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[Landmark Decision on the Eviction of Indigenous People in Kenya](#)

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On February 4, 2010, the African Union adopted the decision by the African Commission on Human and Peoples' Rights issued in May 2009, which ruled in favor of an indigenous group in Kenya.^[i] It is a remarkable decision because it is the first time that an African institution defends the politically most marginalized peoples. The case was brought before the African Commission on Human and Peoples' Rights on behalf of the Endorois community by the Centre for Minority Rights Development,^[ii] a non-governmental organization in Kenya, and Minority Rights Group International.^[iii]

The Endorois are a traditional community of approximately 60,000 nomadic pastoralists. In the 1970s they were evicted by the Kenyan government from their home in central Kenya (Lake Bogoria in the Rift Valley and the Mochongoi forest on the Laikipia Plains). The Endorois have a special connection with this (fertile) land area: it was the centre of their religion and culture and their ancestors are buried nearby.

The Kenyan government deprived the Endorois from their ancestral homeland for the creation of a national reserve and tourist facilities. They were forced to move to (semi)-arid land as a result of which many of their cattle died.

The Endorois first brought their case before Kenyan courts, but after these refused to address it, the pastoralist community turned to the African Commission on Human and Peoples' Rights in 2003. While the Commission issued its ruling in May 2009, it is only celebrated since February 2010: only since its adoption by the African Union, the decision has become legally binding upon the Kenyan government.

The African Commission found violations of several articles of the African Charter on Human and Peoples' Rights, which Kenya ratified in 1992:

- Article 8: The forced eviction of the Endorois from their ancestral lands by Kenya interfered with their right to religious freedom.
- Article 14: The property of the Endorois people has been severely encroached upon since their expulsion. As such, their right to property has been breached.
- Article 17 (2) and (3): The forced resettlement of the Endorois to semi-arid land has led to a major threat to their pastoralist way of life and therefore to a denial of the essence of their right to culture.
- Article 21: The Kenyan government has not only violated the Endorois' right to freely dispose of their wealth and natural resources, but also its obligation to provide restitution and compensation in cases of spoliation.
- Article 22: The Kenyan government did not adequately provide for the Endorois in the development process and therefore breached their right to development.

The African Commission called on the Kenyan government to recognize rights of ownership to the Endorois, to restore their historic land and to pay adequate compensation to the community for the loss suffered.

Since February 4, 2010, Kenya is legally obliged to implement the decision. Importantly, the African Union has the power to impose sanctions in case of non-compliance.^[iv] Nevertheless, it remains to be seen to what extent the government will effectively put into practice the decision. In recent years, attempts have been made to carry out land reforms as to restore land to or to compensate those illegally evicted. These reforms have never been completed, but in 2009 a new land policy was introduced in Kenya which still needs to be implemented on the ground.^[v]

While the decision truly is a victory particularly for the Endorois community, the effect of it may well reach far beyond Kenya and the Endorois. It could set a legal precedent for other (African domestic) jurisdictions and it could influence land use decisions of governments throughout the African continent. From now on governments might think twice before implementing tourism programs that are detrimental to the livelihoods of indigenous peoples.

With the African Commission's decision, it is the first time that an international human rights body gives effect to the right to development,^[vi] which is enshrined in the African Charter on Human and Peoples' Rights.^[vii] It is also the first time in Africa that the concept of indigenous people was recognized (contrasting the idea that all Africans are indigenous), as well as the land rights owned by indigenous people. The African Commission considered the land area historically occupied by the Endorois to be their property.

Above all, the decision of the African Commission and the subsequent adoption of it by the African Union seem to indicate that both institutions are dedicated to take seriously the rules laid down in the African Charter on Human and Peoples' Rights. A sign of justice that is very much welcome on the African continent.

^[i] UNHCR, www.unhcr.org/refworld/publisher/ACHPR,,,4b8275a12,0.html.

^[ii] ESCR-Net, www.escr-net.org/.

^[iii] Minority Rights Group International, www.minorityrights.org/.

^[iv] Article 23 (2) of the Constitutive Act of the African Union, http://www.africa-union.org/root/au/AboutAu/Constitutive_Act_en.htm#Article7.

^[v] Business Daily, <http://www.businessdailyafrica.com/Company%20Industry/-/539550/615332/-/item/0/-/3s83unz/-/index.html>.

[vi] Human Rights Watch, <http://www.hrw.org/en/news/2010/02/04/kenya-landmark-ruling-indigenous-land-rights>.

[vii] Article 22.

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