

Landmark decision for African indigenous communities

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The African Commission on Human and Peoples' Rights (ACHPR) have ruled that the eviction of the Endorois people from their land in the 1970s by the Kenyan government violated their right as an indigenous people to property, health, culture, religion and natural resources. It is a ruling that could have great influence on land claims made by indigenous peoples all over Africa.

In the early 1970s, the indigenous Endorois people were evicted from their ancestral land by the Kenyan government. Living in the Rift Valley around Lake Bogoria, they inhabited a place known for its abundance of pink flamingos and geothermal hot springs. The government had decided that this would be a good location for a game reserve.

The Endorois have traditionally lived as cattle herders, and their community consists of about 60,000 people. With their forced removal from their land, the community lost not only their livelihood but also their historical prayer grounds and sacred burial sites. They are now living on arid land, and many of their cattle have died. Moreover, the Kenyan state has not kept most of its promises, which included, among other things, to use part of the income generated from the game reserve to build infrastructure for the Endorois on their new land. Instead, most of the Endorois live on food aid and have to make long walks to get access to water and electricity. Since the relocation, the state has sold parts of the area to a ruby-mining company.

In 1998 the Endorois community and the Centre for Minority Rights Development initiated a court case against the Kenyan state to challenge the eviction and to receive restitution. The case was dismissed in 2002. Although the Kenyan High Court recognised that the land had been in the trust of the Endorois before 1973, it ruled that when the Kenyan government designated the area as a game park, the community effectively lost any right to it. The court decided that, with

the payment of the relocation costs for the remaining 170 families living on the land in 1986, the state fulfilled all its remaining duties to the community.

Case in African Commission on Human and Peoples' Rights

The community did not give up, however. In 2003 it took the case to the African Commission on Human and Peoples' Rights. The ACHPR is based in the Gambia and upholds the African Charter, a human rights treaty signed and ratified by 53 African countries. The commission has had difficulties in getting countries to comply with its decisions. However, since its rulings are also ratified by the African Union, there can be significant political pressure on states to follow up.

The hearing of the Endorois case was delayed several times by the Kenyan government, which missed numerous deadlines on submissions and also protracted negotiations with the commission and the community. After a three-year wait, the case was finally initiated in 2006.

The African Commission on Human and Peoples' Rights handed down their judgement in May 2009. They determined that the Endorois, having a historic attachment to particular land, are a distinct indigenous people, something that is contested by some African governments, who claim that all Africans are indigenous. They found against the Kenyan government for continuing to rely on a colonial law that prevented indigenous communities from owning land outright and allowed local

authorities effectively to own it for them on "trust". In an important break with past practice, they recommended that the Kenyan state should recognise that the Endorois had rights of ownership to the land, and instructed them to give back to the Endorois their ancestral land. They also ruled that the Kenyan state should compensate the Endorois for losses suffered during eviction. The decision was ratified and made public by the African Union in February 2010.

Importance for indigenous people in Africa

This is a landmark decision. The ruling means that indigenous people have gained a pan-African recognition of their rights to land and development, even though they do not have a formal title to the land. It is the first time that the court has specifically recognised the traditional ways of living for indigenous people centred around their ancestral land and the practice of their religion and culture there. The ACHPR has set a precedent that could have great influence for settling cases involving wrongful evictions of indigenous people.

It is still not clear whether the Kenyan government will recognise and comply with the decision, as they have previously ignored rulings from the ACHPR. Several NGOs have already indicated that they will put maximum political pressure on the Kenyan government fully to implement the ruling. For the Endorois, the decision has already had one important consequence: the mining company has given up its plans to mine rubies in the area.

Sources:

African Charter: http://www.achpr.org/english/_info/charter_en.html

African Commission on Human and Peoples' Rights Ruling: http://indigenouspeoplesissues.com/attachments/3879_ACHPR%20Communication%20276%20of%202003.pdf

"Endorois to Get Back Their Land, Thanks to AU Court", *Daily Nation*: <http://allafrica.com/stories/201002091147.html>

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Minority Rights Group International, "Trouble in Paradise": <http://www.minorityrights.org/6779/trouble-in-paradise/the-facts.html>

"Ruling On Endorois Will Have An Impact On Land Disputes", *Daily Nation*: <http://www.marsgroupkenya.org/multimedia/?StoryID=281432&p=Gem>

The commission considered a number of legal authorities, including aboriginal titles such as: Delgamuukw, Ward and Richtersveld. In addition, it considered the African Charter (articles 8, 14, 17, 21 and 22) and the case of *The Mayagna (Sumo) Awas Tingi v. Nicaragua*.

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