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Ogiek case: protection of an indigenous community in Kenya

In Kenya, the Mau forest is the ancestral home of an indigenous community called the Ogiek people. The Ogiek community comprises 20,000 members, about 15,000 of whom inhabit the greater Mau Forest Complex, a land mass of about 400,000 hectares. The Ogieks are divided into clans, they have their own language and their own social norms and forms of subsistence. As a hunter-gatherer community, the Ogiek have for centuries depended on the Mau Forest for their residence and as a source of livelihood.

But in October 2009, the Kenya Forestry Service ordered the eviction of the Ogiek community from the Mau Forest within 30 days. The Kenyan government knew that the Ogieks had occupied lands in the Mau Forest since time immemorial, however they refused to recognize them as an indigenous population that needed to be protected.

The following month, the Centre for Minority Rights Developments (**CEMIRIDE**) and Minority Rights Group International (**MRGI**), two NGOs acting on behalf of the Ogiek

community of the Mau Forest, submitted a complaint to the African Commission on Human and Peoples' Rights, which in turn transferred the case to the African Court on Human and Peoples' Rights in 2012.

After the African Court was seized, it ordered the Kenyan government to immediately reinstate the restrictions it had imposed on land transactions in the Mau Forest complex as a provisional measure, to prevent the Ogiek people from further irreparable harm while the case was being examined.

On 26 May 2017, the Court reached a decision on the matter and found that Kenya had violated the Ogiek community's rights.¹ The Court said that Kenyan authorities should not have expelled the Ogieks from their ancestral lands against their will and should not have deprived them of disposing of the food produced by these lands. In doing so, they violated their right to land and their right to disposing of the wealth and natural resources of their land.

Also, the judges recognized that the evictions rendered it impossible for the Ogieks to continue their religious practices which are all linked to religious sites in the Mau Forest, and it greatly affected their ability to continue their traditions. On top of that, Kenya had not recognized the Ogiek as an indigenous community whereas they recognized other distinct communities such as the Maasai, and they had denied them special protection available to these other communities. The state had therefore discriminated the Ogiek and denied their rights to freely exercise their religion and their culture.

On 23 June 2022, the Court further ordered Kenya to pay compensation to the Ogiek for the material and moral prejudice they suffered, as well as to take all necessary measures, legislative and otherwise, to identify, delimit and title Ogiek ancestral land and to grant them collective title to such land. Where concessions or leases have already been granted over parts of this land, the Court ordered Kenyan authorities to commence consultation between the Ogiek and the other concerned parties in order to reach an agreement on returning such land or continuing their operations by way of lease or royalty and benefit sharing with the Ogiek. The Court also ordered Kenya to guarantee full recognition of the Ogiek as an indigenous people of Kenya and to take all measures to protect the right of the Ogiek to be effectively consulted in respect of all development, conservation or investment projects on its land.

After years of struggle with the national authorities, the Ogiek were finally recognized as an indigenous community, having rights on the Mau forest and which religious and cultural specificities must be protected. For the NGOs that brought the case and for many

observers, this is a historic case, which brings a “beacon of hope” for the advancement of rights of indigenous people or other minorities in Kenya and more broadly.

[Post judgment: between the issuance of the judgment on merits in 2017 and the judgment on reparations in 2022, violations of the Ogiek’s rights continued. Now that Kenya has just been ordered to take specific measures as reparations a few months ago, we will have to monitor how this is implemented, it is too soon to tell.]

[11] Violations of articles 1, 2, 8, 14, 17, 21 and 22 of the African Charter

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