

LITIGATION FOR THE RESTORATION OF OGIEK LAND RIGHTS IN KENYA

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Country: **Kenya** - Principal Organisation: **OPDP**

1

ABSTRACT

The Ogiek community brought a land rights case against the Government of Kenya at the African Court on Human and Peoples' Rights, after exhausting all local redress mechanisms. The case attracted attention from the international community, and helped to hold the government to a higher standard of accountability. It enabled the Ogiek people to address violations of their rights to human dignity, worship, education, property, and association, among others.

During the case, the Ogiek Peoples' Development Program (OPDP) documented community by-laws, maps, and protocols for the management of communal lands, and used this information to engage the government in seeking legal ownership of the land. The African Court found in favour of the Ogiek community, recognising them as an indigenous community in Kenya and restoring their land rights.

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2

BACKGROUND

Land challenges for the Ogiek began in the 1930s with colonial appropriation of their land, and escalated in the 1990s due to irregular allocation of land and dispossession. With no prospect of justice and continued violations of their land rights, the community sought help from the African Commission on Human and Peoples' Rights

(ACHPR); the ACHPR referred the matter to the African Court for assessment, noting the far-reaching consequences and irreparable harm that continued violations would mean for the Ogiek community. The African Court recognised the Ogiek as a distinct community with the right to restoration of their land and to receive compensation.

THE CHALLENGE

The non-recognition of the Ogiek as an indigenous community in Kenya had led to greater marginalisation and evictions from their land. The national justice system afforded them no protection, with their case held up for 17 years at the High Court

of Kenya. The country's conservation and environmental laws and policies, which prohibited people from living and hunting in the forest, have further marginalised the Ogiek community, who have been unable to obtain titles for their forest land.

OVERCOMING THE CHALLENGE

After the Ogiek had exhausted all local mechanisms for redress, they brought a case at the African Court, and succeeded in holding the Kenyan government accountable for violations of their community land rights. Furthermore, the regional platform gave prominence to the case and highlighted the challenges and injustices faced by indigenous communities in general.

Thanks to continued awareness-raising campaigns on their legal rights, the Ogiek have a better understanding of their collective land rights as an indigenous community. The process of preparing the case also strengthened their land governance systems. Through the documentation process, the community have developed land maps, by-laws, and cultural protocols for proper management of their land.

The African Court recognized the Ogiek as an indigenous community in Kenya, setting an important precedent for Africa as a whole. They were granted rights to reparation from the government and access to their ancestral lands and forests.

The Ogiek used non-violent methods to assert their rights, including those to human dignity, worship, education, property, and association. A legal case that had lasted for 17 years finally delivered justice to the Ogiek community.

MOVING TOWARDS PEOPLE-CENTRED LAND GOVERNANCE

The judgement of the African Court recognised the Ogiek as an indigenous community with equal entitlement to land. This ruling has contributed to the realisation of their land rights and empowered them to access, utilise, and benefit from their natural resources. The Kenyan government was found to have violated several articles of the African Charter on Human and Peoples' Rights. The Ogiek were awarded reparations and the government was ordered to outline measures to address these violations.

In particular, the ruling empowers the community to utilise Kenya's Community Land Act to register communal land claims and to protect their culture and indigenous knowledge. Community by-laws, maps, and protocols for the management of communal rights, which the communities designed during the court case, were instrumental in engaging with the government to seek community title for their land.

THE GOOD PRACTICE IN FIVE SIMPLE STEPS

1

Imminent danger of eviction, October 2009: There had been several earlier evictions of Ogiek communities from the Mau Forest Complex, but the immediate cause of the litigation was a 21-day eviction notice given by the Kenya Forest Service, a state agency responsible for the management of gazetted forests across the country. This threatened to cause irreparable harm to the Ogiek community, because their livelihoods and social activities were dependent on their environment. The Ogiek subsist on honey harvested from log hives, wild berries from indigenous plants, and deer meat. They also have sacred shrines within the forest where they perform their religious rituals. Eviction would have meant complete disruption of their way of life.

2

Mobilising a response: The OPDP and the Centre for Minority Rights Development (CEMIRIDE), later joined by the Minority Rights Group International (MRG), petitioned the African Commission to intervene. The Commission ordered that, for the time being, the Kenyan government should cease evicting members of the community from the Mau Forest and not undertake any other land allocation activities in the area. However, the government violated this interim order and continued to force Ogiek people out of the forest, which led OPDP to file complaints with the Commission. Finally, the Commission assessed the grievances and concluded that mass violations of the rights of the Ogiek community were taking place. In March 2012, the Commission referred the case to the African Court for adjudication. Human rights monitors trained by OPDP documented the offences committed against the community, and this evidence was used to support the case.

3

Progress of the case: Hearings were held at the African Union Commission in Addis Ababa, Ethiopia and at the African Court in Arusha, Tanzania. In 2013, the Court suggested an amicable settlement whereby the Kenyan government would address the concerns raised out of court. However, the State, through the Solicitor General, had unrealistic demands for engagement, including the submission of birth certificates for all Ogiek land claimants. Given the government's rigid approach, the negotiations failed and the case returned to court for adjudication.

4

Community awareness raising and consultations: Throughout this eight-year period, OPDP held regular awareness forums with Ogiek elders, women, and youth to inform them of the case's progress and the role they had to play in the process. Community representatives from seven counties (Nakuru, Narok, Kericho, Uasin Gishu, Nandi, Baringo, and Bungoma) attended hearings and were present at the African Court on 26 May 2017, when the final verdict was delivered.

5

The verdict: The African Court found that the Kenyan government had violated the rights of the seven Ogiek communities relating to property, natural resources, culture, religion, and development. It gave the government six months to report back on progress made in remedying these violations. It also awarded compensation and reparations to the community for losses incurred, with submissions for preferred reparations to be delivered to the Court within three months. This has already been done, and the community is awaiting advice on further action.



3 THREE FACTORS OF SUCCESS AND REPLICABILITY

1

Resilience and consistency: The Ogiek community were determined and consistent in demanding enforcement of their rights. Although they faced evictions, harassment, arrests, destruction of property, and loss of lives, they did not give up the pursuit of their land rights. The community has kept its spirit, and was successful in claiming and retaining its Mau ancestral lands.

2

Advocacy: The Ogiek sustained a movement to advocate for their land rights, their recognition as an indigenous community, and protection against abuses of public mandate, threats, and human rights violations. OPDP worked with elders to guide and direct the community, drawing on their knowledge of the community's history and culture.

3

Legal action: The Ogiek first filed a case at the High Court of Kenya against government authorities in June 1997, in an attempt to stop six government officials from distributing their lands. However, when the local court failed to protect their rights, they took their case to the higher regional court.

5

LESSONS LEARNED

Political actors seeking ownership of Ogiek land made numerous attempts to subvert the case. It is important in any legal action to have lawyers who are incorruptible. Some witnesses and OPDP members received threats from unknown people, but these were averted through the provision of security by human rights defenders, further

linking OPDP with the National Coalition of Human Rights Defenders.

Managing community expectations of the regional-level case was a challenge. Since the case lasted for eight years, community members had to be updated through frequent consultative community meetings. Some

questioned the length of time the trial was taking, and were beginning to doubt that they would win. In its work with local community members, it was essential for OPDP to communicate constantly and to address misleading information that was being circulated.

FIND OUT MORE

Ogiek Peoples' Development Program (OPDP). "Facts about Ogiek Case at the African Court and its Ruling". <https://goo.gl/oAjfUf>

Ogiek Peoples' Development Program (OPDP). <https://goo.gl/3weQxz>

What indigenous communities can learn from Kenya's Ogiek Peoples' significant land rights victory. <https://goo.gl/8Rc2SY>.