



*Working for a Just and Equitable Society by Promoting Sustainable Livelihoods of Ogiek Community*

**Facts about Ogiek Case at the African Court and its Ruling**

*Case No.006/2012: African Commission on Human and Peoples' Rights (ACHPR) versus Republic of Kenya*

***What is the premise of the Case Ogiek filed at the African Court?***

It was a human rights case filed following persistent evictions of Ogiek from Mau Forest Complex..

***What were their grievances?***

Kenyan government violating their rights to life, property, culture, natural resources, development and religion enshrined in Articles 1, 2, 4, 8, 14, 17(2) and (3), 21 and 22 of the African Charter on Human and Peoples' Rights.

***What do these articles refer to?***

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| Article 1 | The Member States of the Organization of African Unity, parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.   |
| Article 2 | Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status. |
| Article 4 | Human beings are inviolable. Every human being shall be entitled to respect for his life   |

Article 8

and the integrity of his person. No one may be arbitrarily deprived of this right.

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

Article 17(2&3)

2) Every individual may freely take part in the cultural life of his community.

3) The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it
2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.
5. State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the

## Article 22

advantages derived from their national resources

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

### *When did they begin the legal process?*

The community through Ogiek Peoples' Development Program(OPDP),Minority Rights Group International (MRG) and Centre for Minority Rights Development (CEMIRIDE) filed their complaints with the African Commission on Human and Peoples' Rights in November 2009 following issuance of a 30-day eviction notice to all Mau Forest Complex inhabitants. Ogiek were then the main settlers in the mentioned area.

### *What was the response from the African Commission?*

In the same month, it issued provisional orders that;

- The government immediately reinstates the restrictions it had imposed on land transactions in the Mau Forest Complex and refrains from any act or thing that would or might irreparably prejudice the case, until the final determination had been made.
- The government reports to Court within 15 days upon receiving the provisional order of the measures taken to implement it.

### *Did the government respond?*

Yes. In a letter dated April 30, 2013, the government informed African Court that it had complied with its provisional measures by reinstating restrictions on all parcels of land within Mau Forest Complex.

### *So how did the matter proceed to the African Court on Human and Peoples' Rights?*

Upon scrutiny of the complaints, the Commission found gross violations of the community's human rights and in March 2012, it forwarded the file to the African Court to institute legal proceedings.

### *Were there any propositions for amicable settlement?*

In April 2015, African Court sought to engage the two parties in amicable settlement in accordance to Rule 57 of its Rules which states;

“Pursuant to Article 9 of the Protocol, the Court may promote amicable settlement of cases pending before it. To that end, it may contact the parties and take appropriate measures to facilitate amicable settlement of the dispute, based on respect for human and peoples’ rights as recognized by the Charter.”

However, upon serious deliberations the community settled on judicial proceedings having felt the government was unwilling to commit to the amicable settlement.

***But why did they feel the government was non-committal?***

The government came up with its own conditions under which it would engage in amicable settlement.

These were:

- That Ogiek provides the African Court and the Kenyan government a register of all Ogiek which would include copies of their National Identity Cards and Birth Certificates or letter from the area Chief for the under 18s.
- That Ogiek provides the African Court and the Kenyan government a list of all representatives of Ogiek and their mode of selection.
- That Ogiek provides the African Court and the Kenyan government a copy of the resolution of the African Commission on Human and Peoples’ Rights setting out the primary conditions for amicable settlement
- The Mau Forest Task Force would not be implemented as it were. The State said implementation of the report would be consistent with the Kenyan Constitution and municipal laws.
- No further measures are necessary in recognizing the provisions of the African Charter on Human and Peoples’ Rights since it had already been domesticated. This was in response to 4th proposal of the amicable settlement which required the State to provide a written agreement to the conditions of the amicable settlement within a month upon the African Court’s official launch of the negotiation process.
- The State does not agree to the condition that the negotiation process should be concluded within a reasonable timeframe; appropriately within a year. The State’s reason that the negotiations would be done in the context of polycentric factors.
- The State was willing to pursue negotiations with duly appointed and recognized representatives of the Ogiek community rather than through foreign intermediaries.
- The State maintained that the latter may not fully appreciate the Kenyan society’s domestic historical, present economic and socio-political context within which the dispute would be resolved amicably.
- The State maintained that the African Commission’s mandate is complimentary to that of the African Court in regard to the negotiation process. It sustained that its participation would be unnecessary if the negotiations were to be carried out under the support of the African Court which it said played the role of ensuring the State abode to the provisions of the African Charter on Human and Peoples’ Rights.

### *How did the African Court rule?*

The Court unanimously ruled the Kenyan government violated the human rights of the Ogiek Community when it evicted them from the Mau Forest Complex.

### *What were the specifics of the ruling?*

- a. By expelling the Ogiek from their ancestral land against their will without their prior consultation and without respecting the conditions of expulsion in the interest of public need, the Kenyan government violated their rights to land.
- b. By failing to recognise the Ogiek status as a distinct tribe like other similar groups, it denied the rights available to other tribes by evicting them from Mau Forest Complex and thereby violating Article 2(Right to Freedom from Discrimination) of the African Charter.
- c. Evictions of the Ogiek from the Mau Forest Complex rendered it impossible for the community to continue its religious practices and is an unjustifiable interference with the freedom of religion of the Ogiek.
- d. The Kenyan government violated Article 21( Right to Free Disposal of Wealth and Natural Resources)of the African Charter since the Ogiek have been deprived the right to enjoy and freely dispose of the abundance produce by the ancestral land.
- e. The Kenyan government violated Article 22 of the African Charter for failure to actively involve the Ogiek in developing and determining health, housing and other economic and social programmes affecting them.

### *Did the Court offer any award?*

The Court ordered the Kenyan government to offer remedies and reparations. It ordered it to ‘appropriate measures ‘within a reasonable time frame to remedy all the violations established and to inform the court of the measures taken within six months from the date of delivering judgment.

### *What was the Ogiek community expected to do?*

The Ogiek Community was given 90 days to tender their submissions for reparations.

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