



CENTRE FOR MINORITY RIGHTS DEVELOPMENT

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A CALL TO RE-EVALUATE THE STATUS OF MINORITY AND INDIGENOUS RIGHTS IN KENYA: DECISION ON THE ENDOROIS COMMUNICATION BEFORE THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (ACHPR)

The Centre for Minority Rights Development (CEMIRIDE) welcomes the recent decision by the African Commission on Human and Peoples' Rights (ACHPR) in regard to **Communication 276/2003: Centre for Minority Rights Development and MRG on behalf of Endorois Community v the Republic of Kenya.**

It further wishes to thank the Kenyan government for its solid cooperation during the prosecution of the communication at the African Commission on Human and Peoples' Rights. Its gratitude is extended to the support received from Minority Rights Group International, and Endorois Welfare Council, various institutions and scholars, and the minority and indigenous people's movement in and outside Africa.

The communication sought redress for the violations suffered by the Endorois community following displacement from their ancestral lands to pave way for the establishment of the Lake Bogoria Game Reserve. The decision by the ACHPR to uphold the claim of the Endorois community is a call for the government of Kenya to re-evaluate the status of rights and protections accorded to minorities and indigenous peoples in Kenya. Specifically, the African Commission has recommended the following:

- a) Restitution of Endorois ancestral land.
- b) Unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites in addition to grazing for their cattle.
- c) Payment of adequate compensation to the community for all losses incurred.
- d) Payment of royalties to the Endorois from existing activities and ensuring that they benefit from employment possibilities within the Reserve.
- e) Registration of the Endorois Welfare Committee.
- f) Engaging with the community for the effective implementation of the recommendations.

For a long time in Kenya, minority and indigenous communities have been characterized by poor access to resources and opportunities, insecurity of tenure and alienation from the state administration: the plight of the Endorois is depictive of this scenario. While we acknowledge that the ongoing National Reform Agenda has been designed to cater to the

resolution of these issues, the decision by the ACHPR will provide the necessary impetus for an increased focus on the concerns of minority and indigenous communities in Kenya.

What does the decision mean in the context of the National Reform Agenda?

The decision by the ACHPR brings into sharp focus a catalogue of issues that are the subject of various national reform processes such as the constitutional review process, the national land policy, the national cohesion process and the truth, justice and reconciliation process to name a few. The issues deliberated on in the communication included: the recognition of indigenous peoples, the right to practice religion, the right to property, the right to culture, the right to free disposition of natural resources and the right to development.

In arriving at its decision, the ACHPR noted that the current Kenyan Constitution while incorporating the principle of non-discrimination and guaranteeing civil and political rights does not recognize economic, social and cultural rights as such, as well as group rights. This in their opinion had a direct adverse effect in the domestic claim of the Endorois seeking recognition of their collective claim to their ancestral lands. The ACHPR however, found the Endorois to be worthy beneficiaries of the collective rights under the African Charter when they recognized the right of the Endorois to preserve their identity through identification with their ancestral lands. This decision demonstrates the need to expand the Bill of Rights under the constitution to be inclusive of group rights and economic, social and cultural rights. It is hoped that as the constitutional review process draws to a close, the gains acquired in this regard shall be retained in the final draft of the proposed new constitution.

The Commission in rendering its decision further recognized that the forced eviction of the Endorois from their ancestral lands had an adverse impact on their religious freedom, removing them from the sacred grounds essential to the practice of their religion and cultural rites. In calling for the Endorois to be granted access to Lake Bogoria and its surrounding areas, the Commission is calling for the State to respect the culture of indigenous communities in addition to recognizing the intrinsic link associated with land and culture for indigenous communities. It is hoped that the ongoing constitutional review process will result in the recognition and protection of culture; and that future government policies involving the eviction or relocation of communities shall take cognizance of the socio-cultural link to land. We would like to acknowledge recent government attempts on the same in relation to the Ogiek Community and the restoration of the Mau Forest Complex.

The Commission has also pointed out that the Trust Land System as currently provided for under the constitution has indeed failed to protect the rights indigenous communities such as the Endorois as it allowed for the encroachment of their land in a manner that was disproportionate to any identified public need. Furthermore, the encroachment was deemed to be in contravention of national and international law. It is hoped that with this decision, Kenya shall adopt a community land tenure system within the constitution and a land policy that recognizes the rights of indigenous communities in line with the internationally recognized principles of consultation, compensation and restitution in the event they are required to relinquish their property rights in the wider public interest. This is especially important in light of the emerging focus on natural resources occurring on

the lands of such communities in areas such as Lake Turkana or the Tana River Delta; and the need to harness them for the benefit of the wider population. It is also hoped that the government shall consider such communities as partners and beneficiaries of such development projects while undertaking measures to mitigate any adverse effects of such projects.

Conclusion

The recommendations by the ACHPR in this case are of immense value to all minority and indigenous communities in Kenya and if adhered to will effectively address the concerns of the routinely marginalized communities of the republic and contribute to the wider goal of achieving national cohesion in Kenya. We therefore call on the organs of the National Reform Agenda namely: the Committee of Experts on Constitutional Review (CoE), the Truth Justice and Reconciliation Commission (TJRC) and the National Cohesion and Integration Commission (NCIC) to take cognizance of the recommendations in this case while fulfilling their mandates and effectively restore the dignity and rights of these communities that have largely gone unrecognized in the past.

Yours sincerely

For: CEMIRIDE

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