

## AFRICAN COMMISSION OF HUMAN AND PEOPLES' RIGHTS

VS

### KENYA (THE 'OGIEK CASE')

#### THE OGIEK

The Ogiek are one of the largest forest-dwelling hunter-gatherer communities in Kenya. Comprising of approximately 20,000 people, they live in or near the highland forests of central Kenya. They are among some of the **most marginalized of all indigenous peoples and minorities in Kenya**.

It has long been established that the Ogiek have a spiritual, emotional, and economic attachment to the forest; they are a nomadic hunter gatherer group **dependant on the forest** for food (honey), medicine, shelter and preservation of their culture. Their traditional, religious, and cultural lifestyles revolve around access to the natural resources of the forest. Yet, dating as far back as the colonial period, the Ogiek have been routinely subjected to arbitrary **forced evictions from their ancestral land**, without consultation or compensation. This loss of land often comes from state-sponsored conservation efforts, resulting in the forced eviction of the Ogiek communities from their ancestral lands and the denial of access to the forest resources upon which they depend for their survival.



#### ACHPR CASE

In **2009**, the government of Kenya issued an eviction notice to the Ogiek; they were given just **fourteen days to vacate the Mau Forest area**, prompting the Ogiek community to seek justice at the regional level. The Ogiek Peoples' Development Program (OPDP) started a case before the Commission, arguing that this eviction would have far reaching consequences on the political, social and economic survival of the Ogiek community. Specifically, they submitted that the Government is **in violation of Articles 1, 2, 4, 8, 14, 17, 21 and 22 of the African Charter of Human and Peoples' Rights (ACHPR)**.

In late 2009, MRG became involved in the case and has taken the lead role in litigating it before the Commission, and, from 2012, the Court. This was one of the first cases brought by NGOs to have been referred to the African Court by the African Commission - on the basis that it evinces serious and mass human rights violations. **It is the first case to have reached hearing stage.**

The case is based on the claim that violations of the Ogiek's rights to property, natural resources, development, religion, culture and non-discrimination are a **gross violation of human rights**, in accordance with the African Charter on Human and Peoples' Rights. It is also a **violation of the right to life**, because the eviction threatens Ogiek livelihoods. It seeks to establish that indigenous peoples' rights should not be subsumed to the interests of conservation.



## KEY DATES

- In **early 2010**, the Ogiek were informed that the recent round of evictions would not proceed.
- In **2010** the UN Special Rapporteur on Indigenous Peoples includes a large section about the proposed evictions in his annual report to the UN Human Rights Council, following lobbying by MRG and OPDP.
- In **March 2012**, at the 11th extraordinary session of the Commission, the decision was made to refer the matter to the African Court on Human and Peoples Rights on the basis that it manifested serious and mass human rights violations.
- In **March 2013** the Court issued a **temporary measure in favour of the Ogiek community** – the first time that the Court has issued such an order in support of an indigenous people. The Court ordered the government of Kenya to halt distributing land in the forest area until a decision was reached on the matter. The government was also to refrain from any act that would or might irreparably prejudice the main application, until the Court gives its final decision.
- In **February 2014**, failure from the Kenyan government to comply with this mandate was still an issue so the non-compliance was the subject of an interlocutory application to the Court, requesting that the Court issue a finding of non-compliance against the Kenyan Government.
- On **November 27 & 28 2014** there was a hearing on the case at the African Court in Addis Ababa. The Court heard arguments from the African Commission legal team as well as two Ogiek witnesses, an expert witness, and an intervention by MRG on behalf of the original Complainants. MRG also supported 25 Ogiek to attend the hearing in person and supported a further 40 Ogiek to view the hearing live in Kenya via the live stream link.
- **In the meantime**, while the judgement is still pending, there have been **continuing violations of the provisional measures order**, with a **violent eviction of approximately 1,000 Ogiek** and police intimidation. The Kenyan Government has also announced its plans for the Mau Forest Complex, which will soon become government land and its inhabitants relocated.

## MRG

MRG is a leading non-governmental organization working to **secure the rights of ethnic, religious and linguistic minorities and indigenous peoples** worldwide, and to promote cooperation and understanding between communities. The case is being handled by MRG's *strategic litigation programme*, established in 2002. The programme assists minority and indigenous communities to bring test cases before international and regional human rights bodies with the specific aim of **establishing precedents that will have far-reaching effects**, and thus positively influence the

position of other minority and indigenous groups suffering similar violations in the same or other countries. This litigation is accompanied by holistic advocacy work which is carefully developed in conjunction with the community and local lawyers. MRG also helps to **build the capacity of local communities and those representing them** to ensure that these communities can demand the implementation of their rights on their own, outside the framework of this Programme, including through the establishment of trained paralegal networks.

