

Case summary

By Katherine Iliopoulos, 25 March 2013

Application 006/2012 African Commission v. The Republic of Kenya [provisional measures]

Application

Commission instituted proceedings against Kenya under Article 5(1)(a) alleging serious and massive violations of human rights guaranteed under the Charter. The application was lodged on behalf of the Ogiek Community of the Mau Forest, an indigenous minority ethnic group, 75% of which inhabit the greater Mau Forest complex. The Kenyan government issued a 30 day eviction notice to the Ogiek and other settlers on the grounds that the forest was a reserved water catchment zone and part of government land. Commission is concerned that implementation of the eviction notices will have far reaching political, social and economic implications for the Ogiek as eviction will lead to the destruction of means of survival, culture, religion and identity. Alleged that the rights enshrined in Articles 1, 2, 4, 14, 17(2) and (3), 21 and 22 of the Charter are violated as a result of the evictions. Commission seeks an order to halt the eviction, recognise the community's title to the land and an order for compensation.

The request for provisional measures was submitted on 31 December 2012, pending resolution of the application, pursuant to Article 27(2) of the Protocol.

Decision

Court satisfied it has *prima facie* jurisdiction to deal with the application and recognised “a situation of extreme gravity and urgency as well as a risk of irreparable harm to the Ogiek Community with regard to their rights guaranteed under the Charter” to (i) enjoyment of cultural rights; (ii) protection; (iii) integrity of their persons; (iv) property and (v) economic, social and cultural development.

Court ordered provisional measures, without prejudice, to preserve the *status quo ante*. Ordered that Kenya immediately reinstate the restrictions imposed on land transactions in the forest and to refrain from any act that might irreparably prejudice the main application. Kenya must report to the Court within 15 days on the measures taken to implement this Order.

Comment:

This is the second instance in which the Court has ordered provisional measures and in which the Commission has acted on behalf of individuals (in this case, a community). Since Kenya has not made a declaration under Article 34(6) of the Protocol, NGOs and individuals cannot bring direct petitions against Kenya. Given the scarcity of declarations under Article 34(6) of the Protocol, the willingness of the African Commission to act on behalf of NGOs and individuals is becoming increasingly important.

African Commission v. Libya [provisional measures]

