian.com/australia-news/2020/may/26/rio-tinto-blasts-46000-year-old-aboriginal-site-to-expand-iron-ore-mine> (last visited June 3, 2024).

¹⁹ See Deanna Kemp, John Owen & Kado Muir, *54% of projects extracting clean energy minerals overlap with Indigenous lands, research reveals*, THE CONVERSATION, <https://theconversation.com/54-of-projects-extracting-clean-energy-minerals-overlap-with-indigenous-lands-research-reveals-195438> (last visited on July 10, 2024).

again to the conclusion that the best way to advance the world is to remove indigenous populations from their patches of it.²⁰

Critical geographers have called this and parallel impulses a “spatial fix”: economic crises of production, or demand, occur in an empowered locale, and the denizens of that empowered locale take advantage of global economic circuits to displace that crisis elsewhere along axes of global development and underdevelopment²¹. Crises of demand for crucial commodity-inputs for new technologies have resulted in global exploration for accessible sources of these inputs, each new site providing a spatial fix alleviating the itch of demand.²² The same goes for crises of overproduction resulting in new market creation to “fix” overproduced goods and sequester them into new sites of market demand.²³

This formula deploys well into circumstances wherein the goods of concern have an easy relationship to production and demand, but is harder to map to circumstances wherein an object is subject to rampant overproduction, but nobody wishes to make it theirs. One such crisis of economic production that has rapt contemporary markets, and has characterized the most charismatic villain of contemporary global crisis, has consisted of the slow overproduction of market “externalities” in the form of greenhouse gas emissions. Everybody is making them; everybody is making far too much of them; nobody wishes to claim them as theirs.

One spatial techno-fix that has emerged to place, fix, and sequester this overproduced carbon, is “carbon credit markets:” a trade innovation which seeks to “internalize the externality”²⁴ by producing parcels of land into a new legislatively-contrived commodity-form that ascribes an easily-intelligible economic weight to previously-incalculable industrial production outputs like CO₂²⁵. Through a form of magical thinking that combines very “real” mathematical formulae, environmental and biological surveying, and geospatial imaging, governments and firms may determine that a given parcel of reserved land can “suck” so many tons of carbon out of the atmosphere. Carbon markets deploy these formulae to transmogrify a land parcel into a good that may be purchased, and so maintained, this parcel-*cum*-sequestration-quantity may be sold to emitters so as to offset an equivalent quantity of the carbon that those producers belch into the atmosphere²⁶. But these parcels do not maintain this commoditizable value as an intrinsic condition: these markets require a constant legislative production and maintenance, like a carbon security that produces and continuously affirms the economic value of a land’s natural sequestrative

²⁰ See Sistad, *supra* note 16 (describing indigenous’ groups fights at Oak Flat as “setbacks” that should be avoided in the advance to mine for green development).

²¹ See, e.g., David Harvey, *Globalization and the “Spatial Fix*, *geographische revue: Zeitschrift für Literatur und Diskussion* 3.2, 23-30 (2001), <https://d-nb.info/1217929630/34> (last visited June 3, 2024).

²² Scholars like Harvey deploy the word “fix” not only in the sense whereby such “fixes” operate to repair a broken thing, but also to analogize to a drug addict scoring a “fix” of their substance of addiction. See *id.* at 24.

²³ See Harvey, *supra* note 21, at page 26.

²⁴ See, e.g., *Internalizing the externalities*, THE ECONOMIST, (Jan. 21, 2022), <https://www.economist.com/special-report/2022/07/21/internalising-the-externalities> (last visited June 3, 2024).

²⁵ See Hartman & Broom, *supra* note 3.

²⁶ See *id.*

capacity. Else why would a firm feel it prudent to expend capital purchasing land that they must maintain undeveloped, and from which they are barred from extracting material gain?

Forestlands comprise one of the many sites that may be identified as carbon sinks, and thereafter converted into carbon credits.²⁷ These land-based sites are easy to geospatially image, and easy to apportion into hectare-chunks, in such a way that makes them an intoxicating form for carbon-credit trading firms to acquire.²⁸ Additionally, forestland may present an appealing target for carbon trading firms on account of the relative immobility of trees as engines of sequestration: whereas currents may carry phytoplankton, trees are by their nature rooted in place. As such, forestland makes for phenomenal carbon-credits, and carbon-credit trading firms are scrambling to acquire those forestlands wherever they may.²⁹ In this scramble to acquire reservable, and therefore commodifiable land, it is no wonder that these acquisitions are found to coincide with the lands of vulnerable indigenous persons whose ownership of land is subject to tenuous legal protection,³⁰ whose forested lands are more virgin,³¹ and whose dispossession may be easier achieved.³²

And so, lawyers allege,³³ this is the reason that the Ogiek were displaced from their land once more in November of 2023; forested land which they claim that they already maintained for millenia prior, and which they claim to actively conserve today.³⁴

III. Justice Delayed and Justice Denied

After the Ogiek had occupied the Mau Forest Complex in Kenya “since time immemorial,” the Kenyan Forest Service gave the 20,000-member tribe a scant 30 days to leave their

²⁷See Jeanethe Falvey, *Carbon credits give conservation and climate action a fighting chance*, WORLD ECON. F., (Dec. 17, 2021), <https://www.weforum.org/agenda/2021/12/conservation-climate-action-carbon-credits-forests/> (last visited June 3, 2024).

²⁸ See Suman Naishadham, *Explainer: Forest carbon credits aim to offset pollution*, AP NEWS, (Dec. 22, 2022), <https://apnews.com/article/business-forests-trees-climate-and-environment8aaa798d422857b660954379690d42fd> (last visited June 3, 2024).

²⁹ See Dewan, *supra* note 12.

³⁰ See, for example, the Ogiek case. In spite of being settled in the highest governing human rights court in the favor of the Ogiek, their lack of domestic protection in the Kenyan constitution, coupled with the national government’s adamant refusal to implement the international court’s decision, has meant that the Ogiek have exhausted legal recourse to a settlement in their favor and yet have yielded no material return, theoretically protected by the law in all but actual implementation. See Amnesty International, *supra* note 11.

³¹ See Stephen T. Garnett et. al., *A spatial overview of the global importance of indigenous lands for conservation*, NATURE SUSTAINABILITY, <https://www.nature.com/articles/s41893-018-0100-6> (last visited July 10, 2024).

³²This claim follows from conversations with activists in the Benet Mosopisyek community, particularly a conversation with Chebet Mungiek on 11 Jan. 2023, and with Moses Kiptala, 12 Jan. 2024. Each attested to the relative social dislocation of the Benet Mosopisyek, and relative lack of access to local government, such that the community was less visible than members of local majority populations. As such, it was posited that the abrogation of community-members’ rights was less visible, and therefore easier achieved.

³³See Marshall, *supra* note 5.

³⁴ See Amy Hall, *The Ogiek own Reparations, Now They Want Results*, NEWS INT’L, (June 20, 2023) <https://newint.org/features/2023/06/05/long-read-now-implementation-mau-forest-kenya-indigenous-decolonizehow#:~:text=One%20year%20on%20from%20a,in%20East%20Africa%20and%20beyond> (last visited June 3, 2024).

homeland in October of 2009. Three years later in 2012, the Ogiek brought their case before Africa's regional human rights apparatus, the African Commission on Human and People's Rights; the Ogiek won a decision in that same apparatus' court in May of 2017 proclaiming that Kenya's eviction of the Ogiek was violative of the community's rights.³⁵ In June of 2022, the Ogiek won a separate judicial victory in the African Court of Human and Peoples' Rights³⁶ declaring that they were entitled to reparations pursuant to their history of illegal displacement by Kenya.

One year to the day after this June 2022 ruling, repair had still not been tendered³⁷. Leaders from the Ogiek community, including Daniel Kobei, traveled to London to exposit their cause at a festival called "Land Body Ecologies", which was organized to explore the affective tie between communities and their land, and to examine the trauma of displacement.³⁸ On a podcast hosted by the BBC³⁹, Daniel Kobei explained the status of his people's legal struggle:

For over twenty years we have been doing litigation on the issues of our land rights in Mau... [W]e stayed in Kenyan courts for twelve years and we went to the African court –or the regional court in Africa– for another eight years, making a total of twenty... [I]n 2017 we won a landmark case –on the 26th May, 2017– and the government of Kenya were told to... declare Ogiek as indigenous peoples of Kenya and give them back their land rights. But, [Daniel qualifies], til now, despite of all those memorable historical land successes, we have not gotten our land or our restitution back, so we are still appealing to the Kenyan government to ensure that they fast-track the implementation of the Ogiek case. [Nevertheless, Daniel continues, we are hopeful.

That hope would unfortunately prove to be ill-advised. Less than half a year later, on the second of November of 2023,⁴⁰ justice delayed would become justice denied when the Ogiek faced another round of violent evictions. A combined force of Kenyan Police and Kenyan Wildlife Service officers descended on Ogiek settlements at the edges of the Mau Forest, where they "burn[ed] dozens of homes in a sustained operation to evict their

³⁵ See Amnesty International, *supra* note 11.

³⁶ See *id.*

³⁷ See Claudia Hammond, *The Evidence: Exploring the concept of solastalgia*, BBC, <https://www.bbc.co.uk/programmes/p0fzjsy8> (last visited July 10, 2024).

³⁸ See the festivals website, at

<http://web.archive.org/web/20231027000626/https://www.landbodyecologies.com/festival>

³⁹ See Hammond, *supra* note 37.

⁴⁰ See Caroline Chebet, *Kenyan government again evicts Ogiek communities from Mau Forest*, MONGABAY, (Nov. 8, 2023), <https://news.mongabay.com/2023/11/kenyan-government-again-evicts-ogiek-communities-from-mau-forest/> (last visited June 3, 2024).

inhabitants.”⁴¹ Though this was a joint operation, “[t]he displaced Ogiek said most of their homes were torched by Kenya Forest Service officers.”⁴²

The BBC would bring global attention to this round of evictions, and posit their link to carbon credits for the first time, one week later on the ninth of November.⁴³ One week thereafter, on the 16th of November 2023, *Time Magazine* lauded Kenyan president William Ruto as one of the 100 most influential climate leaders in business for 2023,⁴⁴ and positioned Ruto under the category of “defender”⁴⁵ on its “Time 100: Climate” list. The list comprises 100 persons whom Time’s editorial staff felt “[made] significant progress in fighting climate change by creating business value.”⁴⁶ Ruto, one of four Africans on the list of 100, was selected for his leadership generating green investment for Africa and pushing the vanguard for green finance on the African continent⁴⁷. Six days later, CNN would break the news⁴⁸ that carbon-credit-broker Blue Carbon had secured forest conservation deals with, *inter alia*, Kenya, pursuant to the creation of carbon credits to sell as pollution offsets.

William Ruto denies that the Ogiek’s recent eviction in November of 2023 had any relation with his government’s professed pivot to a carbon-sequestration economy, and that Kenya has not yet sold an inch of its land to carbon traders.⁴⁹ Carbon trading firms that allegedly maintain relationships with the Kenyan government, and which may be brokering Kenyan lands in pursuit of President Ruto’s ambitious aim, point out that lands contrived from indigenous displacement are not compliant with Article 6 of the Paris Climate Accords, the mechanism undergirding and enabling the trade of these credits.⁵⁰ And this is not the first time that the Ogiek have been evicted,⁵¹ though it is the first time that carbon credits have been tendered as an explanation.

In spite of these assurances that the Ogiek’s displacement has nothing to do with carbon credits, the timing is too suspicious to dismiss out of hand the allegations that the Ogiek were displaced for carbon credits. If this is indeed the case, then the Ogiek shall be written

⁴¹ See Anthony Langat, *Violent evictions are latest ordeal for Kenya’s Ogiek seeking land rights*, MONGABAY, (Dec. 20, 2023), <https://news.mongabay.com/2023/12/violent-evictions-are-latest-ordeal-for-kenyas-ogiek-seeking-land-rights/> (last visited June 3, 2024).

⁴² See Dominic Kirui, *Kenya’s Ogiek people fight on against eviction from Mau Forest*, ALJAZEERA, (Nov. 24, 2023), <https://www.aljazeera.com/features/2023/11/24/kenyas-ogiek-people-fight-on-against-eviction-from-mau-forest> (last visited June 3, 2024).

⁴³ See Marshall, *supra* note 5.

⁴⁴ See William Ruto, *Time 100 Climate: William Ruto, President, Republic of Kenya*, TIME MAGAZINE, <https://time.com/collection/time100-climate/6333115/william-ruto/> (last visited July 10, 2024).

⁴⁵ See Time Magazine, *Time 100 Climate*, TIME MAGAZINE, <https://time.com/collection/time100-climate/> (last visited July 10 2024).

⁴⁶ See Marcius Extavour, *How We Chose the 100 Most Influential Climate Leaders in Business for 2023*, TIME MAGAZINE, <https://time.com/6334864/how-we-chose-time100-climate-2023/> (last visited July 10 2024).

⁴⁷ See Justin Worland & William Ruto, TIME MAGAZINE,, <https://time.com/6965021/william-ruto/> (last visited July 10 2024).

⁴⁸ See Dewan, *supra* note 12.

⁴⁹ See Lidigu, *supra* note 9.

⁵⁰ See Marshall, *supra* note 5.

⁵¹ See Amnesty International, *supra* note 11.

into a long and wretched history of indigenous displacement to create land-value; but theirs comprises a new chapter in which eviction was not to take from the land, but to store therein.

IV. The Displacement of the Ogiek: a Self-Defeating Exercise?

If it is indeed the case that the Ogiek were evicted to create use-value from their land in the form of a commodity carbon credit, then this eviction may actually result in the defeat and the frustration of the very purpose of their eviction.

“Creating” carbon credits from the Mau forest may not actually create any new sequestration⁵². The viability of carbon credits has been critiqued for their lack of “additionality”: old sequestration, in the form of extant forests, cannot be offset new carbon emissions which those forests precede. Effective carbon credits require “additionality”⁵³: if producers create new carbon, a balanced equation of carbon offset requires that creditors create new sequestration commensurate to those new emissions⁵⁴. “[I]f a company buys offsets that fund reforestation, the credits are valid only if the trees would not have been put in the ground otherwise”⁵⁵. The eviction of persons from already-forested land does not, as such, create new sequestration out of thin air.

Additionally, satellite footage⁵⁶ and testimony from Ogiek leaders⁵⁷ and international NGOs⁵⁸ demonstrates that the eviction of Ogiek from their land has done nothing to curtail active deforestation of these very same reserves. Indeed, eviction may be causally related to this deforestation. The Ogiek have previously partnered with government rangers to restore portions of the Mau forest,⁵⁹ demonstrating an extant attention to conservation of forest resources. And, elders attest to the fact that their lifeway requires a maintenance of the forest⁶⁰: in their absence, that burden falls upon apparatuses of the Kenyan state to continuously maintain and guard extant timber stocks responsible for sequestration in the Mau Forest Complex. Continuous deforestation occurring over time periods transverse the eviction of the Ogiek at the very least demonstrates that eviction has not yet positively impacted conservation goals, and may yet evidence that eviction actually worsens concerns of deforestation. If eviction worsens deforestation, then the creation of carbon credits has

⁵²See Naishadham *supra* note 28.

⁵³See *id.*

⁵⁴See *id.*

⁵⁵See *id.*

⁵⁶See Chebet *supra* note 40.

⁵⁷Personal correspondence with Daniel Kobei at Land Body Ecologies, June 23, 2023.

⁵⁸See Chebet *supra* note 40.

⁵⁹See Jackson Okata, *Kenya's Indigenous Ogiek partner with government rangers to restore Mau Forest*, MONGABAY, (Nov. 24, 2021), <https://news.mongabay.com/2021/11/kenyas-indigenous-ogiek-partner-with-government-rangers-to-restore-mau-forest/#:~:text=Kenya's%20Indigenous%20Ogiek%20partner%20with%20government%20rangers%20to%20restore%20Mau%20Forest,-by%20Jackson%20Okata&text=The%20Ogiek%20people%20of%20Kenya,their%20material%20and%20cultural%20needs> (last visited June 3, 2024).

⁶⁰See *id.*

obviated and frustrated their professed purpose. This trade innovation may actually vitiate, not bolster, global conservation aims.

V. New Green Goals, Same Old Violence

Across the world, transformations towards a more environmentally conscious global economy have seen humanity taking laudable steps towards halting advancing, and existentially dire climate crises. This transformation has seen massive trade and technological innovations aimed at curtailing the consequences of humanity's wanton destruction of the environment hitherto.

Unfortunately, labors to this end have come at the expense of the world's most vulnerable indigenous communities. It may well be the case that the Ogiek have been displaced so that one may buy and trade the forest fruits of their conservationist labor. Elsewhere in the East African Community, Uganda hosts the world's first 'conservation refugees' in the Batwa of Bwindi, who were displaced from their lands pursuant to the creation of a national park.⁶¹ Across the border in D.R. Congo, these Batwa's kin have been violently murdered in pursuit of the same.⁶² The mining of "green" iron in Australia has led mining companies to destroy 46,000 year old Aboriginal sacred sites.⁶³ Copper mining for green technology transition in Arizona has led mining companies to proudly proclaim that they shall turn indigenous sacred sites older than the United States into craters 1.8 miles wide and over a thousand feet deep.⁶⁴

The new green economy, laudable and necessary as it is, has done nothing to curtail the violences intrinsic to the economy that it purports to replace. And like the economy it purports to replace, this new economic transformation acutely jeopardizes the well-being humanity's most vulnerable populations, including politically disenfranchised indigenous groups.

⁶¹ It is worth noting that the park also offers visits to these displaced communities as a part of their gorilla tour packages: "The Batwa trail is a very wonderful experience which you can add on your gorilla safari while in Bwindi national park." See *Who are the Batwa*, BWINDI IMPENETRABLE NATIONAL PARK, <https://www.bwindiimpenetrablenationalpark.com/see/batwa-people/> (last visited June 3, 2024).

⁶² See, e.g. Robert Flummerfelt, *To Purge the Forest By Force: Organized violence against Batwa in Kahuzi-Biega National Park*, MINORITY RIGHTS GROUP, (Apr. 5, 2022), <https://minorityrights.org/resources/to-purge-the-forest-by-force-organized-violence-against-batwa-in-kahuzi-biega-national-park/> (last visited June 3, 2024).

⁶³ See Calla Wahlquist, *Rio Tinto blasts 46,000-year-old Aboriginal site to expand iron ore mine*, The Guardian (26 May, 2020) <https://www.theguardian.com/australia-news/2020/may/26/rio-tinto-blasts-46000-year-old-aboriginal-site-to-expand-iron-ore-mine>

⁶⁴ See Anita Snow, *Historic Arizona mining town backs copper project on land that Native American groups say is sacred*, FOX 10 PHOENIX, (June 29, 2023), <https://www.fox10phoenix.com/news/historic-arizona-mining-town-backs-copper-project-on-land-that-native-american-groups-say-is-sacred#:~:text=SUPERIOR%2C%20Ariz.&text=Competing%20interests%20have%20ignited%20a,to%20protect%20it%20from%20disturbance> (last visited June 3, 2024); see also Kevin Rector, *Battle for Oak Flat: How Apache opposition to a copper mine became a religious liberty test*, LOS ANGELES TIMES, https://www.google.com/url?q=https://www.latimes.com/environment/story/2023-06-14/apache-copper-mine-sacred-land-arizona&sa=D&source=docs&ust=1720604546238322&usg=AOvVaw38SJw9-zlVY8SNPY_dczaI (last visited July 10, 2024).