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# Forced displacement in Africa: Could the Tanzanian Maasai obtain justice? The East African Court of Justice case under the lens of the *Ogiek* case before the African Court

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**Summary:** *Indigenous rights in Africa are often considered a domain of rights, which seeks to dislocate national priorities for communitarian purposes and does not fit the logic of state-centred development. This vision is part of a contention that disputes the relevance of recognising diversity in divided societies, a move that privileges the state over its communities and affects the protection of the rights of indigenous peoples by the state. This article examines the 2022 Maasai Villages judgment by the East African Court of Justice and the two judgments of the African Court of Human and Peoples' Rights on the Ogiek case in Kenya. The article highlights the challenges encountered in the implementation of these two judgments. It draws a parallel between*

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*the situation of the Maasai in Tanzania and of the Ogiek in Kenya, highlighting why the Ogiek case is important for the Maasai in Tanzania to continue to defend their rights that they contend are being violated by the Tanzanian government. The article recommends that the Maasai people should bring their claims before the African Court to ensure justice.*

**Key words:** *African Court on Human and Peoples' Rights; East African Court of Justice; implement; indigenous peoples; judgment; Maasai; Ogiek*

## **1 Introduction: The broad problem of indigenous' peoples' struggle for their rights in Africa**

In Africa, the defining features of groups identifying as 'indigenous peoples' are that their ways of life differ markedly from those of the dominant society, and that their cultures are endangered – often, in some contexts, facing the risk of extinction.<sup>1</sup> A fundamental characteristic of many indigenous peoples on the continent, including those under scrutiny in this work, is that the survival of their particular way of life depends on access to and right over, their traditional lands and the natural resources found there. In addition, African indigenous communities continue to face discrimination, as they are often perceived as less developed than the dominant groups within national societies.<sup>2</sup>

Against this backdrop, it is crucial for a major human rights body such as the African Commission on Human and Peoples' Rights (African Commission) to draw attention to the fact that, in the formally decolonised and multicultural African states, we face a serious human rights issue. This issue concerns specific marginalised peoples who are being discriminated against and whose cultures are under threat. Whatever the specific term used to describe their situation is, it is nevertheless important to recognise the issue and to act urgently to safeguard their collective human rights. Debates on terminology should not prevent such action. According to the

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1 African Commission on Human and Peoples' Rights and International Work Group for Indigenous Affairs (IWGIA) *Indigenous peoples in Africa: The forgotten peoples? The African Commission's work on indigenous peoples in Africa* (2006) 10.  
 2 ACHPR and IWGIA (n 1). As a general, scholarly work regarding this topic, see, eg, R Laher & K Sing'Oei (eds) *Indigenous peoples in Africa: Contestations, empowerment and group rights* (2012).

Indigenous Peoples of Africa Co-ordinating Committee (IPACC),<sup>3</sup> both the Maasai and Ogiek (called also Okiek or Akie) can be defined 'indigenous peoples' who pre-dated the migration of Bantu agro-pastoralist peoples into their regions.<sup>4</sup>

In this scenario, the African Commission has recognised the concern of those who feel that the expression 'indigenous peoples' has negative connotations in Africa, as it was used in derogatory ways during European colonialism and has also been misused in chauvinistic ways by some post-colonial African governments. However, in spite of the possible negative connotations of the expression itself, the term 'indigenous peoples' has presently become a much wider internationally recognised term by which to analyse certain forms of inequalities and repression, such as those suffered by many pastoralists and hunter-gatherers in Africa, and by which to address their human rights distresses.<sup>5</sup> Currently, indigenous rights in Africa are often considered a domain of rights that seeks to dislocate national priorities for communitarian purposes and does not fit the logic of state-centred development. This vision is part of a contention that disputes the relevance of recognising diversity in divided societies, a move that privileges the state over its communities.<sup>6</sup>

In light of the foregoing, this work proceeds analysing the 2022 Maasai villages in Tanzania judgment by the East African Court of Justice (EACJ) and the two judgments of the African Court on Human and Peoples' Rights (African Court) in the Ogiek case in Kenya, highlighting the challenges to implement these two judgments. Finally, this work will conclude by drawing a parallel between the situation of the Maasai in Tanzania and of the Ogiek in Kenya,

3 'The Indigenous Peoples of Africa Co-ordinating Committee (IPACC) is a network of 135 indigenous peoples' organisations in 20 African countries. It is a membership organisation. Members elect an Executive Committee representing six geographic and cultural regions in Africa including a special regional representative of indigenous women', <https://www.ipacc.org.za/about/> (accessed 10 December 2025).

4 IPACC's website, [https://www.ipacc.org.za/east-africa/#:~:text=The%20indigenous%20peoples%20of%20East%20Africa%20are,fragmentation\\*\\*%20\\*%20\\*\\*Environmental%20degradation\\*\\*%20\\*%20\\*\\*Climate%20change\\*\\*](https://www.ipacc.org.za/east-africa/#:~:text=The%20indigenous%20peoples%20of%20East%20Africa%20are,fragmentation**%20*%20**Environmental%20degradation**%20*%20**Climate%20change**) (accessed 10 December 2025).

5 ACHPR/Res65 (XXXIV) 03 Resolution on the Adoption of the Report of the African Commission's Working Group on Indigenous Populations/Communities (Resolution on the Adoption of the Report). The report is titled 'Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities', submitted in accordance with the Resolution on the Rights of Indigenous Populations/Communities in Africa adopted by the African Commission at its 28th ordinary session held in Cotonou, Benin in October 2000, IWGIA and ACHPR (2005) 86-87.

6 KS Abraham 'Africa: Indigenous people's struggles for recognition of their rights' Centre Tricontinental (CETRI) 22 September 2008, <https://www.cetri.be/indigenous-people-s-struggles-for?lang=fr> (accessed 10 December 2025).

highlighting why the *Ogiek* case is important for the Maasai in Tanzania to continue to defend their rights that they contend are being violated by the Tanzanian government.

## 2 The 2022 *Maasai villages* judgment by the East African Court of Justice and its aftermath

On 30 September 2022, the EACJ ruled in favour of the Tanzanian government in a case brought by Tanzanian Maasai villages in the Ngorongoro District, Arusha Region (*Maasai Villages* case).<sup>7</sup>

The dispute between the villages and the Tanzanian government began in 2012 over the management of the Serengeti National Park. The dispute involved the exact location of the border between the National Park and the land belonging to the villages.<sup>8</sup> In August 2017, the Tanzanian government required the villagers to move because they were within the borders of the Serengeti National Park. This position was denied by the representatives of the villagers who affirmed that their villages were within their legitimate community land, assigned by the government, and outside the confines of the Serengeti National Park.<sup>9</sup> As the villagers declined to move, the government gave written notice and proceeded to execute evictions of the people living in those villages whose location was the subject of the dispute.<sup>10</sup> Although the Tanzanian government did not formally deny the evictions, it maintained that they were conducted without brutality and in a manner that respected the dignity of the villagers. The government confirmed that those lands belonged to the Serengeti National Park. On the other hand, the representatives of the villages, apart from contending that the evicted lands were their legitimate community land, also affirmed that the evictions were carried out in violation of both Tanzanian and international laws.<sup>11</sup> The representatives of the villagers maintained

<sup>7</sup> *Ololosokwan Village Council & Others v The Attorney General of the United Republic of Tanzania* East African Court of Justice, Reference 10 of 2017 (30 September 2022) (*Maasai Villages*).

<sup>8</sup> *Maasai Villages* (n 7) para 6.

<sup>9</sup> *Maasai Villages* (n 7) para 7.

<sup>10</sup> *Maasai Villages* (n 7) para 8.

<sup>11</sup> *Maasai Villages* (n 7) para 9. The forced eviction of the Maasai is considered by human rights organisations to be against Tanzanian law and international law because it allegedly involves violations of land rights, failure to follow proper legal procedures such as consultation and consent, and the use of violence. In this regard, see, eg, *Civicus* staff 'The human rights of the Maasai people are violated through involuntary assimilation and relocation' *Civicus* 8 July 2022, <https://civicus.org/index.php/media-resources/news/interviews/5905-tanzania-the-human-rights-of-the-masai-people-are-violated-through-involuntary-assimilation-and-relocation#:~:text=Many%20human%20rights%20violations%20have,have%20no%20attachment%20to%20Ngorongoro> (accessed 10 December 2025).

that the land subject of the dispute was community land lawfully held by the villagers. To demonstrate this, they relied on several documents of ownership annexed to their applications<sup>12</sup> as well as on oral testimonies by several witnesses from the villages and, in particular, on the testimony of the 'expert witness', Mr Cesare Ngiigi Mbaria.<sup>13</sup> Mr Mbaria is a qualified Kenyan surveyor, who testified that he used satellite images to confirm that the subject villages were outside and beyond the boundaries of the Serengeti National Park.<sup>14</sup> Consequently, according to the villagers, the Tanzanian government contravened article 6(c)(d) ('Fundamental Principles of the Community') and article 7(2) ('Operational Principles') of the Treaty for the Establishment of the East African Community (EAC Treaty).<sup>15</sup> Additionally, Tanzania breached article 15(1) ('Access to and Use of Land and Premises') of the Protocol on the East African Community Common Market (Protocol).<sup>16</sup> Article 6(c)(d) of the Treaty stipulates the following:

The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include ... (c) peaceful settlement of disputes; (d) good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.

Article 15(1) of the Protocol stipulates as follows: 'The Partner States hereby agree that access to and use of land and premises shall be governed by the national policies and laws of the Partner States.'

Conversely, the Tanzanian government contended that the eviction exercise was done in compliance with the applicable laws of Tanzania. The government added that all the persons who had been removed were constantly treated with dignity and respect and no property was destroyed in the villages.<sup>17</sup>

12 The details of the ownership documents were not specified in the judgment and, as such, the author could not identify and reference them with more accuracy.

13 *Maasai Villages* (n 7) para 11.

14 *Maasai Villages* (n 7) para 12(g).

15 East African Community (EAC) *The Treaty for The Establishment of the East African Community* signed 30 November 1999, entered into force 7 July 2000 (amended on 14 December 2006 and on 20 August 2007). In detail, art 7(2) of the Treaty stipulates: 'The Partner States undertake to abide by the principles of good governance including adherence to the principles of democracy, the rule of law, social justice, and the maintenance of universally accepted standards of human rights.'

16 *Maasai Villages* (n 7) para 13. See also EAC Protocol on the Establishment of the East African Community Common Market, signed 20 November 2009, entered into force 1 July 2010.

17 *Maasai Villages* (n 7) para 19.

In the judgment the EACJ declared itself guided by the law and practice that the party that makes the allegation bears the burden of proof of what it claims. For this reason, the representatives of the villagers had to prove, based on the balance of probabilities, that the evictions took place in villages outside the perimeter of the Serengeti National Park.<sup>18</sup> In view of this, the EACJ considered the affidavits of the witnesses presented by both parties, the oral testimony and submissions, with particular reference to the question of where the evictions took place. In this regard, according to the Court, the applicants' witnesses simply claimed that the evicted villages were outside the boundaries of the Serengeti National Park, that at no point the villagers trespassed into the park, and that the evictions were conducted in their villages outside the park.<sup>19</sup> According to the Court, however, beyond simple assertions in those testimonies, there was a lack of specificity on the location of the boundaries of the Serengeti National Park.<sup>20</sup> In the end, having considered the evidence presented by both parties, the Court was not persuaded that the villagers had discharged the burden of proving that their villages were outside the boundaries of the Serengeti National Park.<sup>21</sup> Additionally, the Court stated that the villagers had failed to provide evidence of injury or tangible loss during the eviction process, thus not meeting the required standard of proof. According to the Court, the representatives of the villagers did not demonstrate that any acts, conduct or omissions of the Tanzanian government violated article 6(c)(d) and article 7(2) of the Treaty and article 15(1) of the Protocol.<sup>22</sup> In light of the above, the Court denied the villagers any remedies arising from the government's actions, as these were not considered detrimental to the interests of the villagers.<sup>23</sup>

As demonstrated above, the Tanzanian government undertook the evictions for the purpose of conservation of the lands. However, this alleged purpose can be called into question on two key bases. First, the government has since given this land to the United Arab Emirates (UAE)'s Otterlo Business Corporation (OBC) for the development of a private airport and game reserve for trophy hunting. This company has run trophy-hunting tours in Tanzania since 1992.<sup>24</sup>

18 *Maasai Villages* (n 7) para 42.

19 *Maasai Villages* (n 7) paras 45-46.

20 *Maasai Villages* (n 7) para 47.

21 *Maasai Villages* (n 7) para 57.

22 *Maasai Villages* (n 7) paras 63-64.

23 *Maasai Villages* (n 7) para 66.

24 C. Gouverneur 'Tanzania forces the Maasai from their land to make way for trophy hunters and tourists' *The Oakland Institute* republished from *Le Monde Diplomatique* 1 April 2023, <https://www.oaklandinstitute.org/tanzania-forces-maasai-their-land-make-way-trophy-hunters-and-tourists> (accessed 10 December 2025). In this regard, see also, *Human Rights Watch* staff 'Tanzania: Maasai forcibly displaced for game reserve' *Human Rights Watch (HRW)*

Second, the Maasai have proven themselves a people uniquely capable of furthering conservation efforts.<sup>25</sup> The narrative that a growing indigenous population is responsible for a supposed ecological decline within the Ngorongoro Conservation Area (NCA) ignores the symbiotic relationship that the Maasai have developed over centuries with the environment in the area. This relationship has allowed local ecology, domesticated livestock and people to coexist in a resource-scarce environment.<sup>26</sup>

On 29 November 2023, in Appeal 13 of 2022<sup>27</sup> (*Ololosakwan Village Council and 3 Others v Attorney General of the United Republic of Tanzania*) the EACJ Appellate Division remitted the case to the First Instance Division for re-adjudication in accordance with the applicable law. The Court instructed the First Instance Division to determine three issues: (i) whether the eviction was conducted in Serengeti National Park or the respective villages; (ii) whether the acts, omissions and conduct of the respondent violated the Treaty; and (iii) the remedies to which the parties were entitled.<sup>28</sup> As regards the first issue, the Court of Appeal considered that the Trial Court did not properly use the applicable standard of proof, specifically the proof on a balance of probability.<sup>29</sup> This means that the Court was satisfied that an event occurred where it considered that the evidence submitted showed that the event was more likely to have occurred than not. Beyond 'reasonable doubt' is a much higher standard of proof.<sup>30</sup>

27 April 2023, [https://www.hrw.org/news/2023/04/27/tanzania-maasai-forcibly-displaced-game-reserve#:~:text=\(Nairobi\)%20%E2%80%93%20The%20Tanzanian%20government's,the%20rights%20of%20affected%20communities.%E2%80%9D](https://www.hrw.org/news/2023/04/27/tanzania-maasai-forcibly-displaced-game-reserve#:~:text=(Nairobi)%20%E2%80%93%20The%20Tanzanian%20government's,the%20rights%20of%20affected%20communities.%E2%80%9D) (accessed 10 December 2025).

25 B Reicher 'Indigenous peoples must be at the centre of global conservation efforts' Oakland Institute, 21 July 2021, <https://www.oaklandinstitute.org/blog/maasai-tanzania-nca-indigenous-global-conservation> (accessed 10 December 2025).

26 The Oakland Institute 'The looming threat of eviction: The continued displacement of the Maasai under the guise of conservation in Ngorongoro conservation area' The Oakland Institute, 10 June 2021 17, <https://www.oaklandinstitute.org/looming-threat-eviction> (accessed 10 December 2025).

27 *Ololosakwan Village Council and Others v The Attorney General of the United Republic of Tanzania* East African Court of Justice, Appeal 13 of 2022 (arising from Reference 10 of 2017) (29 November 2023).

28 *Maasai Villages Appeal* (n 27) paras 171(a) & (b).

29 *Maasai Villages Appeal* (n 27) paras 152, 164.

30 "Beyond a reasonable doubt" is the legal burden of proof required to affirm a conviction in a criminal case. In a criminal case, the prosecution bears the burden of proving that the defendant is guilty beyond all reasonable doubt. This means that the prosecution must convince the jury that there is no other reasonable explanation that can come from the evidence presented at trial.' See Cornell Law School (Legal Information Institute) 'Beyond a reasonable doubt', [https://www.law.cornell.edu/wex/beyond\\_a\\_reasonable\\_doubt](https://www.law.cornell.edu/wex/beyond_a_reasonable_doubt) (accessed 10 December 2025).

On 5 February 2024, the Society for Threatened Peoples (STP), a non-governmental organisation (NGO) in special consultative status at the United Nations (UN), submitted a written statement to the UN Secretary-General (UNSG)<sup>31</sup> in which the NGO called upon the government of Tanzania to undertake several actions. First, the government should halt the forced relocation of the Maasai people from NCA and Pololeti area in Loliondo. Second, the NGO asked the government to stop violating the Maasai's rights to peaceful assembly and protest. Third, the NGO required the government of Tanzania to grant the UN Special Rapporteur on the Rights of Indigenous Peoples access to the country for an independent investigation in fulfilment of his mandate. Additionally, the NGO urged the government of Germany to stop any financial support for the Tanzania National Park Authority (TANAPA) or rangers of the Serengeti National Park, who had been accused of human rights violations in the past and continued to collaborate in the eviction of the Maasai villages. Finally, the STP demanded the UN Special Rapporteur on the Rights of Indigenous Peoples or the UN Special Rapporteur on the Right to Adequate Housing to conduct an independent investigative mission to Tanzania to analyse the human rights violations against the Maasai in the regions of Ngorongoro, Loliondo and Msomera.<sup>32</sup>

In these circumstances, the Maasai were considering the alternative avenues they could use to obtain justice against the Tanzanian government. The most evident next step would be to pursue a case in the African Court. The option of turning to the African Court remains open, given the precedent established in the *Ogiek* case. This remains so even though the initial EACJ judgments concerning the Maasai do not appear to have considered the African Court's findings in *Ogiek*.

To highlight the dire situation in which the Maasai continue to live, it is noteworthy that on 14 August 2024, indigenous peoples in the area became aware that the Tanzanian government had decided to exclude people from 11 wards, comprising 25 villages and 96 sub-villages in Ngorongoro, from voter registration. This measure effectively denies more than 100 000 Maasai their guaranteed democratic right to civic participation.<sup>33</sup> This happened at a time

31 United Nations General Assembly/Human Rights Council Written statement submitted by Society for Threatened Peoples, a non-governmental organisation in special consultative status A/HRC/55/NGO/33 (22 February 2024).

32 Written statement (n 31) 3.

33 'Maasai face yet another violation of their rights in Tanzania in their ongoing struggle' *IWGIA* 28 August 2024, <https://www.iwgia.org/en/news/5553-maasai-face-violation-rights-tanzania-ongoing-struggle.html> (accessed 10 December 2025).



when a recent report by Amnesty International (AI) urged the Tanzanian government to protect the Maasai in their territories from human rights violations committed by non-state actors (NSAs). The report calls on the government to enact laws that prevent such human rights violations and to

ensure their implementation, monitoring and holding to account those who engage in activities that result in human rights violations. In doing this, authorities must conduct impartial, independent, and transparent investigations into corporate complicity in the forced evictions in Loliondo, with the aim of holding any perpetrators fully accountable in accordance with due process.

AI concludes that the rights of the Maasai can only be fully respected if the Tanzanian government reverses its land acquisition decision in Loliondo and ensures that no eviction takes place without the Maasai's 'free, prior, and informed consent', obtained through a process of genuine consultation.<sup>34</sup> Similar conclusions can be found in a Human Rights Watch (HRW) report that was published on 31 July 2024 and where the organisation recommends to the Tanzanian government to 'adopt a revised Wildlife Conservation Act'<sup>35</sup> to reflect Tanzania's history of protected areas with multiple land use and ensure that the provisions respect people's rights to land, property, livelihood, and culture'.<sup>36</sup>

On 1 December 2024, also following a massive three-day demonstration on 18 August,<sup>37</sup> Tanzanian President Samia Suluhu Hassan announced the establishment of two committees to address

34 Amnesty International (AI) 'Business as usual in bloodied land? Role of businesses in forced evictions in Loliondo, Tanzania' August 2024 33, <https://www.amnesty.org/en/documents/afr56/8320/2024/en/> (accessed 10 December 2025). In this regard, see also AI 'Tanzania: "We have lost everything": Forced evictions of the Maasai in Loliondo' 5 June 2023, <https://www.amnesty.org/en/documents/afr56/6841/2023/en/> (accessed 10 December 2025). See, finally, AI 'Tanzania: Authorities brutally violated Maasai amid forced evictions from ancestral lands' 6 June 2023, <https://www.amnesty.org/en/latest/news/2023/06/tanzanian-authorities-brutally-violated-maasai-amid-forced-evictions/> (accessed 10 December 2025).

35 The Wildlife Conservation Act [CAP 283 RE 2022] (15 June 2022). In this regard, see sec 30 ('Restrictions of hunting in National Park and Ngorongoro Conservation Area') of the Act: 'Nothing in this Act shall be construed as empowering the Director to grant any permission for the hunting, killing or capturing of any animal in any national park in contravention of the provisions of the National Parks Act or in Ngorongoro Conservation Area in contravention of the provisions of the Ngorongoro Conservation Area Act.'

36 Human Rights Watch (HRW) 'It's like killing culture': Human rights impacts of relocating Tanzania's Maasai' HRW July 2024 81, [https://www.hrw.org/sites/default/files/media\\_2024/07/tanzania0724%20web.pdf](https://www.hrw.org/sites/default/files/media_2024/07/tanzania0724%20web.pdf) (accessed 10 December 2025).

37 M Simoncelli, D Lemmi & K Said 'Tanzania's Maasai people facing government pressure to leave' *Deutsche Welle* 24 September 2025, <https://www.dw.com/en/tanzanias-maasai-people-facing-government-pressure-to-leave/a-74067154> (accessed 10 December 2025).

land disputes in the Ngorongoro district. The first committee was tasked with investigating complaints made by residents, while the second had the task to assess the government's voluntary relocations of residents from the Ngorongoro Conservation Area to Msomera village in Handeni, Tanga region, more than 600 kilometres away.<sup>38</sup> In this situation, it has been shown by several studies from the 1980s to date how the government has 'invested' in poverty as a weapon for relocation of the Maasai in Ngorongoro Conservation Area.<sup>39</sup>

### 3 The 2017 *Ogiek* judgment by the African Court

The suitability for Maasai to go to before the African Court has been made clear by the African Court's ruling in the case of the *Ogiek* people, a Kenyan hunter-gatherer community, against the Kenyan government in 2017 (*Ogiek*).<sup>40</sup> The *Ogiek* are found along the Great Rift Valley and Mount Elgon. Formally, the case was brought forward by the African Commission on behalf of the *Ogiek* Peoples Development Programme (OPDP), a Kenya-based organisation founded in 1999 and registered by the Kenyan government as an NGO in 2001. *Ogiek* elders, opinion leaders, farmers and professionals form the programme<sup>41</sup> and they use traditional cultural

38 O Nyieko 'Tanzania's President takes on forced evictions of Maasai community: Meaningful consultations, accountability needed in Ngorongoro conservation area' *HRW* 5 December 2024, <https://www.hrw.org/news/2024/12/05/tanzanias-president-takes-forced-evictions-masai-community> (accessed 10 December 2025).

39 Maasai indigenous residents of Ngorongoro conservation area 'Ngorongoro conservation area: Not our world heritage site: A history of exclusion and marginalisation of Maasai residents' submission to the UN Special Rapporteur on the Rights of Indigenous Peoples for his report to the 77 session of the UN General Assembly (25 March 2022) 9, <https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/sr/callforinputcovidrecovery submissions/2022-07-28/MasailndigenousResidentsOfNgorongoroConservationArea.pdf> (accessed 10 December 2025). In this regard, see also TG Weldemichel 'Tanzania's Maasai are being forced off their ancestral land – The tactics the government uses' *The Conversation* 16 January 2025, <https://theconversation.com/tanzanias-masai-are-being-forced-off-their-ancestral-land-the-tactics-the-government-uses-247349> (accessed 10 December 2025).

40 African Court *African Commission on Human and Peoples' Rights v Kenya* Application 6/2012, Judgment of 26 May 2017. For a scholarly analysis of the decision, see, eg, A Majekolagbe & OD Akinkugbe 'The African Court on Human and Peoples' Rights decision in the *Ogiek* case: An appraisal' in A Manirabona & Y Vega Cárdenas (eds) *Extractive industries and human rights in an era of global justice: New ways of resolving and preventing conflicts* (2019) 163-201. In this regard, see also 'Ogiek case: Protection of an indigenous community in Kenya' AI 25 June 2023, <https://www.amnesty.org/en/latest/campaigns/2023/06/ogiek-case-protection-of-an-indigenous-community-in-kenya/> (accessed 10 December 2025).

41 'OPDP's work is centred on promoting the recognition and identity of indigenous peoples' culture, the participation and inclusion of the communities in all sectors of development, championing for land rights, ensuring environmental protection, and overall sustainable development. OPDP has its headquarters in Nakuru town, Nakuru County and operates nationally. OPDP works with

approaches to encourage their community in conserving the forest complex where they used to live.<sup>42</sup>

Since independence of Kenya, but also prior to it, the Kenyan government, without any previous consultation or compensation, has regularly subjected the Ogiek to arbitrary forced evictions from their ancestral land. The eviction of the Ogiek from their ancestral land and the refusal to allow them access to their spiritual home has prevented the Ogiek from practising their traditional cultural and religious practices. The culmination of all these actions has resulted in the Ogiek being prevented from practising their traditional hunter-gatherer way of life, thus threatening their very existence.<sup>43</sup>

As the African Commission was not able to manage settlement of the conflict, on 12 July 2012 it decided to refer the case to the African Court under article 5(1)(a) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol).<sup>44</sup> The relationship between the African Court and the African Commission is complementary.<sup>45</sup> The African Court does not automatically allow

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indigenous peoples in Kenya, their organisations and across Africa', <https://ogiekpeoples.org/about/> (accessed 10 December 2025).

42 J Okata 'Kenya's indigenous Ogiek partner with government rangers to restore Mau forest' *Mongabay* 24 November 2021, <https://news.mongabay.com/2021/11/kenyas-indigenous-ogiek-partner-with-government-rangers-to-restore-mau-forest/> (accessed 10 December 2025).

43 L Claridge 'Litigation as a tool for community empowerment: The case of Kenya's Ogiek' (2018) 12 *Erasmus Law Review* 57. In this regard, see also S Omuka 'Despite a landmark ruling, Kenya's Ogiek community are still fighting to return to their ancestral land' *Equal Times* 10 March 2021, <https://www.equaltimes.org/despite-a-landmark-ruling-kenya-s?lang=en> (accessed 10 December 2025): 'The Ogiek people (whose name means "caretaker of all plants and wild animals") are one of Kenya's last remaining hunter-gatherer communities. According to the 2019 census the Ogiek number 52 000, of which between 35 000 and 45 000 live in the 400 000 hectare Mau forest complex in Kenya's Rift Valley. They have been subjected to brutal evictions since the days of British colonial rule, but since 2004, the evictions have continued under the pretext of environmental protection.'

44 According to art 5(1)(a) of the Protocol, the Commission is one of the institutions entitled to submit cases to the Court.

45 RC Liwanga 'From commitment to compliance: Enforceability of remedial orders of African human rights bodies' (2015) 41 *Brooklyn Journal of International Law* 119: 'The complementary relationship between the AfCHPR and the African Commission is demonstrated through the collaboration on the issue of *locus standi*, where the African Commission serves as the road leading to the Court, particularly in the context when offending States do not allow their citizens to directly approach the Court. Their collaboration is reflected in the Court's advisory jurisdiction where it can request the advisory opinion of the African Commission on human rights questions. Furthermore, both the AfCHPR and the African Commission work together on the admissibility of cases where the AfCHPR demands the African Commission's opinion or decides not to adjudicate the complaints brought before it and transfers them to the African Commission for examination.' In this regard, see also S Nasirumbi 'Revisiting the *Endorois* and *Ogiek* cases: Is the African human rights mechanism a toothless bulldog?' (2020) 4 *African Human Rights Yearbook* 515.

for individual complaints (only eight states had in place a valid declaration rendering individual complaints possible: Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Tanzania and Tunisia)<sup>46</sup> and its judgments are binding. This was the first case concerning the rights of indigenous peoples to come before the African Court and it raised hopes that the 'peoples' rights' enshrined in the African Charter on Human and Peoples' Rights (African Charter) would be clarified and effectively operationalised.<sup>47</sup>

In the circumstances, the African ruled in favour of the Ogiek people finding that the Kenyan government could not hold them accountable for the destruction of the Mau forest. More importantly, the African Court found that the Ogiek were entitled to recognition as an indigenous people with fundamental rights. The Court ruled that the Ogiek had suffered continued subjugation and marginalisation, as evidenced by the evictions from their ancestral lands, their forced assimilation and lack of recognition of their status as an indigenous people tribe. For that reason, the African Court recognised the Ogiek as an indigenous population that is part of the Kenyan population deserving special protection deriving from their vulnerability.<sup>48</sup> Additionally, the African Court rejected the Kenyan government's public interest justification for evicting the Ogiek from the Mau forest – the preservation of the natural ecosystem – since the government had not provided any evidence to the effect that the Ogiek's continued presence in the area was the key cause of the exhaustion of the natural environment. Several reports revealed, indeed, that the main causes were government excisions for settlements and ill-advised logging concessions, and the same government had conceded in its pleadings that the degradation of the Mau forest could not be attributed entirely to the Ogiek.<sup>49</sup> Consequently, the African Court did not consider the continued denial of access to and eviction from the Mau forest of the Ogiek people necessary or proportionate in order to achieve the government's alleged reasoning. In view of that, the African Court maintained that the expulsion of the Ogiek from their ancestral lands, without prior consultation and without respecting the conditions of expulsion in the interests of public need, constituted a violation of article 14 of the African Charter.<sup>50</sup> Furthermore, while the African

46 African Court 'The AfCHPR Monitor (Country Tracker)', <https://www.african-court.org/wpafc/declarations/> (accessed 10 December 2025).

47 African Charter on Human and Peoples' Rights (27 June 1981) 1520 UNTS (No 26363) 217.

48 *Ogiek* (n 40) para 112.

49 *Ogiek* (n 40) paras 129-130.

50 *Ogiek* (n 40) para 131. In detail, art 14 of the African Charter stipulates: 'The right to property shall be guaranteed. It may only be encroached upon in

Court noted that the 2010 Kenyan Constitution recognised the need for special protection of indigenous populations, a protection that could hypothetically benefit the Ogiek, these provisions could only be effective if they were respected, and they had only been in place since the new Constitution was enacted in 2010.<sup>51</sup> Consequently, the African Court found that the continued eviction of the Ogiek and the failure to abide by national court decisions protecting them demonstrated that the 2010 Kenyan Constitution and the institutions that the government had set up intended to address past and ongoing injustices were not entirely effective.<sup>52</sup> Finally, the African Court concluded that the government's justification for the eviction of the Ogiek, namely, the need to preserve the natural ecosystem of the Mau forest, could not reasonably be used to justify the failure to recognise the Ogiek's indigenous or tribal status, nor the denial of the rights associated with that status. This was especially true given the earlier finding in relation to article 14 of the African Charter that the Mau forest had been allocated to other people in a manner that could not be considered compatible with the preservation of the natural environment.<sup>53</sup> Accordingly, the African Court found a violation of article 2 of the African Charter, stipulating that

[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognised 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 other status.

The *Ogiek* judgment represented a crucial achievement that offers hope to other indigenous and rural communities across Africa, and beyond. The African Court has embraced and adopted the concept of 'indigenous peoples' rights', in relation to not only communal property rights over ancestral land, but also with respect to an

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the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.'

51 The Constitution of Kenya (27 August 2010). See, eg, art 21(3) ('Implementation of rights and fundamental freedoms'); art 100(e) ('Promotion of representation of marginalised groups'); art 174(e) ('Objects of devolution'); art 204(3)(b) ('Equalisation Fund'). Art 260 ('Interpretation') explains that 'marginalised community' means '(a) a community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole; (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole; (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or (d) pastoral persons and communities, whether they are (i) nomadic or (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole', <https://kenyalaw.org/kl/fileadmin/pdfdownloads/TheConstitutionOfKenya.pdf> (accessed 10 December 2025).

52 *Ogiek* (n 40) paras 143-144.

53 *Ogiek* (n 40) para 145.

ensemble of other rights, sending a clear message to governments across the continent that indigenous peoples must be recognised and can no longer be discriminated against and marginalised.<sup>54</sup>

The *Ogiek* judgment has been highly celebrated among indigenous activists.<sup>55</sup> It has been considered a success because it shows that the rights of marginalised communities are increasingly being addressed by the African human rights system and that the African Charter, in particular, has great potential to accommodate such claims. In the end, many claims of violations of the African Charter invoked in the *Ogiek* case parallel claims that the Maasai could bring against the Tanzanian government before the African Court.

#### 4 The 2022 *Ogiek* reparations judgment by the African Court

Five years after delivering the first judgment, on 23 June 2022, the African Court delivered another judgment in favour of the *Ogiek* people. This judgment set out the reparations owed for the violations established in the merits judgment.<sup>56</sup>

In the Reparations judgment, the African Court rejected all Kenya's pleas and objections and ordered the Kenyan government to undertake several actions: first, to pay the *Ogiek* KES 57,85 million as collective compensation for material and moral damages suffered;<sup>57</sup> to return the *Ogiek*'s ancestral lands in the Mau forest to collective title within two years through a delimiting, demarcation and titling exercise in consultation with the *Ogiek*;<sup>58</sup> and, to commence a dialogue and consultation process with the *Ogiek* and any concerned parties with regard to any concessions and/or leases granted over *Ogiek* lands. This was in order to reach an agreement on whether or not these operations will continue by way of lease or benefit sharing agreement and, where no agreement is reached, to return the lands

<sup>54</sup> Claridge (n 43) 66.

<sup>55</sup> 'Huge victory for Kenya's *Ogiek* as African Court sets major precedent for indigenous peoples' land rights' *Minority Rights Group* 26 May 2017, <https://minorityrights.org/huge-victory-for-kenyas-ogiek-as-african-court-sets-major-precedent-for-indigenous-peoples-land-rights/> (accessed 10 December 2025).

<sup>56</sup> African Court *African Commission on Human and Peoples' Rights v Republic of Kenya* Application 6/2012, Judgment (Reparations) of 22 June 2022. For a summary of the case, see, eg, C Rickard 'African Court orders that Kenya pays reparations to *Ogiek* people of Mau forest' *African LII* 1 July 2022, <https://africanlii.org/articles/2022-07-01/carmel-rickard/african-court-orders-that-kenya-pays-reparations-to-ogiek-people-of-mau-forest> (accessed 10 December 2025).

<sup>57</sup> *Ogiek* Reparations Judgment (n 56) para 160(ii).

<sup>58</sup> *Ogiek* Reparations Judgment (n 56) para 116.

to the Ogiek and compensate concerned third parties.<sup>59</sup> Additionally, the Kenyan government should adopt all necessary measures to ensure the full recognition of the Ogiek as an indigenous people of Kenya, including recognition of their language and cultural and religious practices.<sup>60</sup> The list continues with the adoption of all necessary measures to ensure that the Ogiek are effectively consulted, in compliance with their traditions and/or their rights to give or withhold their free, prior and informed consent, relating to any development, conservation or investment projects on Ogiek lands.<sup>61</sup> Further actions to be undertaken were that the government should ensure full consultation with the Ogiek, in accordance with their traditions and customs, in the reparations process as a whole,<sup>62</sup> and adopt all necessary measures to give entire effect to the judgment, as a means of guaranteeing the non-repetition of violations.<sup>63</sup> Furthermore, the Kenyan government was compelled to establish a community development fund within one year of the judgment for the benefit of the Ogiek people as a repository for the compensation awarded<sup>64</sup> and coordinate the establishment of a committee to oversee the community development fund. This committee must include representatives chosen by the Ogiek and be operationalised within one year of the judgment.<sup>65</sup> Finally, the African held that the Kenyan government should publish, within six months, the official summaries of the Merits and Reparations judgments in the official *Gazette* and in a newspaper with wide circulation, as well as the full Merits and Reparations judgments, along with their summaries, on an official government website for a period of at least one year.<sup>66</sup> The submissions of a report on the status of implementation of the Reparations judgment within one year of the judgment was also among the requests.<sup>67</sup>

In issuing its 2022 reparations judgment, the African Court has both cemented the rights of the Ogiek over their ancestral land and established the first precedent for the restitution of land on conservation principles to indigenous (and forest) communities in Africa.<sup>68</sup> The African Court recognised that the ownership of land, even for indigenous peoples, entails the right to control access to

59 *Ogiek Reparations Judgment* (n 56) para 117.

60 *Ogiek Reparations Judgment* (n 56) para 126.

61 *Ogiek Reparations Judgment* (n 56) para 144.

62 *Ogiek Reparations Judgment* (n 56) para 145.

63 *Ogiek Reparations Judgment* (n 56) para 160(xi).

64 *Ogiek Reparations Judgment* (n 56) para 155.

65 *Ogiek Reparations Judgment* (n 56) para 156.

66 *Ogiek Reparations Judgment* (n 56) para 160(xiv).

67 *Ogiek Reparations Judgment* (n 56) para 160(xv).

68 L Claridge & D Kobei 'Protected areas, indigenous rights and land restitution: The *Ogiek* judgment of the African Court on Human and Peoples' Rights and community land protection in Kenya' (2023) 57 *Oryx* 322.



indigenous lands and, therefore, it is appropriate for duty bearers such as the government of Kenya to adjust their legal systems to accommodate the rights of indigenous peoples to property such as land. The close ties that indigenous peoples have with the land must be recognised and understood as the fundamental basis of their cultures, spiritual lives, integrity and economic survival.<sup>69</sup> For that reason, securing the right of the Ogiek to property, especially land, creates a conducive context for guaranteeing their continued existence.<sup>70</sup> Besides, the African Court ordered that the free, prior and informed consent of the Ogiek must be sought regarding the development and the conservation of investment projects on Ogiek land, implying that any plans regarding restitution must be agreed by the Ogiek and cannot be decided exclusively by the Kenyan government.<sup>71</sup>

Given that the legal framework for the restitution of Ogiek land exists in Kenya,<sup>72</sup> it should take place as part of the implementation of the ruling of the African Court in their favour. Restitution is a right, even where the concerned land is a protected area.<sup>73</sup> Restitution could also have positive outcomes, particularly whether it is accompanied by measures to support collective conservation actions, setting an example for broader conservation policy and practice. In this way, restitution of land can represent a new, people-driven and human rights-based approach on the African continent, with protected areas being owned by indigenous peoples and forest communities working in cooperation with the state authorities responsible for

69 *Ogiek Reparations Judgment* (n 56) paras 111-112.

70 *Ogiek Reparations Judgment* (n 56) para 115.

71 *Ogiek Reparations Judgment* (n 56) para 144.

72 Apart from the two rulings by the African Court, the legal framework for the restitution of Ogiek land in Kenya is primarily a result of Kenya's Constitution (2010), revised in 2022. The Kenyan Constitution provides for 'community lands' as a lawful category of property, which includes the ancestral lands traditionally occupied by hunter-gatherer communities, thus supporting the Ogiek's claims within the domestic legal system (art 63(2)(d)(ii)). Additionally, see the Community Land Act (2016) and Forest Conservation and Management Act (2016). These national Acts offer a mechanism for the Ogiek to register their communal land claims and protect their cultural and indigenous knowledge systems. In this regard, see secs 10-14 of the Community Land Act. See Republic of Kenya 'The Community Land Act' in Kenya Gazette Supplement 148 (Acts 27) (Special Issue) (7 September 2016) 525, [https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct\\_27of2016.pdf](https://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/CommunityLandAct_27of2016.pdf) (accessed 10 December 2025). Finally, see, secs 4 and 72 of the Forest Conservation and Management Act (2016). See Republic of Kenya 'Forest Conservation and Management Act (Cap 385)' in Kenya Gazette, vol CXVIII 107 (9 September 2016), <https://new.kenyalaw.org/akn/ke/act/2016/34/eng@2022-12-31> (accessed 10 December 2025).

73 In this regard, see, eg, UN Commission on Human Rights 'The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: Final report of the Special Rapporteur, M Cherif Bassiouni' submitted in accordance with Commission Resolution 1999/33, E/CN.4/2000/62 (18 January 2000).



forest protection, who can assist the community owners to meet their relevant needs.<sup>74</sup>

This Reparations judgment is significant because it builds on the precedent established in the Merits judgment and clarifies the scope of state obligations to uphold indigenous peoples' land rights across Africa. It emphasises that states have concrete obligations to legally recognise and protect indigenous peoples' ancestral lands, and that failure to do so requires restitution in collective title through a delimitation, demarcation and titling exercise as redress. The African Court made it clear that what is required is not just abstract recognition of ancestral lands, but a mechanism under domestic law through which indigenous peoples can formalise and secure their collective rights to land, thereby allowing them to control who has access to their lands. This has implications not just for the Ogiek, but also for other indigenous communities in Kenya (such as the Endorois and Sengwer)<sup>75</sup> and across Africa.

This Reparations judgment also breaks new ground, not just in terms of the African Court's willingness to oversee implementation, but also on the issue of compensation for collective violations experienced by indigenous peoples. The African Court's willingness to rely on principles of equity to use its discretion to arrive at the monetary amount to be awarded as material compensation represents a starting point. While reliance on equity to calculate moral damages is common, courts commonly require evidence of specific harm or damage and its nexus to the act or omission of the respondent when calculating material damages. Moreover, the African Court made it clear that states must seek indigenous people free, prior and informed consent with respect to any development, investment or conservation project on their lands.<sup>76</sup> This obligation extends to 'all decisions and actions that affect their lives' and to the measures being undertaken to implement any judgments delivered in favour of indigenous peoples.<sup>77</sup> This obligation is significant in the *Ogiek* case, given that the Kenyan government has attempted to use the implementation process as a pretext to

<sup>74</sup> Claridge & Kobei (n 68) 322.

<sup>75</sup> Regarding the situation of the Sengwer, see, eg, 'Kenyan government must stop Sengwer evictions and restore land rights' *MRG* 16 May 2024, <https://minorityrights.org/sengwer-evictions/> (accessed 10 December 2025).

<sup>76</sup> African Commission 73rd ordinary session of the African Commission on Human and Peoples' Rights, Intersession Activity Report of the Working Group on Indigenous Populations/Communities and Minorities in Africa 29 October 2022 para 29, <https://africanlii.org/akn/aa-au/statement/activity-report/achpr/2022-10-29/working-group-on-indigenous-populationscommunities-and-minorities-in-africa-73os/eng@2022-10-29> (accessed 10 December 2025).

<sup>77</sup> *Ogiek* Reparations Judgment (n 56) paras 142, 145.

continue evicting the Ogiek and granting titles on Ogiek ancestral lands to non-indigenous settlers.<sup>78</sup> The Reparations judgment makes clear that such efforts run counter to Kenya's obligations to defend the African Court's judgments. Given the prevalence of 'fortress conservation' models across Africa, where conservation-related displacement remains a serious threat to indigenous territories,<sup>79</sup> the African Court's judgment has important implications. For example, it calls on the Kenyan government, conservation organisations and donors to uproot coercive approaches to conservation that have had catastrophic consequences for indigenous peoples in Africa. As was illustrated above, recent examples of indigenous peoples fighting to defend their land rights in the context of conservation projects include the Maasai in Tanzania. In this context, the *Ogiek* Reparations judgment makes it clear that land taken from indigenous peoples in the name of conservation must be returned, the law must recognise their underlying ownership rights, and their rights to make the final decisions about their land must be protected.<sup>80</sup>

## 5 Challenges amid the African Court ruling implementation

Yet, the precedent of Kenya needs to be better analysed, because in October 2023 the Kenyan local authorities informed the Ogiek community residing in the Maasai Mau forest in Southwestern Kenya that eviction orders had been processed.<sup>81</sup> These evictions took place even though the Kenyan government failed to comply with its legal obligations under the Reparation judgment delivered by the African in favour of the Ogiek. After being informed of the evictions carried out in the Mau forest in October 2023, further evictions affecting the Ogiek in Sasimwani (Narok county) began on 2 November 2023.<sup>82</sup>

78 A Langat 'Violent evictions are latest ordeal for Kenya's Ogiek seeking land rights' *Mongabay* 20 December 2023, <https://news.mongabay.com/2023/12/violent-evictions-are-latest-ordeal-for-kenyas-ogiek-seeking-land-rights/> (accessed 10 December 2025).

79 C Luoma "'Fortress Conservation': The impact on indigenous peoples today' *From Local to Global* (undated), <https://www.fromlocaltoglobal.co.uk/fortress-conservation> (accessed 10 December 2025).

80 L Domínguez & A Figaroa 'Reparations at last: Land justice for Kenya's Ogiek' *MRG* 2022 11-12, <https://minorityrights.org/resources/reparations-at-last-land-justice-for-kenyas-ogiek/> (accessed 10 December 2025).

81 'Ogiek facing imminent eviction despite African Court's judgment' *IWGIA* 27 October 2023, <https://www.iwgia.org/en/news/5292-ogiek-facing-imminent-eviction-despite-african-court-judgment.html> (accessed 10 December 2025).

82 ICCA Consortium 'Alert: Ogiek indigenous peoples of Mau-Narok are being evicted despite two African Court judgments in their favour' ICCA Consortium 2 November 2023, <https://www.iccaconsortium.org/2023/11/02/alert-ogiek-indigenous-peoples-mau-narok-evicted-despite-african-court-judgments/#:~:text=On%202%20November%202023%2C%20reports,by%20the%20government%20of%20Kenya> (accessed 10 December 2025).

The Kenyan government proposed to fence off the forest under the pretext of conservation. The evictions resulted in over 700 Ogiek families becoming homeless in Sasimwani village, with their houses being wiped out.<sup>83</sup> It is also alleged that the evictions were linked to carbon trade, and Mau forest has been leased for carbon credits.<sup>84</sup> In a joint statement released at that time, three NGOs – AI, Minority Rights Group and Survival International – noted the government's announcement of a new initiative to trade carbon credits on millions of hectares of land in Kenya. For these reasons, the three NGOs called on the Kenyan government

to clarify whether the Ogiek evictions are linked to this initiative. Forest-based carbon projects are particularly problematic as they often target indigenous peoples and their ways of life rather than the true drivers of the climate crisis. While there is mounting evidence that existing offsetting schemes have failed to mitigate against climate change, they have already had a detrimental impact on indigenous peoples' lives and land rights in Kenya and beyond.<sup>85</sup>

On 6 November, the African Commission sent an urgent letter of appeal to the Republic of Kenya calling for cessation of the ongoing eviction of members of the Ogiek in Narok.<sup>86</sup> The same day, the Kenya National Commission on Human Rights (KNCHR)<sup>87</sup> issued a statement in which the KNCHR was standing in solidarity with the members of the Ogiek community. Furthermore, the KNCHR called for several solutions, such as (i) the immediate cessation of the ongoing demolitions and evictions in Sasimwani and Nkareta areas, to allow a structured engagement with the affected persons; (ii) the provision of adequate humanitarian support to effectively respond

83 'Indigenous Ogiek face "humanitarian crisis" as Kenyan government evicts them from their ancestral lands in direct violation of African Court' *Forest Peoples Programme* 3 November 2023, <https://www.forestpeoples.org/en/2023/press-release/Ogiek-face-humanitarian-crisis-as-Kenyan-government-evicts-them-in-direct-violation#:~:text=Around%20700%20members%20of%20the,evict%20them%20from%20their%20lands> (accessed 10 December 2025).

84 'Kenya: Are carbon credits behind Ogiek evictions? NGOs release statement in run-up to COP28' *Survival International* 29 November 2023, <https://www.survivalinternational.org/news/13793> (accessed 10 December 2025).

85 AI, MRG & Survival International 'Joint statement on forced evictions of indigenous peoples in Kenya' (November 2023), [https://assets.survivalinternational.org/documents/2503/231129\\_Joint\\_statement\\_on\\_forced\\_evictions\\_of\\_Indigenous\\_Peoples\\_in\\_Kenya.pdf](https://assets.survivalinternational.org/documents/2503/231129_Joint_statement_on_forced_evictions_of_Indigenous_Peoples_in_Kenya.pdf) (accessed 10 December 2025).

86 African Commission 'African Commission sending urgent letter of appeal to the Republic of Kenya calling for cessation of the ongoing eviction of members of the Ogiek in Narok, Mau Forest' 6 November 2023, <https://achpr.au.int/en/news/press-releases/2023-11-06/african-commission-sending-urgent-letter-appeal-republic-kenya> (accessed 10 December 2025).

87 The KNCHR 'is an independent national human rights institution created by article 59 (Kenya National Human Rights and Equality Commission) of the Constitution of Kenya 2010 and established through the KNCHR Act of Parliament (the Kenya National Commission on Human Rights Act, 2011). It is the state's lead agency in the promotion and protection of human rights.' See <https://www.knchr.org/About-Us/Establishment> (accessed 10 December 2025).

to the immediate needs of the affected people; (iii) implementation of the judgment of the African Court in the *Ogiek* case; and (iv) full implementation of the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012<sup>88</sup> and the adoption of a National Policy on the Prevention of Internal Displacement, Protection and Assistance to Internally Displaced Persons in Kenya as well as a resettlement framework.<sup>89</sup>

The community of Ogiek, through the Kenyan Human Rights Commission (KHRC),<sup>90</sup> intervened in court by obtaining several interim orders to stop further evictions of the Ogiek.<sup>91</sup> On 15 November 2023, the Environment and Land Court in Nakuru issued interim orders,<sup>92</sup> which were followed on 23 November by a similar court in Narok.<sup>93</sup> The orders from both courts barred the government from conducting evictions until the matters had been further determined by the courts. Such orders were not unprecedented. For example, in December 2020, the same court in Nakuru issued a conservatory order to stop the government of Kenya from 'conducting land audits, adjudications, surveys, placing beacons on land and other

88 The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 56 of 2012 (31 December 2012). See, in detail, art 5 ('Prevention of Displacement'); art 6 ('Protection from Displacement'); art 7 ('Preparedness and Mitigation'); art 8 ('Assistance and Protection'); and art 9 ('Durable Solutions'). For a scholarly analysis of this Act, see, eg, L Juma 'Protection of internally displaced persons in Kenya under the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act of 2012: An appraisal' (2018) 51 *Comparative and International Law Journal of Southern Africa* 44-65. At 65, the author noted: 'The efficacy of this law must ... be evaluated in the context of factors such as the political environment, the socio-economic conditions and the changing manifestations of the phenomenon of displacement itself. There are far too many instances in Africa where appropriate legislations are passed but rarely implemented and the reasons for this could be located elsewhere than in the Act itself.'

89 'Halt the ongoing forced evictions of the Ogiek community' *KNCHR* 6 November 2023, <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1174/HALT-THE-ONGOING-FORCED-EVICTIONS-OF-THE-OGIEK-COMMUNITY> (accessed 10 December 2025).

90 The KHRC (not to be confused with the KNCHR) is an NGO that 'works with more than thirty Human Rights Networks (HURINETs) and other grassroots community organisations based in more than thirty counties in Kenya; partners with more than thirty national level state and non-state actors and coalitions; and more than fifty sub-regional, regional, and international human rights organisations and networks', <https://khrc.or.ke/about-us/> (accessed 10 December 2025).

91 NB Mbu & FT Endoh 'A commentary on the African Court on Human and Peoples' Rights' remedial approach in its ruling on reparations in *African Commission on Human and Peoples' Rights v Kenya*' (2023) 7 *African Human Rights Yearbook* 355-374.

92 Environment and Land Court (Nakuru) *Wilson Memosi Ole Ngusilo suing as the Chairman of the Ogiek Council of Elders & Others v The Attorney General & Others* Petition 1 of 2023 (15 November 2023). In detail, see para 3 of the order in which the Court restrained 'the Respondents jointly and severally either by themselves ... from carrying out any more evictions against the Petitioners in relation to the ongoing evictions'.

93 Environment and Land Court (Narok) *Ogiek Council of Elders (Suing on their own behalf and on behalf of the Ogieki of Narok) v The Attorney General & Others* Petition E005 of 2023 (23 November 2023).

unknown activities'; the order to remain in force until further orders of the court 'and/or until the consolidated petitions are fully heard and determined'.<sup>94</sup>

Even with the intervention of the OPDP and its partners seeking justice from local courts in Narok and Nakuru, the Kenyan government went ahead, ignoring the orders issued by the two courts. The government established a camp in the community through the Kenyan Forest Service Unit (KFSU)<sup>95</sup> and drove the community away without providing them with an alternative place to settle. In this scenario, police pulled out all habitable structures that were left during evictions and houses were set on fire during the November eviction in 2023.<sup>96</sup>

On 6 February 2024, members of ESCR-Net (the International Network for Economic, Social and Cultural Rights, uniting 300 social movements and human rights organisations) delivered a call-to-action letter to the office of the Attorney-General of Kenya. The letter demanded that the government immediately implement the African Court rulings to ensure justice and reparations for the Ogiek people. This would include the return of their ancestral lands and respect for their rights to free, prior and informed consent over any actions taken there. In addition, the ESCR-Net reproached the Kenyan government for failing to take any formal steps to implement any of the orders issued by the African Court in its twin judgments.<sup>97</sup>

## 6 Conclusion: The importance of the *Ogiek* judgment for the Maasai in Tanzania

African governments have always maintained that the concept of 'indigenous peoples' is irrelevant in Africa since all Africans are indigenous to Africa. However, developments in international law,

94 Environment and Land Court (Nakuru) *Hon Samuel Kipkemoi Tanui v Kenya Forest Service & Others* Constitutional Petition 11 of 2020 (18 December 2020).

95 The KFSU is an agency of the government of Kenya designated by the Forest Act of 2005 as the replacement for the old Forest Department. The Board of the Kenya Forest Service oversees it. The former Forest Department was supported almost entirely from forest revenues and, as a result, was chronically underfunded. Under the 2005 Forest Act, this has changed somewhat with, eg, the creation of special funds such as the Mau Rehabilitation Trust Fund, for the Mau forest.

96 '700 Ogiek made homeless as Kenyan authorities destroy dozens of homes' *IWGIA* 2 November 2023, <https://iwgia.org/en/news/5298-700-ogiek-made-homeless-kenyan-authorities-destroy-dozens-homes.html> (accessed 10 December 2025).

97 'Push for implementation of Ogiek judgments' *ESCR-Net* 6 February 2024, [https://khrc.or.ke/wp-content/uploads/2024/02/Letter-2\\_-Push-for-Implementation-of-Ogiek-judgments.docx.pdf](https://khrc.or.ke/wp-content/uploads/2024/02/Letter-2_-Push-for-Implementation-of-Ogiek-judgments.docx.pdf) (accessed 10 December 2025).

particularly within the African human rights system, have for a long time challenged this view.<sup>98</sup>

In this scenario, the Ogiek have been legally recognised by the African Court as an indigenous people who should play a role in the conservation of their ancestral forest. Indigenous peoples can play a crucial role in conservation. The 2022 Reparations judgment of the African Court ordered the Kenyan government to return Ogiek land to the Ogiek people in the form of a collective title, in accordance with their rights to free, prior and informed consent. Therefore, the Kenyan government should have taken all necessary steps to implement the Reparation judgment of the African Court through restitution, including a process of delimiting and demarcating Ogiek ancestral land, thereby setting a global precedent for conservation.<sup>99</sup> However, developments are not moving in that direction, despite recent efforts by the Ogiek Council of Elders (OCE) to engage government officials in Nairobi, including the Ministry of Environment, Climate Change and Forestry, the Narok County Commissioner and the Narok County Governor. Indeed, the County Commissioner, Mr Isaac Masinde, informed the OCE that their only admissible recourse would be to engage directly with the President of Kenya, Mr William Ruto. The OCE has also learnt that the Narok County Governor, Mr Patrick Ole Ntutu, is refusing to meet with anyone regarding the evictions.<sup>100</sup> Against this backdrop, the evictions carried out in November 2023 can be considered roadblocks to the implementation of the African Court ruling, as the Kenyan government continues to disregard the judgment and to pursue actions that further violate the rights of the Ogiek. Therefore, there is a need for continued advocacy, engagement and support from all the relevant stakeholders to ensure that the Ogiek's land and human rights are fully respected, protected and fulfilled. As the Kenyan government struggles to balance its conservation policies with its human rights obligations, the Ogiek community fears for its identity and its very survival, as the future of its livelihoods is becoming increasingly uncertain.<sup>101</sup> To reaffirm the rights of the Ogiek, on 4 December 2025, the African Court issued a judgment ordering the Kenyan government to take steps and act immediately to fully comply with previous Court rulings. The

98 KN Bojosi & GM Wachira 'Protecting indigenous peoples in Africa: An analysis of the approach of the African Commission on Human and Peoples' Rights' (2006) 6 *African Human Rights Law Journal* 406.

99 Claridge & Kobei (n 68) 322.

100 MRG (n 75).

101 N Werungah 'Conservation versus human rights: Kenya's Ogiek dilemma' *The New Humanitarian* 24 April 2024, <https://www.thenewhumanitarian.org/video/2024/04/24/conservation-versus-human-rights-kenya-ogiek-dilemma> (accessed 10 December 2025).

Court also ordered the government to fully respect its international obligations and affirmed that to justify violations and non-compliance of court orders or the African Charter, Kenyan authorities cannot use national laws.<sup>102</sup> Additionally, the Court noted that in the terms of its judgment on Reparations, the report on implementation from Kenya was due within 12 months of notification (by June 2023) but which was only filed in May 2025. While conceding that a report had been filed that contained details about steps being taken to comply with the Court's decision and the challenges being encountered by Kenya, on the other hand, the Court held that its order on the filing of a report on implementation had not been complied with in the agreed time frame.<sup>103</sup> The 2025 order on compliance came after the issuance of an order on adjournment of compliance hearing, in November 2024, in which the Kenyan government requested the African Court to adjourn the hearing to enable it to file a report on the steps that it has taken to comply with the Court's decisions on the merits as well as on reparations.<sup>104</sup> The *Ogiek* compliance decision demonstrates the African Court's will to monitor implementation, confirming its authority to hold states in violation of its judgments and its capability to adopt further binding orders. The ruling strengthens the African Court's message that states cannot implement only judgments they 'like'. This inaugurates a significant precedent for all African countries subject to the Court's jurisdiction. Yet, Kenya government's reluctance to implement the *Ogiek* judgments is not exceptional. Compliance requires a political commitment that may conflict with domestic and international interests.<sup>105</sup>

Within the legal framework established by the *Ogiek* case, the Maasai in Tanzania would need to submit their claims to the African Commission, which may then refer the matter to its affiliated judicial body, the African Court. This route is necessary because Tanzania has not deposited the declaration under article 34(6) of the African Court Protocol, which permits individuals and NGOs to bring cases

102 African Court *African Commission on Human and Peoples' Rights v Kenya* Application 6/2012 Order (Compliance) (4 December 2025), <https://www.african-court.org/cpmt/storage/app/uploads/public/693/151/357/693151357d444234883126.pdf> (accessed 10 December 2025). In this regard, see also 'Ogiek celebrate Court decision: Kenyan government must "act without delay"' IWGIA 9 December 2025, <https://iwgia.org/en/news/5878-ogiek-celebrate-court-decision-kenya-must-act-without-delay.html> (accessed 10 December 2025).

103 African Court (n 102).

104 African Court *African Commission on Human and Peoples' Rights v Kenya* Application 6/2012, Order (adjournment of compliance hearing) (12 November 2024) para 4, <https://www.african-court.org/cpmt/storage/app/uploads/public/679/a06/9b2/679a069b22c1e375799836.pdf> (accessed 10 December 2025).

105 L. Claridge <https://www.humanrightsincontext.be/post/the-african-court-s-ogiek-compliance-decision-a-turning-point-for-indigenous-land-rights-in-africa> (accessed 19 December 2025).



directly to the African Court.<sup>106</sup> Nevertheless, the Maasai retain the right to submit a claim to the African Commission, which may in turn refer the matter to the African Court. In doing so, they could argue that the Tanzanian government has violated several provisions of the African Charter, including articles 1, 2, 14, 17(3), 21 and 23. These provisions guarantee several fundamental rights, such as the prohibition on discrimination, the right to property, and the right to peace and security. The African Court has already affirmed these rights in favour of the Ogiek, and the Court may therefore be inclined to extend similar protection to the Maasai in Tanzania.

In this regard, in January 2023, representatives of the African Commission visited Tanzania and commented on the situation of the Maasai people. The Commission envoys acknowledged the suffering of the Maasai and, therefore, encouraged the Tanzanian government to take steps to bring it to an end. The African Commission was already aware of, and sympathetic to, the suffering of the Maasai prior to the visit of its representatives.<sup>107</sup> Not by chance, one of the African Commission's recommendations to the Tanzanian government was to 'consider re-instating' the declaration under article 34(6) of the African Court Protocol, which permits individual and NGO access to the African Court, which was withdrawn in 2019. Additionally, the African Commission delegation also suggested the Tanzanian Government to

attend to the complaints about the decline in social amenities and infrastructure in the Ngorongoro Conservation Area, to ensure continued dignified living conditions for the local communities whilst awaiting the relocation of those who have volunteered to be relocated, as well as for those who choose to remain behind, in respect of which latter group the Government should reach a mutually acceptable strategy with the affected people.

In light of this recognition, and given that the Tanzanian government has thus far failed to adopt remedial measures (and appears reluctant to do so at present), it is in my view that the Maasai have no alternative but to bring their claims before the African Commission in order to obtain justice through the African Court.

<sup>106</sup> The United Republic of Tanzania 'Notice of withdrawal of the Declaration made under Article 34(6) of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights', <https://www.southernafricalitigationcentre.org/wp-content/uploads/2019/12/Tanzania-Withdrawal-Article-36-4-African-Court.pdf> (accessed 10 December 2025). As explained in the document, '[t]he decision [of withdrawal] has been reached after the Declaration has been implemented contrary to the reservations submitted by the United Republic of Tanzania when making the Declaration'.

<sup>107</sup> Press statement at the conclusion of the promotion mission of the African Commission on Human and Peoples' Rights to the United Republic of Tanzania, 23-28 January 2023 (28 January 2023), <https://achpr.au.int/en/news/press-releases/2023-02-24/press-statement-promotion-mission-united-republic-tanzania> (accessed 10 December 2025).