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From declaratory justice to enforceable authority? Expanding enforcement in the African human rights system through the *Ogiek compliance* decision

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Summary: *On 4 December 2025, the African Court on Human and Peoples' Rights issued its first ever compliance decision, in the case of African Commission v Kenya (Ogiek case). The Court found that Kenya had both failed to fully comply with its previous judgments (judgments on the merits and on reparations issued in 2017 and 2022, respectively) and remained in breach of its obligations under both. The compliance ruling establishes an important precedent, ruling for the first time on a state's failure to implement the Court's judgments, and providing the Court with its first opportunity to establish its implicit jurisdiction to monitor and enforce judgments. The Court has thus moved beyond*

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adjudication into post-judgment supervision, aligning itself to some extent with the practice of the Inter-American system. The decision has added to jurisprudence by constitutionalising compliance in the African human rights system, underlining that remedies are binding and enforceable, that compliance must be genuine and effective, and that states remain legally accountable after judgment. The ruling is also crucial for the continued protection of Ogiek rights and, ultimately, their survival as an indigenous people. This article provides a short history of the Ogiek case followed by an analysis of the Court's recent compliance ruling. It argues that the decision marks a decisive jurisprudential shift in the African human rights system, given that the Court explicitly asserted jurisdiction over compliance, rejected domestic law justifications for non-implementation, and issued detailed, time-bound remedial orders. However, this shift remains structurally incomplete: While the Court has strengthened legal authority and supervisory capacity, enforcement still depends on political will and African Union institutional follow-through, exposing a compliance deficit. The Ogiek compliance decision, therefore, represents both a breakthrough in doctrinal clarity and a test of the limits of supranational adjudication in Africa.

Key words: *indigenous peoples; rights; Ogiek; African Court on Human and Peoples' Rights; implementation; compliance hearing; compliance judgment*

1 The Ogiek: A history of evictions and marginalisation

Numbering approximately 52 000 people,¹ the Ogiek are some of Africa's last remaining forest dwellers. Traditionally hunter-gatherers, they survive mainly on wild fruits and roots, game hunting and traditional bee-keeping. The Ogiek have since time immemorial lived in Kenya's Mau Forest, and have a unique way of life well adapted to the forest: It is a home, school, cultural identity and way of life, instilling pride and a sense of destiny.² In fact, the term 'Ogiek' literally

1 See the *merits* judgment of the African Court in *African Commission on Human and Peoples' Rights v Kenya* (Merits) (2017) 2 AfCLR 9 (*merits* judgment), which refers to the Ogiek as comprising about 20 000 members (para 6), but a more accurate number is provided above, based on the 2019 Kenya Housing and Population Census, 2019-Kenya-population-and-Housing-Census-Volume-4-Distribution-of-Population-by-Socio-Economic-Characteristics.pdf (accessed 11 March 2026).

2 Complainant's submissions on the *Ogiek merits* case 1-27, <https://minorityrights.org/app/uploads/2024/01/final-mrg-merits-submissions-pdf.pdf> (accessed 11 March 2026); see also *Ogiek* (Merits) (n 1) para 109.

means 'caretaker of all plants and wild animals'.³ Not surprisingly, the survival of the Mau Forest, therefore, is inextricably linked with the survival of the Ogiek.⁴

The Ogiek have been routinely subjected to arbitrary forced evictions from their ancestral land by successive Kenyan governments, without consultation or compensation. The Ogiek's rights over their traditionally owned lands have been systematically denied and ignored. The government has allocated land to third parties, including political allies, and permitted substantial commercial logging and development of tea plantations to take place, without sharing any of the benefits with the Ogiek. The eviction of the Ogiek from their ancestral land and the refusal to allow them access to their spiritual home have prevented the Ogiek from observing their traditional cultural and religious practices.⁵ The culmination of all these actions has also resulted in the Ogiek being prevented from practising their traditional hunter-gatherer way of life, thus threatening their very existence. Over a period of approximately 60 years, the Ogiek have consistently raised objections to these evictions with local and national administrations, task forces and commissions, and have instituted numerous judicial proceedings in the national courts, to no avail.

In October 2009, following the issuing of a 14-day eviction notice to the Ogiek and other settlers of the Mau Forest,⁶ the Ogiek decided to lodge a case against their government before the African Commission on Human and Peoples' Rights (African Commission), with the assistance of Minority Rights Group International, the Ogiek Peoples' Development Programme (OPDP) and Centre for Minority Rights Development (CEMIRIDE).⁷ In November 2009 the African Commission, citing the far-reaching implications on the political,

3 Ogiek traditional knowledge shared with author by Ogiek community members in context of preparing evidence for merits submissions, June 2013.

4 UN Committee on Economic, Social and Cultural Rights (ESCR Committee), eg, has affirmed that land is closely linked to the right to self-determination and that indigenous peoples can freely pursue their political, economic, social and cultural development and dispose of their natural wealth and resources for their own ends only if they have land or territory in which they can exercise their self-determination; General Comment 26 (2022) on Land and Economic, Social and Cultural Rights E/C.12/GC/26 para 11.

5 Complainant's submissions in the *Ogiek merits* case (n 2) 61-117, <https://minorityrights.org/app/uploads/2024/01/final-mrg-merits-submissions-pdf.pdf> (accessed 11 March 2026).

6 Note that the *Ogiek merits* judgment (n 1) incorrectly refers to a 30-day eviction notice (para 3). The notice in fact provided for a term of 14 days (Annex 10 to Original Complainants' Submissions on Admissibility before the African Commission dated 5 August 2010).

7 CEMIRIDE and OPDP are both NGOs registered in Kenya. OPDP works specifically to promote and protect Ogiek culture, land, language, environment and human rights.

social and economic survival of the Ogiek community and the potential irreparable harm if the eviction notice was actioned, issued an order for provisional measures, requesting the Kenyan government to suspend the implementation of the eviction notice.⁸ The Ogiek were not evicted on that occasion, but their precarious situation continued. In July 2012, following the Kenyan government's lack of response on the issue, the African Commission seized the African Court on Human and Peoples' Rights (African Court), pursuant to 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),⁹ on the grounds that the case evinced serious and mass human rights violations.¹⁰

2 The Ogiek's 13-year litigation journey before the African Court

In 2017, nearly eight years after the case was initiated before the African Commission, the Ogiek obtained a favourable judgment from the African Court. In its *merits* judgment issued on 26 May 2017 (*merits* judgment), in both the first case on indigenous peoples' rights heard by the Court and the largest case it had considered up to that point (in terms of number of complainants and alleged violations of the African Charter), the African Court found violations of articles 1, 2, 8, 14, 17(2) and (3), 21 and 22 of the African

8 *Ogiek merits* judgment (n 1) para 4.

9 Art 5(1)(a) states: 'The following are entitled to submit cases to the Court: The Commission', 2-PROTOCOL-TO-THE-AFRICAN-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS-ON-THE-ESTABLISHMENT-OF-AN-AFRICAN-COURT-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf (accessed 11 March 2026). As one of the first cases to have been referred to the Court, and the first case in which judgment has been issued following a full hearing on the merits, the case was a pilot for both the African Commission and the African Court, testing out the process and creating significant procedural precedent.

10 African Commission's application filed before the African Court, dated 12 July 2012, referring the *Ogiek* case to the African Court on grounds of serious and massive violations of human rights and failure to comply with a request for provisional measures under Rules 84(2), 118(2) and 118(3) of the African Commission 2010 Rules of Procedure; see *Ogiek merits* judgment (n 1) paras 4 & 5. The Commission's 2010 Rules, applicable at the time, provided that the Commission can refer a case to the Court under Rule 118(2) ('if the Commission has made a request for Provisional Measures against a State Party in accordance with Rule 98, and considers that the State has not complied with the Provisional Measures requested, the Commission may pursuant to Article 5(1)(a) of the Protocol, refer the communication to the Court and inform the Complainant and the State concerned'), or Rule 118(3) ('The Commission may, pursuant to Rule 84(2) submit a communication before the Court against a State Party if a situation that, in its view, constitutes one of serious or massive violations of human rights as provided for under Article 58 of the African Charter, has come to its attention'). The *Ogiek merits* judgment does not reveal the exact legal basis of the referral.

Charter on Human and Peoples' Rights (African Charter).¹¹ The case created significant substantive legal precedent. It also set significant procedural precedent, since it was the first ever case to have been referred to the African Court by the African Commission in which judgment has been delivered following a substantive hearing of the arguments of both parties.

Knowing that the process of remedying the many rights violations, including the restitution of Ogiek land, would be complicated, the Ogiek requested – and were granted – a separate court ruling on reparations.¹² The case remained pending before the African Court under its reparations process for a number of years, with both parties making written submissions over the following 18 months, and an oral hearing on reparations postponed several times at the government's request, largely due to the COVID-19 pandemic.¹³ In June 2021 the African Court ordered that it would decide the matter based on the parties' written pleadings and submissions alone.¹⁴

On 23 June 2022, the African Court finally issued a ground-breaking judgment (*Ogiek reparations* judgment),¹⁵ specifying the remedies that the Kenyan government must grant the Ogiek. In its ruling, the Court confirmed that the Ogiek are an indigenous people whose rights have been violated by their government, and ordered the Kenyan government to:¹⁶

- (1) pay the Ogiek 157,85 million Kenyan Shillings as collective compensation for material and moral damages suffered;
- (2) return the Ogiek's ancestral lands in the Mau Forest via collective title within two years through a delimiting, demarcation and titling exercise in consultation with the Ogiek;

11 Adopted 27 June 1981, entered into force 21 October 1986, OAU Doc CAB/LEG/67/3 Rev.5 (1981).

12 Complainant's submissions in the *Ogiek merits* case (n 2) prayer E, para 700, <https://minorityrights.org/app/uploads/2024/01/final-mrg-merits-submissions-pdf.pdf> (accessed 11 March 2026) details the applicant's request, on the Ogiek's behalf, for a separate ruling on reparations. Rule 63 of the Rules of Court provides: 'The Court shall rule on the request for the reparation, submitted in accordance with Rule 34(5) of these Rules, by the same decision establishing the violation of a human and peoples' right or, if the circumstances so require, by a separate decision.' *Ogiek merits* judgment (n 1) paras 223 & 227.

13 *African Commission on Human and Peoples' Rights v Kenya* [2022] AfCHPR 18 (23 June 2022) (*Reparations* judgment) para 19.

14 See Order (Procedure) dated 25 June 2021, 60db027b8ad0d150454468.pdf (accessed 11 March 2026); see also L Domínguez & A Figaroa *Reparations at last: Land justice for Kenya's Ogiek* 2 February 2023, <https://minorityrights.org/resources/reparations-at-last-land-justice-for-kenyas-ogiek/> (accessed 11 March 2026).

15 *Reparations* judgment (n 13).

16 *Reparations* judgment (Operative orders) (n 13) para 160.

- (3) commence a dialogue and consultation process with the Ogiek and any concerned parties in relation to any concessions and/or leases granted over Ogiek lands 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 to the Ogiek and compensate concerned third parties;
- (4) 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;
- (5) adopt all necessary measures to ensure the Ogiek are effectively consulted, in accordance with their traditions and/or their right to give or withhold their free, prior and informed consent, in relation to any development, conservation or investment projects on Ogiek lands;
- (6) ensure full consultation with the Ogiek, in accordance with their traditions and customs, in the reparations process as a whole;
- (7) adopt all necessary measures to give full effect to the judgment as a means of guaranteeing the non-repetition of violations;
- (8) 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;
- (9) coordinate the establishment of a committee to oversee the community development fund, which must include representatives chosen by the Ogiek and be operationalised within one year of the judgment;
- (10) publish, within six months, the official summaries of the merits and reparations judgments in the official *Gazette* and in a newspaper of wide circulation, as well as the full *merits* and *reparations* judgments, together with their summaries, on an official government website for a period of at least one year; and
- (11) submit a report on the status of implementation of the reparations judgment within one year of the judgment.

The Court also determined that it would remain actively engaged in overseeing the implementation of both the *merits* and *reparations* judgments, holding that it would conduct a hearing on implementation (compliance hearing) on a date to be appointed by the Court 12 months from the date of the *Ogiek reparations* judgment.¹⁷ The *Ogiek* case once again set a procedural precedent; this time, as the first occasion that the Court has ordered – and

¹⁷ *Reparations* judgment (n 13) para 160(xvi).

subsequently held – a compliance hearing.¹⁸ This was a significant moment for the Court, indicating its readiness to move from adjudicating cases to overseeing their supervision, to broaden its role upholding the rule of law, and to holding states accountable – ensuring both that states comply with the judgments it delivers and that victims of human rights violations receive the reparations due to them for harm suffered.

3 The compliance hearing

The compliance hearing in *Ogiek* was the first of its kind. The hearing provided an opportunity for the judges of the Court to determine, having received oral and written submissions from both parties, as well as other relevant information,¹⁹ the extent of implementation of the orders set out in both judgments, signalling that states can be held accountable not only for human rights violations, but also for failing to implement the Court's orders. It also provided a further public forum for the *Ogiek* to challenge the continued delays, evictions and non-compliance that had taken place since the *merits* and *reparations* judgments.

The Court's competence to hold the compliance hearing is provided for in Rule 81(3) of the African Court's 2020 Rules of Court, which provides as follows:

In case of a dispute as to compliance with its decisions, the Court may, among others, hold a hearing to assess the status of implementation of its decisions. At the end of the hearing, the Court shall make a finding and where necessary, issue an order to ensure compliance with its decisions.

It is important to note that the hearing was not an opportunity to relitigate matters that had already been adjudicated upon by the Court. This was a particular concern for the *Ogiek*, whose rights and the associated remedies had already been ruled upon.²⁰ For example, during the hearing, counsel representing the government appeared

18 See African Court's press release announcing the compliance hearing, 'African Court to hold a compliance hearing in Application 6/2012, *African Commission v Republic of Kenya*, 4 June 2025' <https://www.african-court.org/afchpr/african-court-to-hold-a-compliance-hearing-in-application-no-006-2012-african-commission-v-republic-of-kenya-4-june-2025/> (accessed 11 March 2026). The hearing was broadcast live via the African Court's YouTube channel; see hearings <https://www.youtube.com/watch?v=Ab59zvSW2LI>; <https://www.youtube.com/watch?v=jxjh7hKU4JM>; <https://www.youtube.com/watch?v=tKBkXH1hKys> (accessed 11 March 2026).

19 In accordance with Rule 81(2) of the African Court 2020 Rules.

20 Author's discussions with *Ogiek* community members on various dates between October 2024 and June 2025, while preparing for the compliance hearing.

to want to re-open the question of Ogiek ancestral ownership of the Mau Forest, referring to the ‘complexities’ of the Mau Forest,²¹ and the presence of other communities in the forest.²² This argument was clearly decided in the merits phase. Indeed, as counsel for the applicant clearly reminded the Court on the Ogiek’s behalf, the issue of Ogiek ownership of the Mau Forest had not been disputed by the government during the merits hearing, had been determined in the *merits* judgment²³ and, therefore, this issue had already been decided. The Court did not engage with the arguments presented by the government, instead emphasising its orders requiring the government to proceed with the identification, delimitation and titling of Ogiek ancestral land through a consultative process fully involving the Ogiek.²⁴

The Court initially convened the compliance hearing as a public hearing on 12 November 2024. When the hearing started, representatives of the Kenyan government requested an adjournment of at least three months to enable it to file a report on the steps that it has taken to comply with the *merits* and *reparations* judgments, stating that its failure to file this report was largely due to recent changes in its government.²⁵ This request was strongly opposed by the applicant on behalf of the Ogiek, arguing that the government had had ample time to file its report from the time the notice of hearing was issued, on 14 August 2024, and referring also to continued evictions of the Ogiek that had taken place after the delivery of the *merits* and *reparations* judgments.²⁶ In the event, the Court granted the respondent state a period of 90 days to file its report on the steps taken to implement both rulings. This was a setback for the Ogiek, whose trust in their government had long expired – but who had placed much trust in the Court process.²⁷

In February 2025 the Court re-scheduled the compliance hearing for 4 June 2025 and this went ahead, attended by many Ogiek

21 See recordings of compliance hearing, African Court YouTube channel (n 18).

22 *African Commission on Human and Peoples’ Rights v Kenya* Application 6/2012 [2025] AfCHPR 38 (4 December 2025) (*Compliance Order*) para 134 (*compliance judgment*).

23 *Merits judgment* (n 1) paras 128-131.

24 *Compliance judgment* (n 22) para 61.

25 *African Commission on Human and Peoples’ Rights v Kenya* Application 6/2012 [2024] AfCHPR 41 (12 November 2024) (*Order*) (Adjournment of Compliance Hearing) paras 4 and 6.

26 Adjournment of Compliance Hearing (n 25) para 5; more information on these evictions is set out in part 5.8 of this article.

27 LA Wily ‘Justice delayed is justice denied: The continuing challenge for the Ogiek of Mau in Kenya’ *Rights and Resources International* blog (web blog) 3 December 2024, <https://rightsandresources.org/blog/justice-delayed-is-justice-denied-the-continuing-challenge-for-the-ogiek-of-mau-in-kenya/> (accessed 11 March 2026).

community members, and with representatives of both parties presenting oral arguments.²⁸ The applicant's arguments in open court focused on the numerous actions of the government that fundamentally contravene the judgments. These included the forced evictions and burning of Ogiek homes, and the titling of Ogiek land to non-Ogiek. It also referred to the lack of meaningful efforts to implement the judgments, as evidenced by the failure to gazette and publish them, to recognise the Ogiek, to adequately consult them in accordance with their traditions and customs, to ensure their free, prior and informed consent and, in general terms, to implement the judgments and show good faith towards the Ogiek and respect their right to lead a life of dignity.

The Human Rights Implementation Centre of the School of Law at the University of Bristol and the Centre for Human Rights, University of Pretoria had previously been granted permission to participate in the reparations proceedings as *amici curiae*,²⁹ and their participation continued into the Court's implementation proceedings, including making an oral intervention during the compliance hearing.³⁰ Their intervention is discussed in part 5.8 below.

In its oral submissions, the government admitted that it had not implemented the judgments in full, but claimed partial compliance, stating that it had recognised the Ogiek by enumerating them as a distinct community within the 2019 census (discussed further in part 5.3 below).

4 The Court's 2025 Compliance Order: Establishing jurisdiction

The African Court issued its *compliance* judgment in the *Ogiek* case on 4 December 2025 (*Ogiek compliance* judgment).³¹ Before ruling on the substantive matters considered during the compliance hearing, it considered the jurisdictional basis on which it could conduct the proceedings. This appears to align specifically with recommendations

28 Pan African Lawyers Union (PALU) 'A decade later: The African Court revisits Kenya's compliance in the *Ogiek* case' 9 June 2025, <https://www.african-court.org/afchpr/african-court-on-human-and-peoples-rights-issues-new-orders-to-kenya-over-non-compliance-in-the-ogiek-case/> (accessed 11 March 2026).

29 *Reparations* judgment (n 13) para 5.

30 See recordings of Compliance Hearing, African Court YouTube channel (n 18).

31 *Compliance* judgment (n 22); see also African Court on Human and Peoples' Rights 'African Court on Human and Peoples' Rights issues new orders to Kenya over non-compliance in the *Ogiek* case' 4 December 2025, <https://www.african-court.org/afchpr/african-court-on-human-and-peoples-rights-issues-new-orders-to-kenya-over-non-compliance-in-the-ogiek-case/> (accessed 11 March 2026).

of the *amici curiae*, who sensibly submitted that, as the proceedings were the first of their type, it may be 'necessary for the Court to expressly establish its competence to monitor compliance with its decisions'.³² The Court's pronouncement on this issue provides helpful guidance for future compliance monitoring; it is notable that the Court considered its approach even though the government did not make any oral or written submissions addressing the Court's jurisdiction.

The *Ogiek compliance* judgment clearly establishes that the African Court has implicit jurisdiction to monitor and enforce its judgments, through a combined and holistic reading of the African Charter, the African Court Protocol and the Rules of Court.³³

First, article 27(1) of the Court Protocol provides the Court with an express mandate to award reparation: 'If the Court finds that there has been a violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.'³⁴ Accordingly, the Court ruled that its role in 'addressing the consequences of a violation extends to ensuring that the terms of its decisions are fully implemented'.³⁵ The Court was also clear that that this compliance monitoring complements the African Union (AU) Executive Council's role.³⁶

Second, article 30 of the African Court Protocol provides as follows: 'States parties to the present Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.' The Court stated that this emphasises the principle requiring parties to a treaty to implement its terms in good faith³⁷ – and the African Charter, African Court Protocol and Rules of Court must be interpreted in a manner that furthers the realisation of human rights on the continent.³⁸ In addition, it explicitly imposes an obligation on states to comply with its judgments, which is the *conditio sine qua non* of any international litigation, deriving from the binding nature of decisions issued by judicial mechanisms.³⁹

32 *Compliance* judgment (n 22) para 14.

33 *Compliance* judgment (n 22) para 25.

34 African Court Protocol (n 9).

35 *Compliance* judgment (n 22) para 18.

36 *Compliance* judgment (n 22) para 21.

37 Art 31(1) Vienna Convention on the Law of Treaties.

38 *Compliance* judgment (n 22) para 20.

39 *Compliance* judgment (n 22) para 22.

Finally, having confirmed both the Court's jurisdiction to award reparations and the duty on state parties to comply with the Court's judgments, the Court referred to article 1 of the African Charter, which requires all state parties to recognise the Charter rights, duties and freedoms, and to adopt legislative or other measures to give effect to them. The Court determined that this obligation extends to the duty of states to faithfully implement decisions of the Court.⁴⁰

This approach aligns with the African Court's Comparative Study on the Law and Practice of Reparations for Human Rights Violations,⁴¹ which specifically recognises that article 27(1) of the Court Protocol grants the Court a great degree of discretion that can be used to achieve a holistic approach to the right to reparations, and it is not limited to any particular form of reparations. Article 7 of the Court Protocol and Rule 29(1)(a) of the 2020 Rules of Court provide that the Court can draw inspiration from, and take into consideration, African instruments and practices, instruments of international law to which the parties to the Charter are members, as well as legal precedents and doctrine.

The Court also considered whether it can meet its obligation to submit regular reports to the AU Assembly of Heads of State under article 31 of the Protocol if it cannot determine the status of compliance with its judgments.⁴² The Court stated that '[i]t must ... conduct an assessment of the status of implementation of its decisions before submitting a meaningful report to the Executive Council'.⁴³ Although providing some justification for the Court's jurisdiction to hold compliance hearings, this statement is ambiguous: It is not clear if this means that the Court must now routinely conduct compliance hearings for each of the cases upon which it has ruled before submitting its report to the Council. Such an interpretation would surely be too onerous, placing a huge burden on the Court to monitor compliance of all its judgments via compliance hearings and decisions.

By confirming that the Court has jurisdiction to monitor and assess compliance with its prior decisions, the ruling represents a jurisprudential shift, moving the Court from a body that merely issues judgments to one that also supervises execution, moving towards the

40 *Compliance judgment* (n 22) para 24.

41 African Court on Human and Peoples' Rights 'Comparative study on the law and practice of reparations for human rights violations' September 2019, <https://www.african-court.org/afchpr/comparative-study-on-the-law-and-practice-of-reparations-for-human-rights-violations/> (accessed 30 June 2026).

42 *Compliance judgment* (n 22) para 21.

43 As above.

implementation approach taken by the Inter-American human rights system. The Inter-American Court of Human Rights, for example, takes a uniquely hands-on role in supervising compliance with its own judgments, drafting reparation orders with follow-up in mind, holding compliance hearings and on-site visits, issuing monitoring resolutions, and seeking reports from states and experts, in a process that is continuous rather than periodic.⁴⁴ The Court uses multiple mechanisms, including written procedures, private roundtable hearings (where states report progress and victims' representatives and the Inter-American Commission offers observations), and Secretariat notes, all aimed at ensuring the material realisation of the rights recognised in each judgment. The Court may also issue more orders on compliance with the remaining orders and follow up review by the Secretariat.⁴⁵ Recent empirical research has shown that this oversight approach, combining mandated self-reporting, third-party civil society engagement and supervision hearings, modestly but meaningfully increases state compliance rates by approximately 3 per cent per year – with civil society participation essential to achieving that effect.⁴⁶ The decision also contributes to institutional strengthening of the African human rights system, clarifying the relationship between the Court's judicial role and the AU's political enforcement mechanisms and building a more coherent enforcement architecture within the African system.

The ruling also reaffirms the supremacy of Kenya's international obligations under the African Charter, strengthening a monist-oriented approach to African human rights law. The Court made it clear that a state cannot invoke its domestic laws to justify a breach of international law or to justify non-compliance (as stated by the Court later in the decision).⁴⁷ This is important since the respondent government had referred to 'competing international law obligations on the Kenyan state' and 'contradictory domestic legislation and judicial decisions which present complicated obstacles to overcome'.⁴⁸ In this way, the Court reminds us of the supremacy of international human rights obligations and reinforces the binding nature of its judgments as a matter of regional law.

44 CM Bailliet 'Procedure for monitoring compliance with judgments and other decisions: Inter-American Court of Human Rights (IACtHR)' in A Peters (ed) *Max Planck Encyclopedia of International Law* (2021).

45 Bailliet (n 44) para 10.

46 A Pérez-Liñán & AKG Atehortúa 'Oversight hearings, stakeholder engagement, and compliance in the Inter-American Court of Human Rights' (2024) 78 *International Organization* 293-320.

47 *Compliance* judgment (n 22) para 140.

48 *Compliance* judgment (n 22) para 102.

5 Assessing compliance with the *merits* and *reparations* judgments

Having established jurisdiction, the Court moved on to an assessment of the government's compliance with the *merits* judgment, considering the submissions presented by both parties, including the government's claims that it had engaged in "strategic consultations with key stakeholders" to fast track the process of registering community land', and that it 'remains committed to ensuring the human rights of its people are fully protected and realised'.⁴⁹ The applicant – on behalf of the Ogiek – submitted that the government had failed to take any steps to implement the judgments, and had instead undertaken measures that constitute continuing and new violations of the Ogiek's rights.⁵⁰

The Court found that the measures taken so far did not adequately resolve the core violations identified in the *merits* judgment and that, therefore – despite some efforts undertaken by the government – compliance remains partial. The Court accordingly ordered the government to immediately take all necessary steps, whether administrative, legislative or otherwise, to fully comply with all the orders made in the *merits* judgment.⁵¹

As such, the compliance decision clarifies that the obligations to provide remedies are ongoing, legally binding obligations that are not once-off or symbolic measures. The Court emphasised that states cannot treat reparations as optional or political obligations, strengthening the norm that international remedies are enforceable legal duties, not aspirational outcomes. In addition, the Court was unequivocal that partial implementation was not sufficient.

The Court then moved to considering the government's compliance with the orders in the *reparations* judgment, addressing each one in turn.

5.1 Payment of financial compensation and the establishment of a Community Development Fund

In relation to the financial compensation due under the *reparations* judgment, the applicant submitted that no compensation had to date been paid to the Ogiek. In the absence of any information

49 *Compliance* judgment (n 22) paras 30-36.

50 *Compliance* judgment (n 22) para 37.

51 *Compliance* judgment (n 22) paras 39-40.

from the government on this point, the Court ruled that the Kenyan government had failed to pay a single shilling of the material and moral damages ordered in 2022,⁵² and had provided no evidence that it has commenced tangible steps to establishing the Community Development Fund. The Court therefore ordered the government to immediately take steps to effect the payments that were ordered in the Reparation Judgment⁵³ and to establish the Fund,⁵⁴ but did not issue any further orders to the government in this respect, arguably limiting the value of the *compliance* judgment for the Ogiek as they seek implementation.

The *reparations* judgment made very clear orders requiring the Kenyan government to take necessary measures to establish a Community Development Fund according to which the Ogiek would receive payment of the compensation due within 12 months of the date of the *reparations* judgment. In its oral submissions during the compliance hearing, the government stated it had started to identify the beneficiaries of the fund, but that the matter needs ‘public participation’ as well as parliamentary approval. On further questioning, the government claimed that the approval process had been initiated.⁵⁵ No further information or timeline was offered, and no further explanation was offered as to why ‘public participation’ was needed to execute payment of compensation to victims of human rights violations, pursuant to an order of the African Court. Although it is clear that the establishment of the Community Development Fund should follow relevant legal frameworks, the failure to provide further details led to the Court’s conclusion and issuing of further orders. In this context, it is worth noting that in 2025, the government reportedly directed 890 million Kenyan Shillings – over five times the amount of compensation that the Court ordered it pay to the Ogiek – towards a renovation of Kenya’s State House,⁵⁶ which perhaps is indicative of the Kenyan government’s approach to meeting its reparations requirements towards the Ogiek.

52 *Compliance* judgment (n 22) para 45.

53 *Compliance* judgment (n 22) para 46.

54 *Compliance* judgment (n 22) para 113.

55 See recordings of Compliance Hearing, African Court YouTube channel (n 18).

56 D Ortega ‘Ruto’s state house gets another Sh 890m for renovations’ *Daily Nation* (Nairobi) 23 June 2025, <https://nation.africa/kenya/news/ruto-s-state-house-gets-another-sh890m-for-renovations-5091296#story> (accessed 11 March 2026).

5.2 Delimitation, demarcation and titling of Ogiek ancestral lands

Above all, throughout the litigation, the Ogiek sought – and continue to seek – restitution of their ancestral land in Kenya's Mau Forest. As an indigenous people, the Ogiek's cultural identity is closely linked to their ancestral lands, and the African Court litigation is part of their ongoing efforts to preserve this identity. Despite the government's submissions during the reparations process⁵⁷ that implementation of the *merits* judgment merely required providing the Ogiek with *access* to the Mau Forest, rather than *title* or *ownership*, the Court held in the *reparations* judgment that the Ogiek had an ownership right to the land in the Mau Forest that they had occupied and used over many years. The Court was unequivocal that the government must restitute Ogiek land under collective title and through a process of physical delineation and demarcation, premised on the framework set out in Kenyan legislation and in line with international law:⁵⁸

It is for this reason that physical delineation, demarcation and titling is important. This delineation, demarcation and titling must be premised on, among others, the Respondent State's Community Land Act, 2016, and the Forest Conservation Management Act, 2016, without undermining any of the protections accorded to indigenous peoples by the applicable international law.

This part of the ruling represents the crux of the Ogiek reparations process. The protection of rights to land and natural resources remains fundamental for the survival of indigenous peoples: Simply granting them access to land entirely fails to do so. In this way, the *reparations* judgment set a clear precedent for the restitution of ancestrally owned land on a conservation basis to indigenous communities in Kenya, Africa and beyond.

The most contested issue regarding the implementation of the Ogiek judgments has been the feasibility of returning ancestral Ogiek land in the Mau Forest, both in law and in practice. As the applicant explained to the Court in its oral and written submissions during the compliance hearing, following the delivery of the *merits* judgment, the Ogiek have developed a roadmap towards restitution which was submitted to the Court as part of the reparations process and formed part of the Court's deliberations.⁵⁹ This roadmap provides a systematic process through which land would be returned under a number of communal land titles, vested in common among the members of each

57 *Reparations* judgment (n 13) paras 103-106.

58 *Reparations* judgment (n 13) para 114.

59 Referred to at *compliance* judgment (n 22) paras 54-55.

community, and have agreed a set of bylaws that they would follow to protect and preserve it. Collective title would be granted pursuant to Kenyan law and procedure, including under the Community Land Act, giving effect to article 63 of the Constitution.⁶⁰ It is also consistent with relevant standards as set out in both international law and jurisprudence.⁶¹ Each of the ten Ogiek communities have reviewed and determined the boundaries of their respective community land areas and started mapping the boundaries of their lands for eventual formal survey and registration by the Ministry of Lands Adjudication and Survey Team, in cooperation with Kenya Forest Service. The ten communities have also collated registers of community members, formed community land management committees and, in some instances, have approached the Land Registry to seek registration.⁶²

In its oral and written submissions at the compliance hearing, the government referred to a March 2024 report from Kenya's National Land Commission (NLC), which issued recommendations that it claims give effect to the *reparations* judgment, as part of a programme to address historical injustices.⁶³ These recommendations required, among others, the Ministry of Lands, Housing, Public Works and Urban Development and the Ministry of Interior and Coordination of National Government to identify Ogiek community members who have not benefited from any resettlement scheme so that they can be resettled, to identify appropriate land(s) on which to settle them, to be given as community land, and for Kenya Forest Service to consider giving licences or permits to the Ogiek for user rights or community rights within the Mau Forest complex for the purposes of extracting medicinal properties, bee-keeping and religious activities.⁶⁴ On the other hand, the applicant – on the Ogiek's behalf – submitted that the NLC recommendations were 'at variance and conflicting with

60 For a further analysis of the domestic legal frameworks on community land, see 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* 313-324.

61 *Centre for Minority Rights Development & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009) para 204; *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001); *Case of the Saramaka People v Suriname* (Preliminary Objections, Merits, Reparations and Costs), Judgment of 28 November 2007, paras 110 & 115; *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua* (Merits, Reparations and Costs) Judgment of 31 August 2001, Series C 79 para 153; *Case of the Indigenous Community Yakye Axa v Paraguay* (Merits, Reparations and Costs) Judgment of 17 June 2005 Series C 125, paras 143 & 215; *Case of the Moiwana Community v Suriname* (Preliminary Objections, Merits, Reparations and Costs) Judgment of 15 June 2005 Series C 124 para 209.

62 Referred to at *compliance* judgment (n 22) para 55.

63 National Land Commission (NLC) 'Final determination – Ogiek community of Mau Forest complex March 2024 – National Land Commission' 25 March 2024, <https://landcommission.go.ke/download/final-determination-ogiek-community-of-mau-forest-complex-march-2024-2/> (accessed 11 March 2026).

64 *Compliance* judgment (n 22) para 51.

the reasonings' and very clear court orders relating to the restitution of Ogiek ancestral lands.⁶⁵

On the basis of this evidence, the Court found that the government had failed to complete – or even properly begin – the process of identifying, delimiting and collectively titling Ogiek ancestral lands, despite the establishment of several committees and task forces.⁶⁶ The Court again emphasised the need for a consultative identification, delimitation, demarcation and titling process, with the Ogiek fully involved, in order to ensure equitable processes as well as outcomes.⁶⁷ As such, the Court again provides clear guidance that remedies are often not once-off requirements, but instead entail structural, ongoing obligations. They also involve monitoring and follow-up, ensuring that the affected community actually benefits over time. The Court was also clear that, although this process would require time, remedies should follow a realistic, time-bound path. This could not be deduced either from the legislative or the administrative acts of the government, even though over three years have lapsed since delivery of the *reparations* judgment.⁶⁸

Similarly, in relation to concessions and leases over Ogiek ancestral land, the Court noted that no dialogue had been initiated with third parties regarding leases or concessions on Ogiek ancestral land.⁶⁹ It again emphasised the importance of following equitable process for the resolution of such claims. In adopting this approach when considering compliance with its judgments, the Court affirms that a strictly legal or procedural approach might overlook these historical harms. Equitable processes ensure that justice is not just formal, but fair, inclusive and responsive to historical marginalisation, allowing courts to consider context – colonial legacies, systemic discrimination and cultural survival – when determining remedies. This is particularly important for the Ogiek, given the decades of displacement and other rights abuses that they have faced.

The government was therefore ordered to immediately take all steps to comply with the relevant orders in the *reparations* judgment. However, again the Court did not issue any further orders that the government should take, raising further questions about the enforceability of the Court's rulings as a result of the *compliance* decision.

65 *Compliance* judgment (n 22) para 57.

66 *Compliance* judgment (n 22) para 64.

67 *Compliance* judgment (n 22) para 61.

68 *Compliance* judgment (n 22) para 63.

69 *Compliance* judgment (n 22) para 72.

5.3 Recognition of the Ogiek as an indigenous population

In its oral and written submissions, the government stated it had recognised the Ogiek by enumerating the Ogiek as a distinct group community within the 2019 census, and that it had 'recognised the Ogiek language, culture and religious practices'. However, it also submitted that the Ogiek were not 'a unique community but a community that has different representatives, different views, different visions'.⁷⁰

The applicant, on the Ogiek's behalf, explained that the recognition of the Ogiek via the 2019 census is insufficient to provide for full recognition of the Ogiek as an indigenous people in Kenya: It is purely an administrative step that does not provide for full recognition of their language and cultural and religious practices, as specified in the *reparations* judgment.⁷¹ It also argued that full recognition should be demonstrated through the effective implementation of the court orders, including restitution of ancestral land and all rights that the Court found had been violated.⁷²

The Court found that full compliance with this order requires more than nominal recognition: Full and effective recognition requires the government to deliberately create conditions in which the Ogiek can exercise the full range of their rights, on an equal basis with others.⁷³ The Court is thus taking a transformative approach to compliance with court judgments, requiring wider legislative, administrative and institutional action that will address the economic and legal barriers that the Ogiek have faced over many years. This should include protection of their land rights, respect for their cultural rights, participation in decisions affecting them, and legal enforcement of those rights – in essence, implementation of the judgment in full, in letter and in spirit. This aligns with the approach taken by the Court in the *reparations* judgment: The remedies are deeply embedded, shaped and defined by Ogiek traditional and cultural realities.⁷⁴

Accordingly, the Court held that, as this had not yet been achieved, the order had not yet been fully implemented, and required the government to fully comply without undue delay. This

70 *Compliance* judgment (n 22) paras 75 & 77.

71 *Compliance* judgment (n 22) para 78.

72 *Compliance* judgment (n 22) para 80.

73 *Compliance* judgment (n 22) paras 81-82.

74 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, 363.

again underscores the Court's approach to remedies: States have a continuous duty to repair harm and prevent it from recurring. This includes structural changes, such as restoring land rights, recognising indigenous status and changing laws and policies.

5.4 Right to consultation

In the *reparations* judgment, the Court made it very clear that the Ogiek's rights to consultation was paramount during the reparations process. First, in relation to the Ogiek's ancestral land, it ordered the Government to take necessary legislative, administrative or other measures to recognise, respect and protect the rights of the Ogiek to be effectively consulted, in accordance with their traditions and customs, and/or with the right to give or withhold their free, prior and informed consent (FPIC), in relation to both any development of their lands. In addition, and of particular importance, it also ordered that the government should ensure the full consultation with and participation of the Ogiek in the reparations process *as a whole*.⁷⁵

In this respect, the Court considered evidence submitted prior to and during the compliance hearing, including the government's failure to fully consult the Ogiek when establishing an Inter-Ministerial Committee and Task Forces looking into implementation of the judgments, when issuing Presidential decisions lifting restrictions on land transactions in the Mau Forest and fencing off the Mau Forest complex requiring all occupants to leave, and in relation to the October 2023 evictions of Ogiek from their lands in Maasai Mau.⁷⁶ The Court was unequivocal that consultation is both *a process as well as an outcome* – it is necessary for the full realisation of Ogiek rights – and that such consultation should be culturally appropriate.⁷⁷ This obligation applies both to development, conservation or investment projects on Ogiek land, and also to all processes related to the implementation of the judgments. As the consultation efforts were often inadequate or absent, and the Ogiek were excluded from some key decision-making processes, the Court considered that its orders on consultation had not been fully implemented, and ordered the government to immediately implement necessary measures to ensure full compliance.⁷⁸

The right to consultation in the case of the Ogiek is crucial for several reasons: It transforms indigenous participation from a

⁷⁵ *Reparations* judgment (n 13) paras 144-145.

⁷⁶ *Compliance* judgment (n 22) paras 85-92.

⁷⁷ *Compliance* judgment (n 22) para 93 (my emphasis).

⁷⁸ *Compliance* judgment (n 22) para 98.

policy preference into a legally enforceable requirement and, in the compliance phase, it becomes a key test of whether justice is actually being implemented on the ground. Although the Court did not always specifically refer to the term FPIC, its reasoning aligns closely with this principle. The Court affirmed that consultation must be meaningful, not symbolic; it must occur before state action; and communities must have adequate information and genuine influence. In the compliance stage, this means that the Kenyan government must demonstrate that any measures affecting the Ogiek involve real participation, not just administrative procedures. This aligns with applicable international law, as reflected in the *merits* and *reparations* judgments.⁷⁹

5.5 Guarantees of non-repetition

In its written and oral submissions, the government stated that it had established the Ogiek Task Force and an Inter-Ministerial Committee on implementation of the judgments, although the latter had not yet finalised its report. It claimed that ‘significant steps are being made towards giving effect to the orders of the Court with full involvement and consideration of the views of the Ogiek’ and referred to ‘several challenges impeding the implementation processes’, including ‘the historical and socially complex nature of some of the issues ... competing international law obligations on the Kenyan state ... and contradictory domestic legislation and judicial decisions which present complicated obstacles to overcome’.⁸⁰ The government, however, also claimed that full compliance with the Court’s orders requires both considerable financial outlay and time for fulfilment.⁸¹ The applicant, on the Ogiek’s behalf, referred to articles 27(1) and 30 of the African Court Protocol, which mandate a state to remedy the violation(s) and implement the judgment within the time stipulated.⁸²

Having considered the totality of the government’s written and oral submissions, the Court found that while the government had expressed a commitment to taking measures to guarantee non-repetition of violations, these lack specificity.⁸³ The applicant had also submitted significant evidence of continued violations (discussed further below) indicating that the government has engaged in acts further undermining the Court’s orders after delivery of the

79 Eg, *Saramaka People* (n 61) paras 133-137.

80 *Compliance* judgment (n 22) paras 100-102.

81 *Compliance* judgment (n 22) para 102.

82 *Compliance* judgment (n 22) para 103.

83 *Compliance* judgment (n 22) para 105.

reparations judgment. The government, therefore, had not complied with this order and was ordered to immediately take steps to do so.⁸⁴

The guarantee of non-repetition is one of the most forward-looking aspects of the *reparations* judgment. By including this order, the Court made it clear that paying compensation alone is not enough. Guarantees of non-repetition require the Kenyan government to reform laws and policies affecting land and forests and address systemic discrimination against indigenous groups. This transforms the *reparations* judgment from a one-time remedy into a long-term reform obligation: a tool for systemic transformation.⁸⁵ It shifts the focus from simply remedying past harm to preventing future violations against the Ogiek. In addition, in the *compliance* decision, the guarantee of non-repetition becomes a test of whether the state has changed its behaviour and legal framework sufficiently to ensure that the same violations will not happen again.

5.6 Publication of judgments

One of the most readily actionable measures the Kenyan government could have taken to implement the judgments was to publish the official summaries of both in the official *Gazette* and in a newspaper of wide circulation, on an official government website for a period of at least one year – by December 2022.⁸⁶ This would not only have demonstrated compliance with the relevant part of the *reparations* judgment, but also provide a broader indication of the government's intention to implement the Court's other orders and start to provide a healing process for the historical injustices meted out on the Ogiek.⁸⁷

During the compliance hearing, the government seemed unable to provide a credible response to specific and repeated questions from the Court as to why the judgments had not been gazetted and published, referring simply to the difficulties of doing so during the transitional political period in Kenya between 2022 and 2023, and

⁸⁴ *Compliance* judgment (n 22) para 106.

⁸⁵ See C Ngaiza 'Dispensing justice through reparations: Benchmarking the decision of the African Court on Human and Peoples' Rights in the *Ogiek* case in protecting indigenous peoples' right to development in Tanzania' (2025) 9 *African Human Rights Yearbook* 497-514, for a discussion on how the *reparations* judgment establishes precedent for the dispensation of justice through restorative measures and how remedies for collective rights violations require affirmative state action beyond mere financial relief.

⁸⁶ *Reparations* judgment (n 13) para 160(xiv).

⁸⁷ A summary of the judgments was in fact published in the *Daily Nation* on 27 March 2024 by a non-governmental organisation, the Kenya Human Rights Commission on behalf of the Ogiek, in solidarity with the community and in order to create wider awareness of the orders following grave concerns over Ogiek evictions in late 2023.

stating that it does intend to publish the judgment in the fullness of time.⁸⁸ No further information or timeline was offered. The applicant, on behalf of the Ogiek, countered that publication of the judgments would not require significant financial outlay and that even within times of political transition, government institutions did not stop functioning.⁸⁹

Rejecting the government's explanation that the political transition had delayed this process, the Court found that – despite explicit instructions – the government had failed to publish the judgments, and ordered it to immediately do so.⁹⁰

Publication of the judgments was aimed at encouraging the government to acknowledge the historic violations meted out on the Ogiek, representing an acceptance of the past and a desire to move forward – while also contributing to narrative change. The failure to take these steps arguably indicates the government's reluctance to accept the past and take steps to change the Ogiek's future.

5.7 Reporting to the African Court

In the *reparations* judgment, the Court had set a one-year timeframe for the respondent to provide a report on the status of implementation of all its orders. In fact, despite regular reminders from the African Court, by the time the compliance hearing was initially scheduled for November 2024, the government had failed to submit a report on the status of implementation of the *reparations* judgment (the Court deadline having passed approximately 18 months earlier). A report was eventually filed just three weeks before the rescheduled June 2025 hearing, nearly two years late.⁹¹

During the compliance hearing, the government relied on comparative jurisprudence, particularly from the Inter-American human rights system, to claim that implementation is very difficult to achieve in full, and that this jurisprudence indicates that compliance with judgments from regional courts can take between 8 and 11 years.⁹² The government referred to a need for 'reasonable time' to comply, although it could not really define that further, despite questions from the Court. It simply referred to the practical difficulties of providing a precise timeframe for the different steps needed to

88 See recordings of Compliance Hearing, African Court YouTube channel (n 18).

89 *Compliance* judgment (n 22) paras 117-118.

90 *Compliance* judgment (n 22) paras 119-120.

91 *Compliance* judgment (n 22) para 10.

92 See recordings of Compliance Hearing, African Court YouTube channel (n 18).

implement the judgments, and stated that it would be willing to commit to dialogue. In their oral intervention, the representative for the *amici curiae* stated that such a timeframe would not be a reasonable benchmark. Such consistent delay, without specifying timelines by which the Ogiek can expect the relevant orders to be respected, does not indicate that the government is committed to transformative reparations, including the acknowledgment of past harm and the building of a mutually respectful relationship for the future.⁹³

The Court appeared to take into account the *amici curiae*'s submissions in particular, reiterating the obligation of governments to comply with all its orders as prescribed by article 30 of the African Court Protocol and, holding that this order had not been implemented, ordered the Kenyan government to submit a detailed implementation plan within six months (by 4 June 2026), including timelines, responsible institutions, land-titling methodology, mechanisms for reparations and safeguards against further evictions.

In taking this approach, the Court went beyond formal compliance and stressed substantive, good faith implementation: States must not take actions that undermine the spirit of the judgment (for example, continued evictions), and partial or superficial measures are insufficient. This introduces a qualitative standard of compliance – good faith and effectiveness, not just formal reporting.

5.8 Provisional measures order and alleged continued violation of Ogiek rights

The *compliance* judgment makes it abundantly clear that eight years after the delivery of the *merits* judgment, and despite the far-reaching findings of the Court, the subsequent clear court orders in the *reparations* judgment, and considerable efforts by the Ogiek to engage with relevant Kenyan institutions, the Kenyan state still failed to remedy the Ogiek's rights.⁹⁴ In addition, as argued by the applicant on behalf of the Ogiek during the compliance hearing,⁹⁵ the Ogiek contended that the Kenyan government had taken actions that actively contravene both judgments, which comprise continuing

⁹³ As above.

⁹⁴ For a detailed analysis of the steps taken to implement the *merits* judgment in the first few years following its delivery, see Katiba Institute & Ogiek Peoples Development Programme 'Defending our future: Overcoming the challenges of returning the Ogiek home' July 2020, <https://katibainstitute.org/wp-content/uploads/2020/07/Ogiek-Katiba-Book-Defending-our-future.pdf> (accessed 11 March 2026).

⁹⁵ See recordings of Compliance Hearing, African Court YouTube channel (n 18).

and new violations of the Ogiek's rights and directly undermine meaningful implementation of the judgments, in violation of article 1 of the African Charter, and sought a provisional measures order to prevent further violations of Ogiek rights.

The applicant's arguments in open court focused on the numerous actions of the government that fundamentally contravened the judgments.⁹⁶ These included the forced evictions and burning of Ogiek homes, and the titling of Ogiek land to non-Ogiek. In October and November 2023, following an order direct from the Ministry of the Environment, Kenya's Rift Valley Regional Commissioner took steps to remove 'illegal forest dwellers' from Ogiek ancestral land at Sasimwani and Nkareta, Narok county.⁹⁷ The Ogiek communities living in these locations were included in Application 6/2012 before the Court and, therefore, were the subject of the *merits* and *reparations* judgments. Dozens of armed Kenya Forest Service (KFS) and Kenya Wildlife Service (KWS) guards invaded Ogiek ancestral lands in a violent campaign characterised by the burning of houses and schools, the destruction of property and seizing of livestock, forcefully evicting more than 700 Ogiek community members, rendering them homeless and destitute. Ogiek human rights defenders and community leaders bore the brunt of the violence during the eviction process, facing targeted intimidation and harassment by KFS officers, and they remain in a desperate situation: evicted from their homes, without access to livelihoods, health care or education.⁹⁸ Not only are these developments of extreme concern to the entire Ogiek community, who live in continual fear of being deprived of their rights and denied their livelihoods, but the Ogiek view these as clear and ongoing violations of several of the orders of the *reparations* judgment.⁹⁹

96 As above.

97 *Compliance* judgment (n 22) para 88.

98 Extensive affidavit evidence was submitted to the Court covering these events prior to the Compliance Hearing, and referred to by applicant's counsel during the hearing itself (see recordings of Compliance Hearing, African Court YouTube channel (n 18)). The events were also widely reported in national and international media; see, eg, C Kimeu "'We are living in absolute fear': Call to stop indigenous evictions in Rift Valley' *The Guardian* 8 November 2023, <https://www.theguardian.com/global-development/2023/nov/08/we-are-living-in-absolute-fear-call-to-stop-indigenous-evictions-in-rift-valley> (accessed 11 March 2026); C Marshall 'Kenya's Ogiek people being evicted for carbon credits – Lawyers' *BBC News* 9 November 2023, <https://www.bbc.com/news/world-africa-67352067> (accessed 11 March 2026); and 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/> Violent evictions are latest ordeal for Kenya's Ogiek seeking land rights (accessed 11 March 2026).

99 As stated by applicant's counsel at the compliance hearing: See recordings of Compliance Hearing, African Court YouTube channel (n 18).

In an urgent attempt to prevent further evictions and further human rights violations being meted out upon them, the Ogiek resorted to the Kenyan courts, seeking conservatory orders in Kenya's Environmental and Land Court (ELC). However, in its decision delivered in May 2024,¹⁰⁰ the Nakuru ELC dismissed the claims of the Ogiek to their rights of ownership, occupation, access to and use of their ancestral land in the Mau Forest.¹⁰¹ The ELC found that the Mau Forest is gazetted as a public forest pursuant to relevant legislation and has not been degazetted. Therefore, the case had no merit, despite the fact that the same land had been declared Ogiek ancestral land in the *merits* judgment. Since then, the government has convened a series of public fora to discuss how to implement the Nakuru ELC ruling, culminating in a rushed demarcation process that started in April 2025, without the necessary consultations with the Ogiek.¹⁰²

The applicant also referred to the lack of meaningful efforts towards implementation, from the failure to gazette and publish the judgments, to the failure to recognise the Ogiek, to the failure to adequately consult the Ogiek in accordance with their traditions and customs, and with the right to give or withhold their FPIC, and the overall failure to implement the judgments and show good faith towards the Ogiek and to respect their rights to lead a life with dignity. The applicant sought a roadmap from the Court which would specify detailed timescales and steps towards implementation: Although the *reparations* judgment had set clear steps and deadlines, these had so far not been sufficient to encourage compliance.¹⁰³ The applicant also sought continued engagement of the Court in the implementation process on behalf of the Ogiek, suggesting that an independent mechanism could be established to liaise with both parties and the Ogiek to develop this roadmap and report back to the Court under Rule 81, in addition to the Court holding follow-up compliance hearings.

100 *Ngusilo (Suing as the Chairman of the Ogiek Council of Elders) & 2 Others v Attorney General & 5 Others* (Petition 1 of 2023) [2024] KEELC 4427 (KLR) (30 May 2024) (Judgment), <https://share.google/dZDusJhfiQ8Zh3sC> (accessed 11 March 2026).

101 As above.

102 The UN Special Rapporteur on the Rights of Indigenous Peoples expressed concern about these developments in a press release: Office of the United Nations High Commissioner for Human Rights (OHCHR) 'Kenya: UN expert urges immediate halt to land demarcation violating Ogiek rights and African court judgments' 4 June 2025, <https://www.ohchr.org/en/press-releases/2025/06/kenya-un-expert-urges-immediate-halt-land-demarcation-violating-ogiek-rights-and-african-court-judgments> (accessed 11 March 2026).

103 Further orders of the Court are possible under Rule 81(3) of the African Court's 2020 Rules.

In response, the government failed to rebut these allegations, instead referring to the 'historical complexity and sensitivity of the land issue in Kenya', and referring to international treaties that impose duties to protect and manage the environment not only for the benefit of the Ogiek but also for Africa.¹⁰⁴

The *amici curiae* provided in their oral intervention¹⁰⁵ that, under Rule 81(3), the Court could order the Kenyan government to submit a roadmap that, in respect of each reparation, identifies the ministries and government departments responsible for its implementation; the practical processes – including relevant people and actions – involved; and deadlines by which certain tasks needed to be completed, in line with those identified by the Court in its *reparations* judgment. Although the *reparations* judgment had set clear steps and deadlines, these had so far not been sufficient to encourage compliance.¹⁰⁶ Noting that implementation is not linear and can improve but also backtrack, the *amici curiae* raised the importance of having various stages where progress made by the government of Kenya can be acknowledged, but also a decision taken on where there has been no compliance. Each stage can be individually assessed, including via a further compliance hearing under article 31 of the Court Protocol and Rule 81(3) of the Rules of Court.

However, the Court took a more neutral approach to this issue, considering that the request for provisional measures arises from the non-implementation of the Court's orders. It therefore declined to impose sanctions or provisional measures, deciding that full compliance with the judgments would address the harms alleged by the Ogiek, and signalling an expectation that the Kenyan government must now implement the rulings without delay.¹⁰⁷ It may be that the Court preferred to take a more cautious approach as it develops its jurisprudence and approach in this area. It is notable that the Inter-American system takes a bolder stance: Failure to comply with an Inter-American Court judgment, including reparation orders, can constitute an internationally wrongful act that violates article 25, in conjunction with article 1(1) of the American Convention, because it renders the judicial remedy illusory and ineffective.¹⁰⁸

Nonetheless, the Court emphasised that it was of 'utmost importance for the respondent state to desist from engaging in any

104 *Compliance* judgment (n 22) para 134.

105 See recordings of Compliance Hearing, African Court YouTube channel (n 18).

106 Further orders of the Court are possible under Rule 81(3) of the African Court's Rules.

107 *Compliance* judgment (n 22) para 138.

108 Bailliet (n 44) para 26.

conduct that may undermine any of its orders in this matter'.¹⁰⁹ The Court reaffirmed the general principle of international law that a state cannot invoke its domestic laws to justify a breach of its international obligations.

It ordered the government to stop and desist from any actions or conduct that may in any way undermine the terms of both judgments, and ordered the respondent to file a report on the implementation of the Court's decisions within six months of the date of the order, to include a clear and specific indication of state of implementation of all the orders issued by the Court in this matter.¹¹⁰ The report remains pending. This approach perhaps is understandable given that the Court's focus at this stage of the *Ogiek* case was on implementation, not on re-litigation of the issues. The Court avoided using provisional measures as a 'back-door' enforcement tool of the judgments. However, it does demonstrate some of the limits of the Court's enforcement process, relying instead on reporting, monitoring and political pressure via the AU bodies, rather than coercive interim orders.

6 Legal and political significance of the decision

The *Ogiek compliance* judgment transforms compliance with African Court judgments from a political issue to a justiciable legal question. It underscores the Court's clear authority and readiness to oversee how its rulings are implemented. It confirms that the Court can find states in breach of their obligations under its judgments, and issue additional binding directives when necessary. Importantly, the decision reinforces the principle that states are not free to pick and choose which parts of a ruling to implement. Given one of the critiques of international human rights law is weak enforcement, the decision directly shows that the Court is willing and able to publicly identify and condemn non-compliance, and to order further concrete implementation plans with timelines. In doing so, it sets a significant precedent for all African states under the Court's jurisdiction, helping to ensure that full reparations are provided to victims of human rights abuses.

However, ultimately, implementation of court rulings is determined by states' political will, based on their domestic and international priorities. The Court does not have direct enforcement power. Unfortunately, when it comes to indigenous rights, many

¹⁰⁹ *Compliance* judgment (n 22) para 140.

¹¹⁰ *Compliance* judgment (n 22) para 141.

governments resist collective land titling because it challenges state ownership assumptions and the ‘accepted’ model, which centralises control over forests and mineral resources and threatens lucrative land-use concessions. In practice, enforcement of court decisions depends on political follow-up by bodies such as the Assembly of the AU, which can issue decisions or recommendations urging compliance. Implementation reports from states can be transmitted to the political level of the AU, particularly the Executive Council of the AU, which formally monitors the execution of judgments. The Court also submits an annual activity report to the AU Assembly, highlighting cases of non-compliance and drawing political attention to states that have failed to act.¹¹¹ Indeed, the applicant had sought to argue, on the Ogiek’s behalf, that should the Court conclude that the Kenyan government has failed to comply with the judgments, the Court can, in accordance with article 31 of the African Court Protocol and under Rule 81(4) of the Court Rules, report the non-compliance to the Assembly of Heads of State and Government of the AU. However, the Court chose not to take that action in this case. In addition, these organs typically rely on diplomatic pressure, peer review and naming-and-shaming, rather than binding sanctions, which limits the overall effectiveness of the system.

For the Ogiek – and for other indigenous peoples in Africa and beyond – the decision has indirectly strengthened indigenous rights jurisprudence. Although the Ogiek’s rights were articulated earlier in the merits judgment, the compliance decision is a step towards ensuring those rights – to land, to culture and to FPIC – are practically realised. The ruling also reinforces the concept that indigenous rights require structural implementation, not just recognition. The Court was explicit that the government must stop and desist from any action or conduct that may, in any other way, undermine the judgments. Implementing these rulings, therefore, is not simply just following the Court’s orders – it requires respect for their spirit and the Ogiek’s rights as an indigenous people.

To date, the Court’s *merits* and *reparations* judgments have empowered the Ogiek,¹¹² restoring their faith in the justice system, albeit somewhat shattered due to the lack of implementation and recent evictions. The *compliance* decision has rekindled the Ogiek’s

¹¹¹ Art 31 African Court Protocol (n 9)

¹¹² See, eg, Ogiek Peoples’ Development Programme ‘Achievements’, www.ogiekpeoples.org/achievements (accessed 11 March 2026) and L Claridge ‘Litigation as a tool for community empowerment: The case of Kenya’s Ogiek’ (2018) 11 *Erasmus Law Review* 57; J Gilbert ‘Litigating indigenous peoples’ rights in Africa: Potentials, challenges and limitations’ (2017) 66 *International and Comparative Law Quarterly* 657–686.

hope that justice denied for generations might finally be realised, and for Kenya, it presents a chance to demonstrate leadership in indigenous rights and environmental stewardship. The next steps on implementation are eagerly awaited by both the Ogiek community and those monitoring the Court's ability to require states to both comply with its rulings and to report regularly on progress, in order for the Ogiek to receive full reparative justice.